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April 27, 2009

**VIA HAND DELIVERY**

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

Re: Proposed Wal-Mart Regional Distribution Center  
Draft Environmental Impact Report (DEIR)  
SCH No. 2006071029  
Comments of Valley Advocates and  
Merced Citizens for Responsible Planning

Dear Ms. Espinosa:

This office has been retained to prepare and submit comments on the above-referenced Draft Environmental Impact Report. After reviewing the DEIR, including the Appendices contained in Volume 2 of the DEIR, my clients and I have set forth the following comments and objections.

**1. Inadequate Analysis and Mitigation of Cumulative and Secondary Adverse Impacts to Agricultural Resources**

Section 4.1 of the DEIR, pp. 4.1-1 through 4.1-13, purports to disclose and analyze the adverse impacts from the proposed project on agricultural resources. At p. 4.1-11, the DEIR states

“Because of (*sic*) the project would result in the conversion of 228.68 acres of Farmland and the significant LESA score, the effect on farmland soils is considered a significant impact. Furthermore, industrial uses adjacent to agricultural land can result in land use conflicts and create incentives for agricultural producers to discontinue agricultural operations and sell their land for development.

...  
...The City’s General Plan EIR further concludes that to achieve the goals of maintaining a compact urban form, and other types of land-use compatibility issues,

101-1

mitigation that would eliminate the loss of agricultural land to urban development is not possible. Therefore, because no mitigation is available to reduce this impact, the impact would remain *significant and unavoidable*. This conclusion is consistent with the conclusion of the EIR prepared for the Merced Vision 2015 General Plan. It should be noted that the City considered the significant impact associated with the conversion of farmland resulting from the buildout of the General Plan and adopted a Statement of Overriding Considerations (Resolution No. 97-22).” (emphasis included in original)

Similarly, the Summary of Impacts and Mitigation Measures (DEIR, p. 2-5) makes similar findings and relies upon the current City General Plan EIR for the conclusion that:

“...mitigation that would eliminate the loss of agricultural land to urban development is not possible. Therefore, because no mitigation is available to reduce this impact, the impact would remain significant and unavoidable.”

However, as noted hereinbelow, the City General Plan and EIR were adopted in 1997, over twelve (12) years ago, and have not been comprehensively updated since then. These commentators respectfully submit that the City General Plan is outdated and inadequate in terms of the current mitigation measures available to and employed by other jurisdictions in the Central Valley, including the City of Davis, Yolo County, and Solano County and other jurisdictions which have adopted Agricultural Elements. Among the mitigation measures available and used by other jurisdictions Agricultural Land Trusts and off-site conservation easements or fee title acquisitions of comparable farmland. In fact, the City of Riverbank in Stanislaus County is in the process of considering the inclusion of such mitigation measures in its General Plan Update.

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Thus, these commentators contend that the City General Plan EIR is outdated and inadequate and that there are readily available and feasible mitigation measures which can reduce or mitigate the cumulative impacts of agricultural land conversion to urban uses in the City and County of Merced and elsewhere in the San Joaquin Valley. Therefore, the Final EIR for the proposed project should include a complete and adequate disclosure and analysis of the specific agricultural buffers, easements, and purchases of comparable agricultural land in Merced County which will mitigate the acknowledged significant impacts to agricultural land.

Second, for purposes of the City’s proposed Statement of Overriding Considerations, the FEIR should contain a quantified analysis of the economic losses, including appropriate multiplier effects, to the local and county-wide economies, to be utilized in the City’s weighing and balancing procedure required by CEQA and the CEQA Guidelines in the City’s findings of overriding consideration.

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Third, the disclosure and analysis of the cumulative adverse impacts to agricultural resources is inadequate, due to the fact that it is too limited in its scope. Specifically, the proposed project purports to serve the present and future Wal-Mart retail facilities, including super-centers, general merchandise stores, in the San Joaquin Valley and Northern California. Consequently, the proposed regional distribution center project in Merced will be the facilitator and “linchpin” of the San Joaquin Valley and Northern California by enabling the expansion of the

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Applicant's retail store operations in the region referred to above. Since Wal-Mart has never provided any agricultural mitigation for **any** of its projects in the Central Valley or elsewhere in Northern California and since virtually all of its projects in these areas have been built upon agricultural land, the FEIR should contain a quantified disclosure and analysis of all of the true direct, secondary, and indirect cumulative impacts to the agricultural resources of the Central Valley and Northern California---not solely the 238-acre proposed project, but also the Porterville Distribution Center and all of the existing, currently proposed, and reasonably foreseeable future retail stores in these areas and should provide for off-site mitigation for the total cumulative impacts from the conversion of agricultural lands to urban use.

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Finally, in addition, the cumulative adverse impacts to agricultural resources from the above-referenced projects should include a quantified disclosure and analysis of the adverse impacts in economic terms to the crop production caused by the cumulative mobile source air emissions should be included in the FEIR for the proposed project, which should include all of the above-referenced retail stores, so that the economic impacts may be weighed and balanced in the Statement of Overriding Considerations. Among the other factors to be considered and weighed should be the possible use of such off-site mitigation habitat to grow the fresh produce which will not be stored in the proposed regional distribution center, as an offset for the economic impact caused by the conversion of the agricultural land for the proposed project.

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## **2. Inadequate Analysis and Mitigation of Cumulative Adverse Impacts of Mobile Sources to Air Quality**

The DEIR purports to disclose all adverse cumulative impacts to air quality from the proposed Wal-Mart regional distribution center. However, the DEIR fails to disclose and to require readily available and feasible mitigation measures which can substantially reduce the significant and unavoidable cumulative adverse impacts to air quality.

Specifically, the FEIR should require the following mandatory mitigation measures.

- A. The proposed project shall use on-site Photo-Voltaic and Photo-Thermal Solar panels to provide all electric power, heating, cooling, and hot water for the proposed project operations. In the event that there is not enough space on the distribution center roof [1,100,000 sq.ft. divided by 43,560 sq. ft. per acre = approximately 22 acres under roof], the Applicant shall be required to construct additional on-site solar panels to supply all electricity required for the proposed project.
- B. All on-site vehicles, including all fork-lifts and other support vehicles, shall be electric-powered vehicles.
- C. All trucks (tractors) which serve the regional distribution center and retail stores served by the proposed project shall be required to use engines fueled by Compressed Natural Gas or methane (CNG), Liquid Propane Gas (LPG), or other alternative renewable fuels, such as bio-diesel, ethanol, or blends of renewable energy fuels and/or electric-powered vehicles.

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- D. The on-site fueling station for the proposed project shall provide the fuels referred to in the preceding mitigation measure.
- E. The trucks (tractors) for the distribution of fresh produce to the retail stores served by the proposed regional distribution center shall be required to use the fuels referred to in the preceding mitigation measures.
- F. The Applicant shall be required to enter into an agreement with Merced Community College or the Merced Union High School District for the purpose of training and employing automotive mechanics with experience in alternative renewable fuel engines and in converting gasoline and diesel engines to use the alternative renewable fuels referred to in the mitigation measures set forth above.
- G. The proposed project shall provide fuel for its employees who use alternative renewable fuel powered vehicles to purchase on-site.
- H. The proposed project shall provide on-site electric recharging stations for use by employees, visitors, and guests to purchase electric power to recharge their vehicles on-site.
- I. The proposed project applicant shall provide an electric-powered bus or jitneys to provide transportation or carpooling for its employees who wish to use such service.

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### 3. Energy Conservation

These commentators reiterate and incorporate herein by reference the mitigation measures set forth in paragraph 2 above, which are readily available and feasible, for the purpose of reducing energy usage by the proposed project.

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### 4. Inadequate Disclosure and Analysis of Fire Protection Services

The total disclosure and analysis of Fire Protection Services for this proposed 1.1 million square foot project is contained on less than one (1) page at Section 4.12 (Utilities and Public Services), at p.4.12-6. This topic is also briefly mentioned on one(1) page in Appendix F, at p. 12. The Summary of Impacts and Mitigation Measures includes one brief reference to the group of services identified as “Public Services---Police, Fire and Schools” at p. 2-60.

At the outset, the DEIR fails to disclose to the responsible and trustee agencies and to the general public that the City has been sued for its failure to comply with its own General Plan Safety Element Policies, Goals, Objectives, and Implementation measures, based upon the failure of the City to construct and have operational two (2) additional fire stations. In fact, the City is required by its General Plan and its ordinances to have a fire station within 1.5 miles of the

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proposed Project. However, the DEIR fails to disclose this information and fails to disclose and analyze the inconsistencies with the General Plan Safety Element and other regulatory requirements of the City. [A true and correct copy of the pending legal action is attached hereto and incorporated herein by reference; see “Attachment A.” *Merced Citizens for Responsible Planning v. City of Merced* (Merced County Superior Court Case No. 150872, Court of Appeals Civil Case No. F056076)]

In addition, the DEIR fails to disclose or analyze the failure of the City to comply with the mitigation measures set forth in the City General Plan Final Environmental Impact Report (FEIR) which address and mitigate the potentially significant effects of future growth and development on the ability of the City to provide adequate fire protection services to new developments, such as the proposed project. In fact, the City General Plan and other documents referred to in the above-referenced legal action expressly identify a fire station to be constructed and operated within the distance identified and required by the City from the proposed Wal-Mart Regional Distribution Center.

There is no disclosure or analysis of the mitigation measures of the City General Plan FEIR, adopted and certified in 1997, as required by the California Environmental Quality Act (CEQA) [Public Resources Code section 21000 et seq.]. The fact that the City of Merced is a “charter city,” as distinguished from a “general law city,” is irrelevant to its duty to comply with CEQA and the mitigation measures approved and adopted by the City in its own General Plan EIR for fire protection services. Given the rapid growth in the City, which occurred between 2003 and 2006, the current City General Plan is invalid and outdated, based upon the fact that it is over twelve (12) years old. Moreover, the current cumulative deficiency in the fire protection services will be substantially exacerbated by the approval of the proposed project. In this context, it should be noted that the City General Plan does not provide for an exclusion from, or waiver of compliance with, the mandatory Safety Element Policies, Goals, Objectives, and Implementation measures. More important, the General Plan EIR does not provide for an exclusion from compliance with, or a waiver of compliance based upon, the proposed project’s inclusion of a sprinkler system.

Further, in the Water Supply Assessment (WSA) contained in Appendix F, the DEIR omits any analysis, discussion, quantified calculations, or other facts upon which the EIR Preparer made the determination that the two (2) 300,000 gallon tanks would contain sufficient capacity to mitigate the potential fire hazards caused by the proposed project. Similarly, in the Fire Protection section at p. 4.12-6 of the DEIR, there is no identification of the relevant section(s) of the California Fire Code to support the finding of adequate fire flow for the proposed project.

Also, there is only a passing reference to a “mutual aid agreement with the Atwater and County Fire Departments,” but there is no copy of this Agreement contained in the DEIR, nor is any relevant section quoted in the DEIR or the location of such Agreement disclosed. This information needs to be provided in the DEIR or Appendices.

Since the Mutual Aid Agreement is not contained in the DEIR and there is no disclosure or analysis of the inconsistencies with the General Plan Safety Element and other City regulatory

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policies and development standards, the DEIR is inadequate, due to the fact that it does not address how the proposed project will have adequate fire protection from one (1) on-site pumper truck. Likewise, there is no disclosure or analysis of how the proposed mitigation measures and/or conditions will be sufficient to respond to a large-scale fire at a warehouse with multiple chemicals, toxic substances, and hazardous substances stored in the proposed warehouse/distribution center, including domestic cleaning agents, drain cleaners, chlorine bleaches, and other common household chemicals and garden fertilizers that will be stored in the warehouse. The DEIR should disclose a complete list of all such chemicals and toxic and hazardous substances which will be stored on-site and how the fire protection system will deal with these items.

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In addition to the foregoing comments and omissions, it should be noted that, although the proposed project will include sprinklers,

Finally, since the following issues have not been adequately addressed, the Response to Comments should address the following questions:

- A. Who will be responsible for providing the personnel to staff and operate whatever fire suppression equipment is intended to be utilized for the proposed project? 101-9
- B. Where will the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan? 101-10
- C. When will the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan? 101-11
- D. Does the City intend to amend its General Plan Safety Element for purposes of bringing the proposed project into consistency with the General Plan? 101-12
- E. Does the City intend to revise and amend its General Plan EIR for the proposed project purposes of CEQA compliance with the mitigation measures, conditions, and other implementation measures included in the GP EIR? [See, *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 in support of of position that CEQA mitigation measures approved and adopted by the lead agency and constitute conditions running with the land under state law and must be enforced by the lead or other responsible agency, unless and until the EIR for the General Plan is revised or amended, irrespective of whether the lead agency is a “charter city.”] 101-13

**5. Statement of Overriding Considerations**

These commentators request that the Findings and/or Statement of Overriding Considerations be included with the Final Draft EIR at least ten (10) days prior to the Planning Commission hearing on the proposed project. Further, these commentators expressly request that the Statement of Overriding Considerations include a spreadsheet or table including quantified economic values or other values for all benefits and detriments

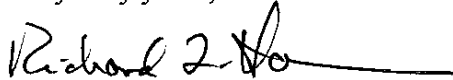
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(costs/benefits) considered, weighed, and balanced by the lead agency in the Statement/Findings of Overriding Consideration and identifying the substantial evidence in support of both the findings of benefit and detriment considered by the lead agency in the Statement/Findings of Overriding Consideration.

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Thank you for the opportunity to submit the foregoing comments to the City of Merced regarding this important proposed project

Very truly yours,



RICHARD L. HARRIMAN

cc: Sally Magnani Knox, Deputy Attorney General  
Clients

1 Richard L. Harriman, SBN 066124  
2 Lanahan & Reilley LLP  
3 191 West Shaw Avenue, Suite 205-B  
4 Fresno, California 93704-2826  
5 Telephone: (559) 226-1818  
6 Facsimile: (559) 226-1870  
7 Email: harrimanlaw1@sbcglobal.net  
8 Attorney for Plaintiffs and Petitioners

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF MERCED

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11 MERCED CITIZENS FOR RESPONSIBLE  
12 PLANNING, a California non-profit  
13 unincorporated association, and VALLEY  
14 ADVOCATES, a California non-profit public  
15 benefit corporation,  
16 Plaintiffs and Petitioners,  
17 v.  
18 CITY OF MERCED, a California municipal  
19 corporation, and MERCED CITY COUNCIL, a  
20 body politic,  
21 Defendants and Respondents.

CASE NO. 150872  
SECOND AMENDED PETITION FOR  
WRIT OF MANDAMUS  
[Code of Civil Procedure Section 1085]  
Date Action Filed: December 17, 2007  
Hearing Date on Petition: N/A

21 BELLEVUE RANCH-MERCED, L.P., a  
22 California limited partnership; CROSSWINDS  
23 AT BELLEVUE RANCH NORTH, LLC, a  
24 California limited liability company;  
25 CROSSWINDS BRE II, LLC, a California  
26 limited liability company; CROSSWINDS  
27 HOMES AT BELLEVUE, LLC, a California  
28 limited liability company; ENVISION HOMES,  
LLC, a California limited liability company;  
GRUPE INVESTMENT COMPANY, INC., a  
California corporation; (continued on next page)



1 KB HOME CENTRAL VALLEY, INC., a  
2 California corporation; KIMBALL HILL  
3 BELLEVUE RANCH, LLC, a California  
4 limited liability company; L.J. STEINER, LLC,  
5 a California limited liability company;  
6 MERCED PASEO, LLC, a California limited  
7 liability company; MERCED RENAISSANCE,  
8 L.P., a California limited partnership; MERCED  
9 SANDCASTLE, L.P., a California limited  
10 partnership; RYLAND HOMES OF  
11 CALIFORNIA, INC., a Delaware corporation;  
12 SUMMERTON HOMES, LLC, a California  
13 limited liability company; WOODSIDE  
14 PRAIRIES, INC., a California corporation;  
15 WAL-MART REALTY COMPANY, an  
16 Arkansas corporation; and DOES 1 through 50,  
17 inclusive,

18 Real Parties in Interest.

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1 Petitioners, Merced Citizens for Responsible Planning and Valley Advocates, petition this  
2 Court for a writ of mandamus, pursuant to Code of Civil Procedure section 1085, directed to the  
3 City of Merced, by and through the Merced City Council, and for an administrative stay of  
4 action, pursuant to Code of Civil Procedure, section 1094.5(g) and Government Code sections  
5 66474, 66499.34, and 66499.36, and by this verified petition allege the following.

6 **INTRODUCTION**

7 This case concerns a challenge by two (2) citizens' organizations to the continuing  
8 violation by the City of Merced ("City") and the Merced City Council ("Council") of the City of  
9 Merced 2015 General Plan provisions and subdivision map conditions of approval relating to the  
10 protection of public health and safety, human life, and private property, which were adopted by  
11 the Merced City Council for the specific purpose of protecting the public health and safety,  
12 human life, and private property of the residents of the City of Merced from significant risks due  
13 to the City's failure to enforce mandated fire protection requirements set forth in the *Merced*  
14 *Vision 2015 General Plan*, such as subdivision map approvals, development agreements, and  
15 other state and local regulations set forth herein.

16 Petitioners contend that the City is violating its own policies, ordinances, and regulations  
17 by engaging in the unlawful approval and improper issuance of building permits, certificates of  
18 occupancy, sewer connections, water service connections, and other development entitlements in  
19 violation of its own standard Tentative Subdivision Map ("TSM") Conditions of Approval, based  
20 on the Merced Vision 2015 General Plan and the Subdivision Map Act [Government Code  
21 ("Govt. C.") section 66473 et seq.] sections 66473.5, 66499.34, and 66499.36, due to the fact  
22 that such approvals are not in compliance with the City's General Plan Policies, Goals,  
23 Objectives, and Implementation Measures, and adopted development standards, which regulate  
24 and control the City's adopted fire safety requirements for the travel time and distance from City  
25 Fire Stations for public health and safety purposes.

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*Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case No. 150872; VERIFIED SECOND AMENDED PETITION FOR WRIT OF MANDAMUS

1           Petitioners ask the Court to order, direct, and command the City of Merced, the Merced  
2 City Council, and City Staff persons to perform their mandatory duty to enforce the City's  
3 standard Conditions of Approval for TSMs approved by the City Council which incorporate by  
4 reference the Policies, Goals, Objectives, and Implementation Measures of the *Merced Vision*  
5 *2015 General Plan* and other adopted development standards, which regulate the time and  
6 distance requirements for the location of Fire Stations and compliance with performance of fire  
7 safety standards in the City of Merced.

8           This action is extremely important for the protection of students, faculty, and  
9 administrators who have been recruited and solicited by two (2) state funded institutions of  
10 higher learning, Merced Community College (MCC) and the new University of California,  
11 Merced (UCM) who may buy or rent homes or rooms in buildings constructed in areas of the  
12 City which are underserved and exposed to fire safety hazards as defined in the City's *Merced*  
13 *Vision 2015 General Plan*, as incorporated by reference in the City's standard TSM Conditions of  
14 Approval. As such, these business invitees to the Merced community give rise to a duty of care  
15 for the health and safety of these newcomers so as to create a cognizable threat to public health  
16 and safety which is affected with a state interest and a substantial public interest to all residents  
17 and taxpayers of the City of Merced, because of the significant potential threat of legal liability to  
18 the City of Merced and to the taxpayers in the event of property damage and/or personal injury or  
19 death caused by inadequate fire safety services.

20           Petitioners hereby apply to the Court for an administrative stay, pursuant to Code of Civil  
21 Procedure (CCP) sections 1085 and 1094.5(g) and an Order, pursuant to CCP section 527 *et seq.*  
22 enjoining and restraining the City and its elected officials, agents, and employees from approving  
23 any new Tentative Subdivision Maps or Final Subdivision Maps outside of the time and distance  
24 requirements for Fire Stations and from approving and/or issuing any new building permits,  
25 certificates of occupancy, sewer connections, water connections, and other development  
26 entitlements for lots and/or structures located in the non-conforming subdivisions set forth

27 *Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case  
28 No.150872; VERIFIED SECOND AMENDED PETITION FOR WRIT OF MANDAMUS

1 hereinbelow or any new subdivisions as described hereinbelow. Petitioners request the Court to  
2 issue its Order staying all further administrative action in furtherance of the development,  
3 construction, and/or occupation of such lots and/or structures located in such non-conforming  
4 subdivisions, during the pendency of this action.

5 **PARTIES**

6 1. Plaintiff and Petitioner, Merced Citizens for Responsible Planning ("MCFRP"), is and,  
7 at all times mentioned herein was, a California non-profit public benefit unincorporated  
8 association, having its principal place of business located in the City of Merced, County of  
9 Merced, State of California. MCFRP is a project of Valley Advocates. Among the members of  
10 MCFRP is Richard L. Harriman, who, along with his wife, and Kamila Young are property  
11 owners, tax-payers, and residents of the Fahrens Creek subdivision, City of Merced, California  
12 95348, approximately one (1) mile from the City of Merced Fire Station 53, located on the south  
13 side of Loughborough Drive, between M Street and R Street, which serves the Harriman  
14 residence.

15 2. Plaintiff and Petitioner, Valley Advocates ("VA"), is a California non-profit public  
16 benefit corporation, having its principal place of business located in the City of Fresno, State of  
17 California. VA is a public interest organization which initiates and prosecutes legal actions on  
18 behalf of local residents and citizens' organizations in the public interest in the Central Valley of  
19 California, in order to enforce the Constitution and laws of the State of California and the United  
20 States of America.

21 3. Defendant and Respondent, City of Merced ("City"), is a California chartered  
22 municipal corporation and is governed by the Merced City Council ("Council"), elected by the  
23 voters residing within the jurisdiction of the City; and, as such, the City has jurisdiction and the  
24 legal authority to make determinations as a local government entity to approve and issue TSMs  
25 and Final Subdivision Maps, pursuant to the Subdivision Map Act and the Merced Vision 2015  
26 General Plan, and to approve and issue building permits, certificates of occupancy, sewer

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1 connections, water connections, and other administrative permits and entitlements for the  
2 development, construction, and occupancy of the projects referred to herein. The current  
3 members of the City Council are: Ellie Wooten (Mayor), John Carlisle (Mayor Pro Tem), Joe  
4 Cortez, Michele Gabriault-Acosta, Noah Lor, James D. Sanders, and William Spriggs.

5 4. Petitioners are informed believe, and based upon such information and belief, hereon  
6 allege that the following-listed Real Parties in Interest ("RPIs") and Does 1 through 50, inclusive,  
7 own property in non-complying subdivisions in the City of Merced, as follow, and are in the  
8 process of selling and constructing homes outside of the area specified and adopted by the City of  
9 Merced in its standard Conditions of Approval for required fire safety and protection of life and  
10 property; and, therefore, they are necessary or indispensable parties to this action and are named  
11 as RPIs herein, accordingly:

12  
13 BELLEVUE RANCH-MERCED, L.P., a California limited partnership  
14 16133 Ventura Boulevard, Suite 1400, Encino, CA 91436  
15 North of Cardella, APN Book 224, page 2

16 CROSSWINDS AT BELLEVUE RANCH NORTH, LLC, a California limited liability  
17 company, 22920 Ventura Drive, Novi, MI 48375  
18 North of Cardella, APN Book 170, page 3

19 CROSSWINDS BRE II, LLC, a California limited liability company  
20 22920 Ventura Drive, Novi, MI 48375  
21 North of Cardella, APN 224, pages 2 and 20

22 CROSSWINDS HOMES AT BELLEVUE, LLC, a California limited liability company  
23 22920 Ventura Drive, MI 48375  
24 North of Cardella, APN Book 224, page 13

25 ENVISION HOMES, LLC, a California limited liability company  
26 360 East Yosemite Avenue, Suite 200, Merced, CA 95340  
27 North of Cardella, APN Book 224, pages 17 and 18

28 GRUPE INVESTMENT COMPANY, INC., a California corporation  
c/o Nelson E. Bahler

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3255 West March Lane, Suite 400, Stockton, CA 95219  
North of Cardella, APN Book 224, page 16

KB HOME CENTRAL VALLEY, INC., a California corporation  
c/o David B. Simons  
17270 Golden Valley Parkway  
Lathrop, CA 95330  
South Merced, APN Book 61, page 61

KIMBALL HILL BELLEVUE RANCH, LLC, a California limited liability company  
5999 New Wilke Road, Suite 504, Rolling Meadows, IL 60008  
[9355 East Stockton Boulevard, Elk Grove, CA 95624]  
North of Cardella, APN Book 224, page 5 and Book 224, page 14

L.J. STEINER, LLC, a California limited liability company  
554 East Bellevue Avenue, Suite B  
Merced, CA 95301  
South Merced, APN Book 61, page 64

MERCED PASEO, LLC, a California limited liability company  
c/o William Gnass, Esq.  
767 East Yosemite Avenue, Suite A  
Merced, CA 95340  
El Paseo Subdivision, APN Book 170, pages 1 and 2

MERCED RENAISSANCE, L.P., a California limited partnership  
c/o Patrick Matthews  
3202 West March Lane, Stockton, CA 95219  
South Merced, APN, Book 61, page 61

MERCED SANDCASTLE, L.P., a California limited partnership  
c/o Patrick H. Matthews  
3202 West March Lane, Stockton, CA 95219  
Stockton, CA 95219  
South Merced, Sandcastle Subdivision, APN Book 61, pages 53 and 59

RYLAND HOMES OF CALIFORNIA, INC., a Delaware corporation  
24025 Park Sorrento, Suite 400, Calabasas, CA 91302  
North of Cardella, APN, Book 224, pages 4 and 15

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SUMMERTON HOMES, LLC, a California limited liability company  
c/o Todd Bender  
767 East Yosemite Avenue, Suite A, Merced, CA 95340  
South Merced, APN Book 61, page 60

WOODSIDE PRAIRIES, INC., a California corporation;  
39 East Eagleridge Drive, Suite 102, North Salt Lake, UT 84054  
North Merced, APN 224, pages 8 and 9

5. Petitioners are informed believe, and based upon such information and belief, hereon allege that, due to the fact that RPI, Wal-Mart Realty Company ("WMRC") owns real property in the City of Merced and is actively engaged in prosecuting an application for project permits and entitlements for the Wal-Mart Distribution Center "WMDC" located in an area of the City of Merced which currently is underserved in terms of the City's own fire safety standards; and due to this fact, WMRC is a necessary or indispensable parties to this action and is named herein as an RPIs, accordingly:

**FACTS COMMON TO ALL CAUSES OF ACTION**

6. On December 3, 1982, Kenneth W. Mitten, Fire Chief, Merced Fire Department, promulgated a document, entitled "The Basic Elements of Fire and Disaster Planning for the City of Merced" (1982), which is identified and characterized as a "Master Plan" and "policy guide for managing the fire and emergency environment of the community through a fire protection system." At pages 8-15 of the document, Chief Mitten describes "MASTER PLANNING FOR FIRE PROTECTION," and at Appendix B, there is a diagram of the "HISTORY OF A FIRE," which sets forth the evolution of a fire and the benchmarks which establish the so-called "REFLEX TIME" necessary to respond to a fire. [See true copies of letter to City Manager and City Council, December 3, 1982, pp. 8-15, and Appendix B, marked "Exhibit A," attached hereto and incorporated by reference herein.]

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1 7. Subsequently, after a 1983 review of inspections and other safety programs was  
2 undertaken by the Merced Fire Department, Chief Mitten prepared a follow-up on this report for  
3 the City Council referred to in paragraph 4 hereinabove with a "Master Plan," entitled "Merced  
4 Fire Department Master Plan—Service Level" (no date). At pages 26-32, the "Master Plan"  
5 contains a discussion of "flashover," "response time," and "reflex time." With respect to  
6 "response time," the document states:

7 "At an average of 35 miles per hour, it will take an engine company approxi-  
8 mately 3 minutes to cover the I.S.O. criteria of 1.5 miles. Couple this time  
9 with the "turnout" time of 30 to 45 seconds and we should be able to put a  
10 unit on scene within 4 minutes of dispatch. For each additional one-half mile  
11 of response distance, it would be necessary to add one minute to our response  
12 time. [p. 29, final paragraph]

13 Similarly, with respect to "reflex time," the document states:

14 "Response to an alarm that was detected immediately, reported and dispatched  
15 within 2 minutes, and no more than 1.5 miles from the fire company's location,  
16 should be within a 7-minute time period. Add to this a 3-minute set-up time,  
17 and our system will reflect a "reflex time" of 10 minutes – a realistic and  
18 acceptable "service level." [p. 32, final paragraph]

19 Finally, the document addresses Fire Station Location, as follows:

20 "Fire Station Location"

21 In a review of our existing facilities, response distances are in general  
22 within the I.S.O.'s recommendations. However, various areas within  
23 the city limits are beyond that 1-1/2 mile criteria. It is not advocated  
24 that a massive relocation effort be initiated, yet the maximum time to  
25 any area of the city should be established and a plan developed to bring  
26 our response needs within the "time" limits as established."  
27 [p. 35, middle paragraph]

28 [See true copies, marked "Exhibit B," attached hereto and incorporated by reference  
herein.]

8. In 1987, the Merced Fire Department promulgated a document entitled, "Merced Fire

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1 Department Facilities Study (1987-2002).” Included in this document is a “Reflex Time  
2 Schedule”, as follows:

3 “1. Reporting and dispatch time – 1 minute: Reporting party dials 911 emergency  
4 number, provides information to dispatcher, dispatcher tones out alarm and dispatches  
5 appropriate units.

6 2. Response time – 3-5 minutes: Receipt of alarm information by responding units,  
7 turn-out time (donning of safety gear, etc.) actual travel time to scene.

8 3. Set-up time – 4 minutes: Arrival/on-scene size-up and report, initial equipment  
9 layout and initial quick attack.

10 The above reflex schedule is designed to establish a minimum acceptable reflex  
11 capability *with the objective of an average response distance of approximately one and*  
12 *one-half miles within 3-5 minutes maximum*. Medical emergencies within this distance  
13 are responded to within the six-minute time frame and an initial fire attack (resources to  
14 attack a dwelling fire with our basic manpower commitment and a fire flow of 100 gpm)  
15 is achieved within a ten-minute time frame.” (emphasis added) [p. 4]

16 The “Facilities Study” continues, as follows:

17 “1. Time, rather than distance, is a more valid unit of measure for emergency response  
18 criteria. The achievable speed over a given distance varies depending on street  
19 conditions, street width, volume of traffic, and various other factors affecting traffic flow.  
20 Because of these variables, it is possible for fire apparatus stationed two miles from an  
21 incident to arrive prior to another fire company stationed only one mile from the same  
22 incident. A standard response (travel) time of three to five minutes was developed, using  
23 criteria of an average apparatus response speed of 30 m.p.h., or approximate distance of  
24 one-half (1/2) mile per minute.” [pp. 4-5; see, also, p. 6]

25 Subsequently, the study finds:

26 “Phase III”

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1 "Phase III is keyed to acquisition of property and the development of Engine Company  
2 No. Six and Seven in the North Central Merced area.

3 Current growth trends indicate a possible need to acquire property within the North "M"  
4 Street/Cardella Road area within 10 to 12 years for the development of Fire Station No.  
5 Six. Experienced growth may require the actual purchase of property and facilities  
6 development prior to our projections. *Annual updates of this study must be developed to*  
7 *project actual movement on this facility and Station No. Seven, projected further north*  
8 *in the Bellevue Road area.*" (emphasis added) [p. 26]

9 Likewise, the Study delineates areas of the City which are not served by existing  
10 facilities. [See Attachment B to the Study ("City-Wide Fire Station Coverage"), at pp. B2 and  
11 B3] The diagram at p. B5 demonstrates the proposed coverage area projected for the "New  
12 Engine #6 at Cardella & "M" St." [See true copies, marked "Exhibit C," attached hereto and  
13 incorporated by reference herein.]

14 9. In 1990, Kenneth W. Mitten, Fire Chief of City of Merced, prepared a document  
15 entitled "1990 Fire Department Service Level Report." Again, the "Service Level Report" finds,  
16 "Therefore fire attack response "reflex time" is based upon a one and one-half mile response  
17 distance with a turn-out and travel time of four to five minutes and a initial set-up time of four to  
18 five minutes." [p. 2, paragraph 2, final sentence] The Report continues to state:

19 "Again, the map below (Figure 2) compares not only the areas outside of the  
20 acceptable "reflex time" response standard, as identified in 1987, but also  
21 shows annexations since that time (lined areas) which are now within the city  
22 limits. Most of them are outside of our existing "reflex time" capabilities.

23 *After reviewing these two illustrations it is obvious that we are not*  
24 *meeting the adopted emergency response standard in a portion of the city.*

25 ...  
26 It is anticipated that with the addition of fire station five the City will  
27 be able to adequately cover the North-Eastern section of the City for the next  
28 three to five years. The exact time factor is based upon the projected build-out  
of the Wathen and Bellevue Ranch projects. It is projected, however, that prior  
to both of these developments being completed, the City will then need to locate

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1 another fire station, somewhere in the "G" to "M" and Cardella to Bellevue Road  
2 area." (emphasis added) [p. 6, paragraph 3]

3 [See true copies, marked "Exhibit D," attached hereto and incorporated by reference  
4 herein.]

5 10. In 1992, the Merced City Fire Department published its "Strategic Plan" (1992). This  
6 document found that the Merced Fire Department's "Master Plan" and "Fire Station Facilities  
7 Study need to be reviewed annually." [p. 8, third assumption] Further, the "Administrative  
8 Division Action Objectives" include the following: 1) "Update and revise the Merced Fire  
9 Department Facilities Study document based upon current demographics and projections;" and  
10 2) "Provide appropriate revisions within the Master Plan to facilitate updates to the city general  
11 plan." [p. 11] Third, "Develop an updated emergency response "reflex time" model for the  
12 city." [p. 12] Finally, the Report notes:

13 "Therefore, the fire protection system response time of four to six minutes is an  
14 important aspect in policy issues when considering an adequate service level."  
15 (underlining in original) [p. 23, paragraph 4, final sentence]

16 Later in the Report, in an Inter-Office Memorandum from Kenneth W. Mitten, Fire Chief,  
17 to Jim Marshall, City Manager, dated June 4, 1992, the Chief writes:

18 "...Through testing and experience it has been documented that the first  
19 five to ten minutes of a fire are the most critical. In a residential fire, for  
20 example, if you expect to save the occupants and limit the amount of  
21 damage within the building, trained personnel must be dispatched and  
22 deployed prior to flashover occurring.

23 Flashover occurs when the contents and smoke within a room or building  
24 have been preheated to a point that the entire area explodes into flame.  
25 Once flashover occurs, survival of the occupants and containment of the  
26 fire to the room or area of origin is doubtful."

27 ...  
28 Fire station location and apparatus need to be strategically located within  
the geographical areas that will best insure response times within  
established parameters. *The standard criteria is a maximum response  
distance of one and one half miles (4-6 minutes).* As the City of Merced  
grows, it is imperative that the emergency services response times remain  
within the identified parameters if our service levels are to be maintained."

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1 (emphasis added) [Memorandum , pp. 1-2, at p. 37 (unnumbered), in  
2 section following p. 34]

3 [See true copies, marked "Exhibit E," attached hereto and incorporated by reference  
4 herein.]

5 11. In 1997, the Merced City Fire Department published its "Strategic Plan 1997." Again,  
6 in that document, the Merced Fire Department reaffirms the necessity of maintaining a 4-6  
7 minute response time:

8 "1997 Objectives

9 ...

10 \*To maintain 4-6 minute response times and adhere to the Facilities Master  
11 Plan by developing and acquiring Station 55.

12 [See true copy, marked "Exhibit F," attached hereto and incorporated by reference  
13 herein.]

14 12. In 1997, the City of Merced approved and adopted the Merced Vision 2015 General  
15 Plan and the Final Environmental Impact Report (FEIR) for the General Plan.

16 13. The Merced Vision 2015 General Plan includes, Policy UE-1.3, in relevant part, as  
17 follows:

18 "Policy UE-1.3

19 ***Control the Annexation, Timing, Density, and Location of New Land***  
20 ***Uses Within the City's Urban Expansion Boundaries***

21 ***Implementing Actions:***

22 ...

23 **1.3.b The City should adequately plan for public improvements/services to**  
24 **support designated land uses for all areas as they become suitable for**  
25 **development and/or proposed for annexation.**

26 The City should prepare master plans for providing sewer, water, fire protection,  
27 Drainage, and other services for all new growth areas after the adoption of the  
28 General Plan. Refer to Chapter 5 -- Public Services and Facilities for  
specific policies regarding each of these areas.

[General Plan, p. 2-26; true copy, marked "Exhibit G," is attached hereto  
and is incorporated by reference herein.]

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14. The Merced Vision 2015 General Plan includes Section 5.2 "SETTING," which states, in relevant part, as follows:

"The City's Fire Department Master Facilities Plan is used in the planning of stations that will provide protection within a primary service area. The Department has a goal of maintaining a *response time of four to six minutes* for the first crew to arrive at a fire or medical emergency within an assigned district. *This goal was chosen on the basis of proven factors affecting property damage and, more importantly, life.*

As the City continues to grow in population and area, the fire protection system will have to change if it is to maintain this response time standard. This would require three existing stations to be relocated and four new facilities with personnel and equipment to be added to the system. *Figure 1* shows tentative fire station locations." (emphasis added)  
[General Plan, page 5-4; copies of pages 5-2 to 5-4, including *Figure 1*, marked "Exhibit H," are attached hereto, and are incorporated by reference herein.]

15. City General Plan Section 5.3 "ISSUES AND INTENT" provides, in relevant part, as follows:

**"5.3.1 Fire Protection**

*The location of fire facilities is a critical factor in providing adequate fire protection to the citizens of Merced.* The time and distance that must be traveled to the scene of an emergency can determine whether fire suppression efforts will be successful. The goals, policies, and actions (Goal Area P-2) in this chapter address locational criteria and distribution goals for new fire facilities. Additional goals, policies, and actions relating to fire prevention methods, disaster preparedness, and hazardous materials safety can be found in the Safety Element (Chapter 11)." (emphasis added)

[General Plan, Section 5.3.1, page 5-16; true copy of this section, marked "Exhibit I," is attached hereto, and is incorporated by reference herein.]

16. In addition, City General Plan Section 5.4 provides, in relevant part, as follows:

**Goal Area P-1: Public Facilities and Services** provides, in relevant part, as follows:

**5.4 PUBLIC SERVICES AND FACILITIES GOALS, POLICIES, AND ACTIONS**

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**Goal Area P-1: Public Facilities and Services**

**GOALS**

- ...
- **New Development Which Includes a Full Complement of Infrastructure and Public Facilities**

**POLICIES**

**P-1.1** Provide adequate public infrastructure and services to meet the needs of future development.

**P-1.2** Utilize existing infrastructure and public service capacities to the maximum extent possible and provide for the logical, timely and economically efficient extension of infrastructure and services where necessary.

**Policy P-1.1**

***Provide Adequate Public Infrastructure and Services to Meet the Needs of Future Development.***

*One of the key elements to promoting a healthy local economy in Merced is the quality of life enjoyed by the City's residents. The quality availability of urban services and infrastructure is found to be an important measure of urban quality.*

***Implementing Actions:***

- ...
- 1.1.b** Master infrastructure plans for newly developing areas may be prepared and adopted as necessary.

The City may prepare master infrastructure plans for newly developing areas. Individual development Proposals will need to develop plans and specifications for accessing planned City infrastructure.

- 1.1.c** Include in Specific Plans and master plans, a phasing plan for providing access, sewer, water, drainage, flood control, schools, parks, and other appropriate governmental facilities and services.

A phasing plan helps ensure that adequate service facilities can be accommodated in the planning area and that new facilities and services will be provided in a manner that keeps pace with population growth." [General Plan, pp. 5-18 and 5-19; true copy, marked "Exhibit J," is attached hereto and is incorporated by reference herein.]

17. In addition, City General Plan Section 5.4 provides, in relevant part, as follows:

**Goal Area P-2: Police and Fire Protection Services** provides:

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***“Goal Area P-2: Police and Fire Protection Services***

**GOAL**

- A Community Reasonably Safe From Crime and Fire

**POLICY**

***Policy P-2.1***

***Maintain Sufficient Public Protection Facilities, Equipment, and Personnel to Serve the City’s Needs.***

*Public protection services and facilities are to be maintained in the City of Merced at a level that promotes the health and welfare of the city’s residents. The City is committed to assuring that facilities, equipment and staffing levels of its fire and police service units meet the highest standard that can be accommodated within the resource constraints of the City.*

***Implementing actions:***

**2.1.a Periodically review existing and potential station facilities, equipment and manpower in light of protection service needs**

Fire-fighting equipment and companies of personnel should be sufficient in number and adequately distributed throughout the planning area in order to allow optimum response time to calls within the primary service areas of a fire station and to ensure prompt availability of additional companies for serious or simultaneous fires. Police service districts should be sized to promote community-based policing concepts and to maintain sufficient personnel to promote crime prevention and to combat criminal activity.

**2.1.b Determine that new development is adequately served by fire and police protection services.**

Fire stations should be located so that no development in the City is outside the primary response areas (4 to 6 minutes) of at least one firehouse. Development plans should be reviewed with respect to existing and planned future fire sites and police resources.”

**2.1.c Fire station sites should be selected based on the distribution of land uses and population projected when the area is fully developed.**

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Future sites should be located within planned urban service centers based on future use.

**2.1.d Ease of access should be a primary consideration in selecting fire station site.**

The following guidelines should be considered when siting new firehouse facilities:

- a) Fire stations should be located on streets close to and leading into major or secondary thoroughfares.
- b) Fire stations should be so located as to minimize delays caused by incomplete street patterns.
- c) A fire station should be near the center of its primary service area, measured in terms of driving time to the periphery of this area.
- d) Fire stations should be convenient to high value areas of commercial or industrial Districts, but not located in them unless such a location is necessary to maintain the required service radius.
- e) Fire stations should be located, as much as feasible, away from other uses which may be sensitive to the noise impacts of frequent alarms.
- f) Fire stations and their sites should be designed to fit in with their surroundings, including consideration of open spaces, off-street parking, landscaping, and general appearances especially when located in residential districts.
- g) In residential service areas, fire stations should be located in or near those sections which have the highest density.”

[General Plan, pages 5-21 to 5-22; true copy of this section, marked “Exhibit K,” is attached hereto and is incorporated by reference herein.]

18. On April 4, 2003, Kenneth W. Mitten, Fire Chief, Merced Fire Department, released a document entitled, “Merced Fire/Rescue Strategic Plan 2003.” At p. 7 (unnumbered) of this Plan, in Section D. “Five Plus Years,” the document states:

“1) Due to community growth and development, review and revise the City of Merced Community Fire Protection Master Plan (CFPMP) to maintain adequate and affordable service levels, as directed by the City Council.”

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1 [See true copy, marked "Exhibit L," attached hereto and incorporated by reference  
2 herein.]

3 19. The Safety Element of the City General Plan also includes specific language  
4 confirming the foregoing fire station response time standards:

5 "Land Use  
6 Merced has a variety of land use types. Many of these require tailored fire protection  
7 considerations. These land uses are included as follows:  
8 ...  
9 Each of these land use types requires somewhat different fire suppression resources  
10 (e.g., emergency medical services, hazardous materials response, and heavy  
11 rescue). Merced's current policy is to provide emergency response within 4 to 6  
12 minutes and to provide adequate resources to combat fires in these occupancies.  
13 The target of this response is to place a fire unit on scene in 95 percent of incidents  
14 in five minutes..."

15 [General Plan, Safety Element, pp. 11-26 and 11-27; true copies, marked "Exhibit M," is  
16 attached hereto and incorporated by reference herein; see Figure 11.26]

17 20. The City's typical Pre-Annexation Development Agreement used in its  
18 ordinary course and practice includes boilerplate Conditions of Approval, which often includes:

19 "Section 7. If an additional Fire Station or Substation is necessary to meet the  
20 adopted fire response time in the City's Community Fire Protection Master Plan,  
21 Owner must contribute its proportional share to the construction of such facility."

22 "Exhibit B, Development Approvals," including compliance with the environmental  
23 review document, incorporating the Mitigation Monitoring Program; and

24 "Exhibit C, Land Use Regulations," including compliance with:

- 25 *Merced Vision 2015 General Plan*, as amended
- 26 Charter of the City of Merced, as amended
- 27 Merced Municipal Code, as amended
- 28 City of Merced Design Standards, as amended

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1 [See City's typical form Pre-Annexation Development Agreement, from which the  
2 foregoing excerpts were cited.]

3 21. On January 2, 2007, the City Council considered the Staff Report prepared by City  
4 Staff, dated December 21, 2006 and unanimously adopted a motion approving and adopting  
5 Resolution 2007-11, regarding the establishment of priorities as recommended for the  
6 development of fire stations; directing staff to seek proposals from architects for the design of  
7 fire station 56, to be located at the Merced College site; and to conduct a joint Fire Station Study  
8 Session on a temporary (interim) fire station for Bellevue Ranch North. [See Staff Report, dated  
9 December 21, 2006 and the Minutes of the City Council Meeting held on January 2, 2007,  
10 marked "Exhibit N;" true copies are attached hereto and incorporated herein by reference.] There  
11 is no evidence that Resolution No. 2007-11 was rescinded or modified by the Council.

12  
13 22. On August 22, 2007, the City Planning Commission approved and adopted  
14 Amendments to Planning Commission Resolution No. 1175 (Standard Tentative Subdivision  
15 Map Conditions) Provision No. 7, which applies to all Tentative Subdivision Maps in the City of  
16 Merced, which is included for all subdivisions referred to hereinabove; to-wit:

17 "7. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced  
18 shall apply."

19 22. In the Staff Report for Agenda Item L-1-I for the City Council meeting of May 5,  
20 2008, the City Manager and the Fire Chief reported to the City Council:

21 "Current balances as of March, 2008 within the Fire PFFP Account total  
22 \$1,727,020.57. This includes \$645,715.87 City and \$1,081,304.70 developer.  
(page 5)

23 ...  
24 Fire Station 56 was designated by the City Council as the top priority. The  
25 site acquisition has been completed. The schedule approved by the City  
26 Council was to undertake the design work in 2008, and construct the facility  
27 in 2010. It is currently projected that Fire Station 56 would be open and  
28 operational by then (*sic*) end of 2010. (page 6)

...

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1 In the calendar year of 2007 fire station No. 53 responded to 941 incidents.  
2 The average response time was 4:24 minutes for the year.” (page 7)

3 [True copy of the Staff Report, marked “Exhibit O” is attached hereto and incorporated  
4 by reference herein.]

5 23. The current Staff Report does not provide a report of the relevant time period, which  
6 is the *longest* elapsed times for responses outside of the areas previously identified in Exhibit N  
7 showing the coverage areas and those developed areas outside the circles showing purportedly  
8 adequate coverage, nor does the Staff Report provide an accounting of the development impact  
9 mitigation funds received during the “boom” years of 2001-2005 in the City or any funds  
10 transferred into or out of the relevant funds. There is no discussion of the call volume or where it  
11 was generated, with respect to new development *outside* the service rings shown in the  
12 attachments to “Exhibit N.”

13 24. Petitioners contend that the Respondents have failed to discharge their mandatory  
14 duty set by the Council by Planning Commission Resolution No. 1175, which requires that all  
15 “applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply” and that  
16 there is substantial credible evidence to support a finding that the City Council has adequate  
17 funds to construct Fire Station No. 56 and that Council Resolution No. 2007-11 expressly  
18 authorizes the Council to borrow from other funds to fund the construction of fire stations. [See  
19 Exhibit N, which expressly states:

20 “This station is recognized in Merced College’s Campus plan as well as City  
21 plans, and is ready to proceed to construction. The City owns the site, which  
22 was recently purchased from Merced College. Staffing for an additional station  
23 is available, due to revenues from Community Facilities Districts. The need for  
24 this station is the most immediate, evidenced by both the growing call volume  
25 in the area, and the amount of development to be served by the station. (see  
26 Attachment 2). This station would serve Bellevue Ranch, recently annexed  
27 Land (e.g. Absolute-Leeco), and Proposed annexations shown in Attachment  
28 2.)”

25 25. Moreover, the City Staff Reports do not report on the number of out-of-area students

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1 who are attending both Merced Community College and the University of California, Merced,  
2 who have come to the City of Merced specifically because of these two state-funded educational  
3 institutions, who reside in the underserved areas outside the service rings identified in the  
4 attachments to "Exhibit N." Thus, the fire service standards and regulations adopted by the City  
5 of Merced in their General Plan policies and other standards, which have been incorporated by  
6 the City into the standard Conditions of Approval for all Tentative Subdivision Maps are affected  
7 with a state interest in protecting out-of-area students, faculty, and administrators who have come  
8 to the City of Merced expressly for the purpose of attending both post-secondary school  
9 institutions funded and supported by the State of California.

10 26. Petitioners have no adequate remedy at law and, due to the continuing unlawful  
11 decisions, actions, and omissions of the City of Merced, acting through its City Council, City  
12 Manager, and other City Staff, as alleged herein. Petitioners have been compelled to retain legal  
13 counsel to bring this action against the Respondents and Defendants, in order to protect and  
14 defend substantial interests of the Petitioners and the general public in the public health, safety,  
15 and welfare of the residents of the City of Merced and to protect the City residents and taxpayers  
16 from sub-standard fire protection of life and property and from potential significant exposure to  
17 liability and monetary damages from claims by residents in recently annexed areas who have not  
18 been provided the fire protection system and safety mandated by the City General Plan and other  
19 City goals, policies, objectives, implementing actions, memoranda to the City Council, through  
20 the City Manager, and City Council Resolution No. 2007-11, as set forth hereinabove.

21 27. In addition, Respondent City has continued to issue building permits, water and  
22 sewer service connections, certificates of occupancy, and other development entitlements, despite  
23 the continuing violations of the standard TSM Conditions of Approval incorporating City  
24 General Plan Goals, Policies, Objectives, and Implementing Actions, and other adopted  
25 development standards, including the City's Fire Protection Master Plan, Subdivision Map  
26 Conditions of Approval, and Development Agreement Conditions of Approval, along with the

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1 City's failure to implement the provisions of City Council Resolution No. 2007-11, including the  
2 failure to proceed with either the construction and equipping of an operational permanent or  
3 temporary or interim fire station at the M Street traffic circle south of Bellevue Road or  
4 elsewhere in the Bellevue Ranch Master Planned Community.

5 **FIRST CAUSE OF ACTION**

6 **[Violation of City General Plan]**

7 **(Failure to Enforce Compliance, Pursuant to Gov't Code**

8 **Sections 66499.34 and 66499.36 )**

9 28. Petitioners re-plead and reincorporate the allegations in paragraphs 1 through 27,  
10 inclusive, as though fully set forth herein.

11 29. Despite the clear and express mandate of the City General Plan provisions cited  
12 hereinabove, including the City Fire Protection Master Plan, and memoranda from the City Fire  
13 Chief to the City Council, through the City Manager, and the adoption of Resolution No. 2007-  
14 11, Respondent City of Merced has failed to provide the planned construction of new City Fire  
15 Station 56 (Merced College) or the relocation of Fire Station 53 (Loughborough), which results  
16 in numerous subdivisions being in violation of the General Plan fire protection requirements,  
17 final subdivision map requirements for numerous developments, City fire protection goals,  
18 policies, objectives, implementing actions, and other policies, agreements, and standards adopted  
19 by the City Council, as referred to hereinabove. Specifically, all of the homes located north of  
20 Cardella Road exceed the two (2) mile **maximum** distance from Fire Station 53 (Loughborough),  
21 and the homes under construction north of Bellevue Road and G Street are 3.2 miles from the  
22 nearest fire station that serves them, Fire Station 53 (Loughborough), and construction of Station  
23 56 (Merced College) has not yet commenced.

24 30. In addition, the residences currently within in the adopted 1.5 mile fire services  
25 area of Station 53 (Loughborough) are subject to substantial risk to life and property, due to the  
26 fact that Station 53 (Loughborough) is currently charged with the duty to provide fire protection

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1 services to a service area far larger than the 1.5 mile radius identified in City Resolution 2007-11,  
2 thereby causing an unreasonable risk of timely provision of fire services being unavailable within  
3 the 4-6 minute time period within which "flashover" occurs, in the event that the Fire Station 53  
4 personnel and equipment were dispatched outside the designated service area to the area north of  
5 Cardella Road, when service was needed within the designated service area of Station 53  
6 (Loughborough), thereby increasing the probability of damage to life and/or property within the  
7 1.5 mile service area required by the fire protection service standards adopted by Respondent  
8 City.

9 31. Moreover, as taxpayers and residents of the City of Merced, the MCFRP members  
10 and other members of the public are exposed to both risk of monetary damages from loss of life  
11 and property damages, but, also, they are exposed to increased financial risk resulting from  
12 increased fees caused by lawsuits brought against the City to recover damages for the inadequate  
13 fire protection services, based upon the violation of the City's own mandatory TSM Conditions  
14 of Approval, which incorporate fire safety standards, as well as the nationally accepted standards  
15 set forth in the exhibits attached hereto.

16 32. In the early part of 2007, prior to filing suit, Petitioners' counsel raised this issue  
17 before the City Council, sitting in public session, by asking the City Manager when the City  
18 would have the new fire stations constructed and fully operational, and the City Manager stated  
19 that he did not know when the next new fire station would be constructed and fully operational.  
20 In August, 2007, Petitioners' counsel contacted the City Attorney by telephone and asked when  
21 the new fire station planned for the Bellevue Ranch Master Planned Community would be  
22 constructed to serve the new development proceeding outside the City's adopted service area,  
23 and the City Attorney informed Petitioners' counsel that he would be turning this matter over to  
24 the developers of the projects outside the adopted service area for them to solve the problem. On  
25 December 17, 2007, when this suit was filed, no permanent or temporary fire station was  
26

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1 constructed or operational to serve the area north of Cardella Road or in the areas of south  
2 Merced identified in the real property owned by the RPIs, as set forth hereinabove.

3 33. Petitioners contend that Respondent City has a mandatory duty to enforce the  
4 Conditions of Approval set forth in its "Standard Conditions" for all TSM's, including Provision  
5 No. 7, which Petitioners contend include all of the City General Plan provisions and to comply  
6 with the State Subdivision Map Act [Gov't Code section 66473 et seq.] by enforcing the  
7 Conditions of Approval adopted by the City Council expressly set forth in the City's approval of  
8 each TSM and FSM, to comply with the California Environmental Quality Act (CEQA) [Public  
9 Resources Code section 21000 et seq.] mitigation measures adopted with the approval of each  
10 subdivision project, and to enforce the Conditions of Approval contained in the Development  
11 Agreements with property owners and developers for each subdivision project.

12 34. Petitioners petition the Court to grant this Petition for Writ of Mandamus, pursuant  
13 to CCP section 1085, and to grant a stay of further issuance by Respondent City of Merced of any  
14 new building permits, water connections, sewer connections, certificates of occupancy, and any  
15 and all other development entitlements in those areas which are not in compliance with the City's  
16 General Plan fire protection standards, subdivision map Conditions of Approval, Development  
17 Agreement Conditions of Approval, and the other fire protection standards, as set forth  
18 hereinabove, including City Resolution 2007-11 and Planning Commission Resolution No. 1175,  
19 unless and until the City has caused the necessary new fire stations to be constructed and fully  
20 operational, as required by the foregoing legal mandates and authority, or to require the  
21 installation of temporary or interim fire stations which are fully equipped and staffed with the  
22 necessary personnel.

23 35. In addition, Petitioners respectfully seek equitable relief by requesting this Court's  
24 order commanding, directing, and ordering the City to prepare an inventory list of all properties  
25 which are not located within areas complying with the City's fire protection standards, as  
26 approved and adopted in Resolution 2007-11 and Planning Commission Resolution No. 1175; to

27 *Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case  
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1 provide written notice to all City property owners of record and/or residents who reside in areas  
2 which are not in compliance with the City's fire protection standards, as set forth hereinabove; to  
3 provide notice to all title and escrow companies engaged in business in the City and County of  
4 Merced of the inventory of non-compliant properties in the City of Merced, and to post notices of  
5 such non-compliance on each building within the City limits that is not in compliance with the  
6 City's adopted fire protection standards.

7 36. The legal bases for this relief are set forth in the Subdivision Map Act (SMA) [Gov't  
8 Code sections 66474, subd. (a), (b), and (g), 66499.33, 66499.34, and 66499.36 (which regulate  
9 the duty of the agency granting entitlements under the SMA)]; PRC section 21181.6 (regarding  
10 compliance with the Mitigation Monitoring Program for each annexation and subdivision and  
11 Development Agreement Conditions of Approval); and the State Planning and Zoning Act  
12 [Gov't Code section 65300.5 (requiring internal integration and consistency among general plan  
13 land uses and zoning and the Safety Element)].

14 37. Petitioners are informed believe, and based upon such information and belief,  
15 hereon allege that, due to the fact that Merced Community College (MCC) and University of  
16 California, Merced, is actively engaged in recruiting and soliciting students to come to their  
17 respective institutions and to reside in the City of Merced; and due to the fact that these  
18 institutions are on notice of the fire safety deficiencies in the underserved areas identified in this  
19 action; and due to the fact that these institutions serve in the role of *in loco parentis* to, and have  
20 an affirmative duty to safeguard the health and safety of their students by warning them of the  
21 potential health and safety risks to, their students who rent houses, apartments, and/or rooms in  
22 the areas which are underserved by the fire protection services of the City of Merced, as defined  
23 by the City's own standards:

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*Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case  
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1 38. Petitioners represent the public interest and initiate this legal action on behalf of the  
2 taxpayers of the City of Merced and the general public for the purpose of protecting and  
3 defending the public health, safety, and welfare, mandated by the provisions of the SMA and  
4 CEQA, as alleged herein, and to preserve the financial integrity of the City of Merced and to  
5 avoid potential civil lawsuits and judgments against the City of Merced.

6 39. Petitioners have a substantial beneficial interest in ensuring that the Respondents'  
7 decisions be rendered, and actions be taken, only in conformance with the policies and  
8 procedures required by law, in having laws properly executed, and in having public duties  
9 enforced, including the enforcement of the SMA, the City's own standard TSM Conditions of  
10 Approval, Mitigation Monitoring Programs, Development Agreement Conditions of Approval,  
11 City Fire Protection Master Plan, and other City policies, goals, objectives, implementing  
12 actions, including the implementation of Resolution 2007-11, regarding the protection of life,  
13 property, and public financial resources in the City of Merced.

14 40. Petitioners are entitled to, and hereby seek, an award of reasonable attorney's fees and  
15 costs, based upon their service to the public as private attorneys general, pursuant to Code of  
16 Civil Procedure Section 1021.5 and Government Code Section 800.

17 41. Wherefore, Petitioners seek this Court's order granting this petition for a writ of  
18 mandamus and other relief as prayed for hereinbelow.

19 **PRAYER**

20 WHEREFORE, Plaintiffs and Petitioners pray for judgment against Respondents and  
21 Defendants, as follows.

22 As to the First Cause of Action for Mandamus:

23 1. For a peremptory writ of mandamus or other appropriate writ, pursuant to Code of  
24 Civil Procedure Sections 1085, commanding, directing, and ordering Respondents City of  
25 Merced and the Merced City Council to enforce its own standard Tentative Subdivision Map  
26 Conditions of Approval as set forth in Provision 7 of Planning Commission Resolution No. 1175

27 *Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case  
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1 and City Council Resolution No. 2007-11, to comply with the State Subdivision Map Act [Gov't  
2 Code section 66473 et seq.] by enforcing the Conditions of Approval adopted by the City  
3 Council in its approval of each TSM and FSM, to comply with the California Environmental  
4 Quality Act (CEQA) [Public Resources Code section 21000 et seq.], and to enforce the  
5 Conditions of Approval contained in its Development Agreements with property owners who are  
6 named herein as Real Parties in Interest.

7           2. For a peremptory writ of mandamus or other appropriate writ, pursuant to Code of  
8 Civil Procedure Sections 1085, commanding, directing, and ordering Respondents City of  
9 Merced and the Merced City Council to enforce its General Plan provisions, to cease issuance of  
10 any building permits, water and sewer connections, certificates of occupancy, and any and all  
11 other development entitlements in those areas which are not in compliance with the City's  
12 General Plan fire protection standards, subdivision map Conditions of Approval, Development  
13 Agreement Conditions of Approval, and the other adopted fire safety standards, as set forth  
14 hereinabove, including Resolution 2007-11, unless and until the City has caused the necessary  
15 new fire stations to be constructed and fully operational, as required by the foregoing legal  
16 mandates and authority.

17           3. For a peremptory writ of mandamus or other appropriate writ, pursuant to Code of  
18 Civil Procedure Sections 1085, commanding, directing, and ordering Respondents City of  
19 Merced and the Merced City Council to prepare an inventory list of all properties with  
20 development entitlements which are not located within areas complying with the City's fire  
21 protection standards, including City Council Resolution 2007-11 and Planning Commission  
22 Resolution No. 1175; to provide written notice to all City property owners of record and  
23 residents of such areas which are not in compliance with the City's fire safety standards, as set  
24 forth hereinabove; to provide notice to all title and escrow companies engaged in business in the  
25 City and County of Merced of the inventory of non-compliant properties in the City of Merced,  
26 to publish a notice in the Merced Sun-Star and the Merced County Times including the notice of

27 *Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case  
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1 the locations of existing non-compliance; and to post notices of such non-compliance on each  
2 building within the City limits that is not in compliance with the City's fire protection standards.

3 4. For costs of suit incurred herein;

4 5. For reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure Section  
5 1021.5 and Government Code Section 800;

6 6. For such other and further relief as the court deems just and proper.

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**LANAHAN & REILLEY LLP**

Dated: May 5, 2008

By: Richard L. Harriman  
RICHARD L. HARRIMAN  
Attorneys for Petitioners

*Merced Citizens for Responsible Planning, and Valley Advocates v. City of Merced, et al.*; Merced County Superior Court Case No.150872; VERIFIED SECOND AMENDED PETITION FOR WRIT OF MANDAMUS

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*Merced Citizens for Responsible Planning and Valley Advocates v.  
City of Merced*

[Merced County Superior Court Case No. 150872]

VERIFICATION

I, Richard L. Harriman, declare:

I am a member and General Counsel of Petitioner and Plaintiff, Merced Citizens for Responsible Planning (MCFRP), in the above-entitled action and reside in the City of Merced, County of Merced. I have read the foregoing SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF and I know the contents thereof are true based on my personal knowledge, except as to those matters that are therein stated on my on my information and belief, and as to those matters I am informed and believe they are true, and on that ground verify that those matters are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is executed at Merced, California on this 3rd day of May, 2008.

  
RICHARD L. HARRIMAN

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*Merced Citizens for Responsible Planning and Valley Advocates v.  
City of Merced*

[Merced County Superior Court Case No. 150872]

VERIFICATION

I, Susan K. Ion, declare:

I am the Vice-President of Petitioner and Plaintiff, Valley Advocates, in the above-entitled action and reside in Stanislaus County. I have read the foregoing SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF and I know the contents thereof are true based on my personal knowledge, except as to those matters that are therein stated on my on my information and belief, and as to those matters I am informed and believe they are true, and on that ground verify that those matters are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is executed at Modesto, California on this 4th day of May, 2008.

  
SUSAN K. ION

**EXHIBIT A**

# The Basic Elements of Fire and Disaster Planning for the CITY OF MERCED

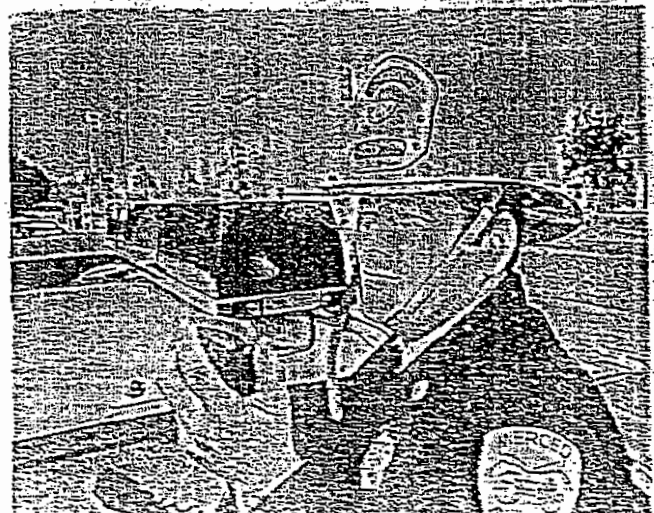
Prepared by

K.W. MITTEN, Fire Chief

1982

CONTROLLING THE COST OF EMERGENCY PROTECTION

CONTROLLING THE COST OF EMERGENCY PROTECTION



# CITY OF MERCED

CITY HALL, 1730 "M" STREET, MERCED, CA 95344-0068 - P.O. BOX 2068

(209) 722-4131



December 3, 1982

City Manager and  
Honorable Mayor and  
City Council Members  
City of Merced

As the Fire Protection Manager (Fire Chief) for the City of Merced, I am made painfully aware on a daily basis of the tremendous losses our nation's communities suffer from fires and other disasters. This report is about fire protection "Master Planning"--a systematic and cost effective approach to fire service delivery for community fire and disaster mitigation.

Community involvement is an important element in the master planning process. Early citizen participation and support can do much to air concerns and avoid misunderstanding. The community as a whole needs to understand what fire protection master planning is, and what it is not. The people must not feel threatened, but rather they must be made to feel that they are a part of the process and have a say in what happens. Also, the political, business and civic leaders must be convinced as to the need of master planning. Fire protection planning takes a lot of work and some of the decisions will be difficult; however, the results are likely to be well worth the effort.

Last but not least, the Master Plan is a policy guide for managing the fire and emergency environment of the community through a fire protection system. Because it is future looking, the plan provides policy in advance of change; permitting control of, rather than reaction to, the fire environment.

*Kenneth W. Mitten*

Kenneth W. Mitten  
Fire Chief  
Merced Fire Department

e1d3

022



units are dispatched/respond/arrive faster (due to early notification) to provide final fire extinguishment and salvage/overhaul.

The systematic process then moves into an investigation and documentation phase and supports the system by providing data for research and development, which calls for improvements by code development and enforcement to support the fire prevention effort.

The fire protection system that is being suggested at this time was developed by the USFA and impacts upon the local community in the form of fire protection "MASTER PLANNING". (See Appendix C)

"The idea of providing a system of comprehensive emergency management for response to major life-threatening emergencies has evolved."

#### MASTER PLANNING FOR FIRE PROTECTION:

What is fire protection Master Planning and how does it impact upon the fire problems in America? Traditionally, our community's thinking is to delegate to the local fire department the sole responsibility for providing fire and disaster protection. True, the primary responsibility for fire protection and disaster planning obviously does rest with the fire department; however, with today's economics and the resulting changes in management philosophies, the need for fire protection planning as a community function has been identified. In a typical community each of the following organizations is a part of the fire protection and emergency system:

1. Fire Department: Performs rescue, fire extinguishment, arson investigation, emergency medical services, fire

prevention activities, such as inspections and code enforcement, fire and disaster planning.

2. Building Department: Administers and enforces building codes in new construction and old construction undergoing remodeling.
3. Road or Street Department: Constructs, marks and maintains traffic corridors for motor-vehicle use, including fire apparatus.
4. Police Department: Crowd control and law enforcement, arson investigation for arrest and prosecution, traffic control and other police actions including evacuation.
5. Water Department: Supplies and distributes water for fire extinguishment.
6. Public and Private Schools: Sponsors public awareness programs in fire prevention and education.
7. Telephone Company: Telephone and other alarm circuits.
8. Planning Commission: Determines zoning which influences the spread of fires.

9. Ambulance Services: Emergency medical services and victim transport.
10. Citizens: A personal concern and responsibility for themselves and their neighbors.

As can be seen, the fire department is but one of the several local organizations in every community which influence fire and emergency protection. More often than not, the fire department deals with fires and other types of emergencies, resulting from factors which are the direct responsibility of some of these other local governmental organizations or individuals. It is therefore suggested that disaster planning is a community process, coordinated by the fire department.

Basically, the fire protection Master Planning process is designed to provide an organized approach to defining, obtaining, and maintaining the level of emergency protection a community desires, and the subsequent fire prevention and control system necessary. The local fire protection Master Plan should:

- Define the current and future fire/emergency environment by establishing and maintaining a comprehensive data base
- Define accepted life and property risk levels by setting goals and objectives
- Define the fire protection system which provides the level of service commensurate with the level of accepted risk
- Identify and justify the resources necessary to develop and operate the public fire protection agency

"All phases of emergency management are addressed in the comprehensive approach."

- Provide a detailed program of action to implement and maintain the fire protection system necessary

Ideally, the fire protection plan will provide a standard format to be applied to the community by establishing a policy guide for managing the local fire environment through the fire protection system.

Master Planning in itself is not a new process; however, Master Planning as applied to the fire service does differ from other standards and planning processes in that:

1. Fire protection master planning requires a commitment from the local governing body. A successful master planning process is based upon the authority being given to the local fire protection agency to develop a plan. Just as codes and ordinances provide a community with the authority to be a city or town and to regulate its own destiny, the authority for fire protection master planning enables the fire department to manage the resources for fire protection and disaster planning.
2. Fire protection master planning requires local multi-agency involvement for success. If other city or county departments are involved in the process, they are more likely to support the needs in fire protection master planning in the world of political and economic realities.

3. In the fire protection master planning process, all potential strategies are considered. By shaping fire protection goals and objectives in a proper way, certain needed alternatives for reaching the established objectives are available for consideration. These alternatives give the fire department an opportunity to direct the community toward a reasonable level of fire protection within the allocated local resources. Taking this non-traditional approach to the fire protection needs of the community provides an interesting and dynamic process that is keyed to specified levels of service.
4. Fire protection master planning is a community-based process and the local community must be involved.

FIRE PROTECTION PLANNING FOR THE CITY OF MERCED:

The City of Merced's fire department to date has not addressed the fire service delivery method as a systematic process, an item the current administration deems a priority. This is not to infer that our community's fire protection needs have not previously been addressed. To the contrary, the high service levels and our recent Insurance Services Office (ISO) survey and subsequent high-Class III rating validate our city administration in its efforts to provide an adequate level of fire suppression to the citizens.

The Merced City Fire Department being under the direction of a newly appointed fire service manager (fire chief) is currently reviewing our methods of fire and emergency service delivery and has identified the need to implement a planned process for fire service protection to the citizens of Merced. It is projected that this process will take the better part of two years to formulate and implement. However, due to its development it is felt that the true fire protection needs of the community will be identified and future planning enhanced by:

"Not only with an eye to the final plan but also to how you are going to implement it!"

- Identifying an Adequate Level of Fire Protection

The fire service has tended to rely on bigger and better fire-fighting forces, resulting in a labor intensive situation with rapidly escalating costs. As property values and population densities have increased, losses have also continued relatively unabated despite increased firefighting forces. Valid alternatives usually have not been addressed. Planning is the key to adequate fire protection, but the planning must be done at the local level. Without local considerations, the planned fire protection system is likely to be poorly suited to local needs and to be slow to react to changing local requirements.

- Identifying the Cost of Fire Protection

Determining the cost and worth of fire protection has been traditionally difficult. Few communities actually try to

measure such things; consequently, few know the true costs of operating a fire protection system. The expenses of running an organized fire department are regularly calculated, but they are by no means all the costs of fire protection. Here are a few of these "other" costs:

- Water distribution and maintenance costs for pipes, hydrants, and plant capacity and operations used for fire protection
- Fire insurance costs
- Costs for in-place fire protection such as sprinkler systems and smoke and heat detectors
- Private fire brigades

Our nation's communities are being challenged to control or reduce costs but yet maintain or improve fire protection services--herein lies the challenge facing master planning.

- Determining an Acceptable Risk

A certain level of losses from fire must be accepted as tolerable simply because of the limited resources of the community. For example, many communities calculate their fire losses, but few consider such opposite factors as:

"Communities today are realizing the need for resources made readily available for response to a wide variety of emergencies."

What savings result from the existence of their fire protection system? How many buildings did not burn and how many lives were not lost? What industries exist in the area because of a favorable fire protection system and acceptable insurance rates?

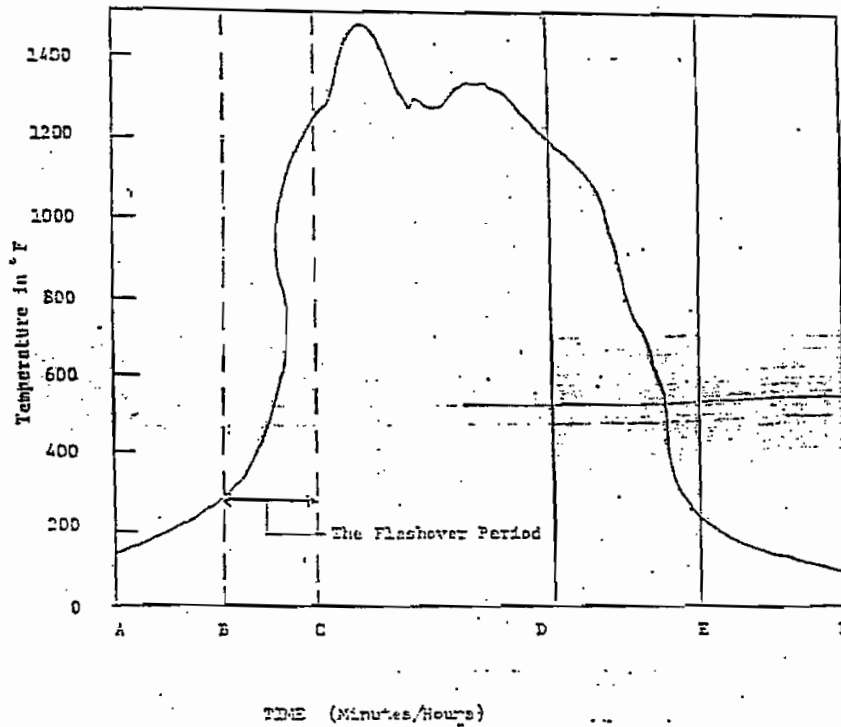
An adequate fire protection system is sure to be worth more than an inadequate system, but there are no universal criteria for evaluating adequacy. Therefore, each community must determine the "worth" of its own system. For example, to one community, adequate fire protection may mean achievement of a specified response time and water flow for 90% of the fires. However, to another community, that may not be enough. Conditions that endanger the safety of citizens and firefighters beyond the acceptable risk must be identified as targets for reduction.

#### WHY MUST WE PLAN?

Having read this report thus far, you may ask why, after all these years, is it necessary to go to all this effort. Don't we already know what our fire protection needs are? There are some pretty good answers to these questions. Fire protection in many cities, towns and rural areas is known to be inadequate, in most places, by urban standards. And if concepts don't change, it is likely to remain so, especially in the face of rising costs and intense competition for what funds are available. But now there are some alternatives that need to be addressed in Merced--for example, low cost and



APPENDIX B  
HISTORY OF A FIRE



The amount of fire damage incurred relates to the evolution of fire and is keyed to various benchmarks as identified under the reflex time listings as it relates to the chart of the history of a fire.

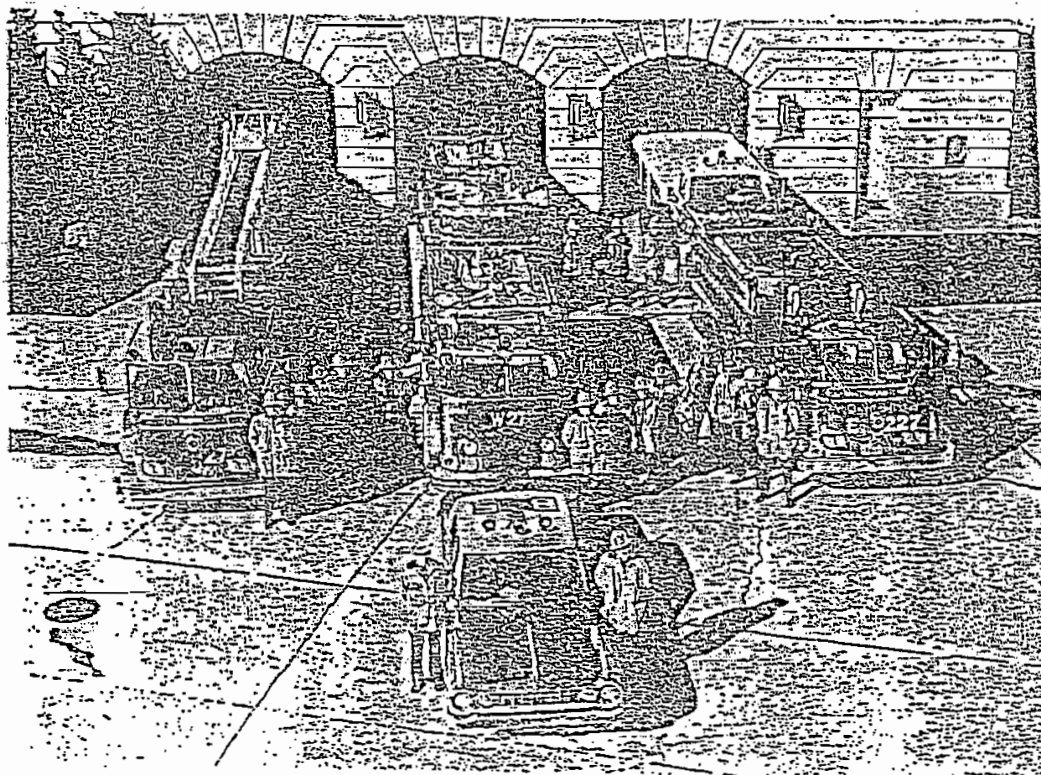
REFLEX TIME

- Preheating of the fuel
- Actual ignition of the fuel
- Detection of the fire
- Notification time
- Receipt of alarm/dispatch time
- Unit notification/response time
- (Operational) set-up time

merced fire department

master plan

SERVICE LEVEL



BY K.W. MITTEN

protection if it is supported by active fire prevention and public education programs and built-in fire protection systems and equipment in selected structures.

### CONTROL OF FIRES

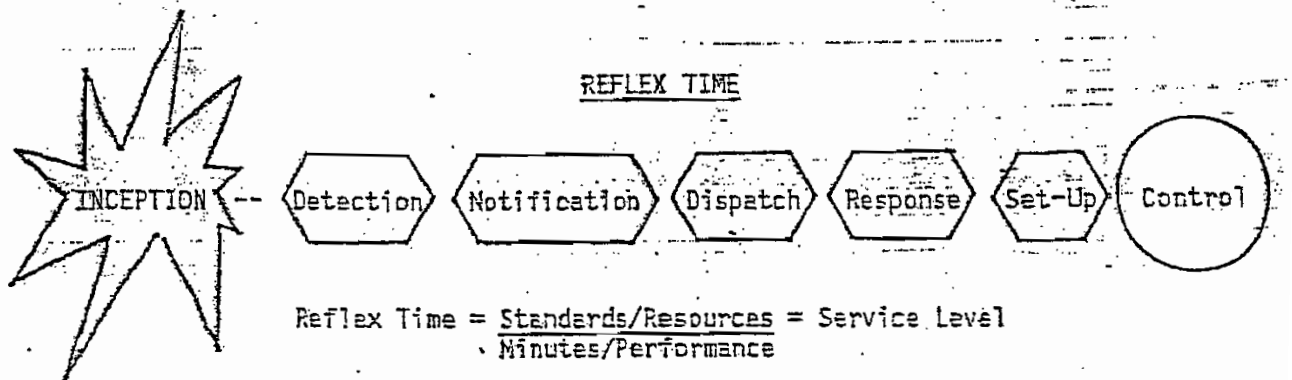
Through testing and experience, it has been documented that the first five to ten minutes of a fire, both from life safety and property protection standpoints, are of the greatest concern. Because of the physical characteristics of a fire, the temperature within a building rises extremely rapidly from the fire's incipiency to a point when all of the combustible contents within a confined area will ignite in a "flashover" phenomenon. The actual amount of time required for this condition to develop will vary, depending on several factors, including the building construction and related characteristics of its contents.

If an extinguishing effort can be initiated prior to the time the fire reaches this "flashover" point, the rescue of occupants is anticipated and the difficulty of control is greatly reduced. Associated with this greater ease of extinguishment is not only the saving of a life(s) but the elimination of a financial loss to the community and the occupancy involved. Therefore, our fire protection "reflex time" is an important aspect in policy issues when considering an adequate service level.

There are five critical periods of time that must be considered in establishing the ability to attack structure fires prior to "flashover":

1. The time that elapses between the inception and the detection of the fire.
2. The amount of time required to report the fire.
3. The amount of time required to receive the alarm, determine the type of alarm, the appropriate assignment and dispatch of companies.
4. The actual response time from alarm dispatch until arrival on the scene.
5. The time required to set up at the fire scene and commence the application of sufficient extinguishing agents.

These five time periods all relate to the effectiveness of the fire protection system and are illustrated in the following figure as they relate to "reflex time" and the "flashover" phenomenon.



### Lease Time Between Inception and Detection

Through active fire prevention efforts, the frequency of the occurrence of fires in the community can be greatly reduced; however, when a fire or other emergency does occur, the period of time from the start of ignition, in the case of a fire, to the detection of same, is a most critical stage. Very often, major fires have been the result of a fire burning for a long period of time prior to detection. In fact, the greatest loss of life and property is experienced when there has been a delay in detecting the fire. This time period, unfortunately, is the most difficult period of time for the public fire protection agency to control. To address this problem through the installation of devices such as smoke detectors and built-in fire protection systems, an early warning is possible and control is usually established with a minimum amount of damage.

Time factors: With detection systems: seconds to minutes.

Without detection systems: minutes to hours.

### Report of Emergency

In our sequence of an emergency, the educating of the members of the community in the proper procedures to follow in the reporting of same is important. Many a fire has burned for several minutes without being reported strictly due to the "I thought you had already reported it" process.

Time factors: Within one minute after detection.

### Receipt of Alarm and Dispatch of Apparatus

Upon the notification of an emergency, the dispatch of apparatus and manpower should be completed within a 45-second to one-minute time interval. This includes the time needed to confirm the type of fire or emergency, the location and the toning of the fire department's paging system.

Time factors: 45 seconds to one minute maximum.

### Response Time to the Scene of the Alarm

The response time to the scene of the alarm is influenced by a variety of factors, including the street patterns, road conditions, time of day, location of and activities of the fire company at the time of the alarm. Upon the activation of the "dispatch" tone, and with the broadcasting of the type and location of the emergency, fire company response time will include the "turnout" time (putting on of protective clothing) and the actual response or running time to the reported scene.

At an average of 35 miles per hour, it will take an engine company approximately 3 minutes to cover the I.S.O. criteria of 1.5 miles. Couple this time with the "turnout" time of 30 to 45 seconds and we should be able to put a unit on scene within 4 minutes of dispatch. For each additional one-half mile of response distance, it would be necessary to add one minute to our response time.

Set-Up Time at the Scene of the Emergency

With the arrival of the fire department units at the scene of the emergency, operational efficiency in controlling the incident is based upon the deployment of the resources as rapidly as possible in a coordinated fire/rescue attack. The plan of operation must be determined, many times without complete information, and coordinated by the incident commander to accomplish the following objectives: save lives, protect exposures, confine and control the fire.

The Merced Fire Department basic operational procedures are designed to address the typical fire scene, in the priority of sequence listed above, by providing the fire ground commander (IC) with teams of personnel assigned as companies, with standard operational expertise and specific objective:

Rescue team: Search and rescue.

Attack team: Protective lines to support search and rescue and confine the fire.

Entry team: Open the building and ventilate to support search and rescue and fire control.

Water team: Develop a continuous supply of water.

The time required for fire companies to accomplish the set-up on the emergency scene and obtain their primary objectives are directly related to the manning levels, access to the structure involved, water supply, built-in fire protection

systems, the magnitude of involvement upon arrival, number of companies required (size of building) and the training of personnel.

These considerations all impact upon our operational success. Without standard operational procedures and a constant manning policy, operational efficiency is greatly reduced, resulting in possible loss of life and higher property losses. It is recommended that all fire companies be manned at a three-member per company level and that basic set-up times of no more than three minutes be established, as our standard.

Control: Incipient Fires (Offensive Mode)

The ability to save lives (make rescues) and control fires in their incipency is directly related to the early detection and rapid response with a quick set-up and application of an adequate amount of extinguishing agent on a fire within a 7- to 10-minute period of time.

Control: Large Fires (Defensive Mode)

In considering fire protection service levels, the control of fires that are not stopped in their early stage and have progressed to a point where they threaten not only the building of origin but the neighboring structures as well, involves the attacking of such fires with sufficient manpower to apply the required volume of water to effect extinguishment. In addressing this problem, the amount of water that would be required to handle a large fire in a particular building and protect the exposures can be calculated through the use of the "Guide for Determination of Required Fire Flow" published by the Insurance Services Office. This volume of water, referred to as the fire flow



requirement, relates to how many gallons of water per minute (GPM) that must be applied to effect fire control.

If, upon arrival at the scene of an emergency, the building is reported to be well involved and if rescue is impossible, all efforts are directed at the confinement of the fire to the building of origin. It is due to this type of operation (defensive attack) that sufficient manpower must be responded on initial alarm to provide sufficient resources to meet the fire flow requirements of our typical building.

Time factors: three minutes

Reflex Time: "The Standard"

Response to an alarm that was detected immediately, reported and dispatched within 2 minutes, and no more than 1.5 miles from the fire company's location, should be within a 7-minute time period. Add to this a 3-minute set-up time, and our system will reflect a "reflex time" of 10 minutes -- a realistic and acceptable "service level."

department's facilities as it relates to the distance to be traveled to any point in the city and, second, the set-up time and efficiency of our fire companies to deploy resources on the emergency scene, as it relates to our fire company manning levels and standard operating procedures.

#### Fire Station Location

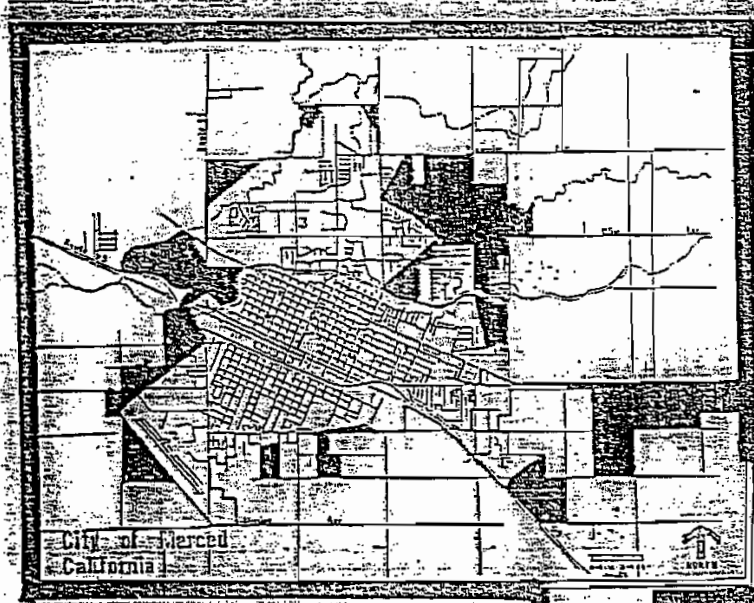
In a review of our existing facilities, response distances are in general within the I.S.O.'s recommendations. However, various areas within the city limits are beyond that 1-1/2 mile criteria. It is not advocated that a massive relocation effort be initiated, yet the maximum time to any area of the city should be established and a plan developed to bring our response needs within the "time" limits as established.

#### Fire Company Manning

For several years, the city has expressed an interest in the setting of fire company manning at three members per company. To establish a policy of manning our existing apparatus at a three-member per company level would require the addition of a minimum of nine new positions to the department -- a very expensive effort, at best. It is deemed, however, that our manning policies need to be addressed.

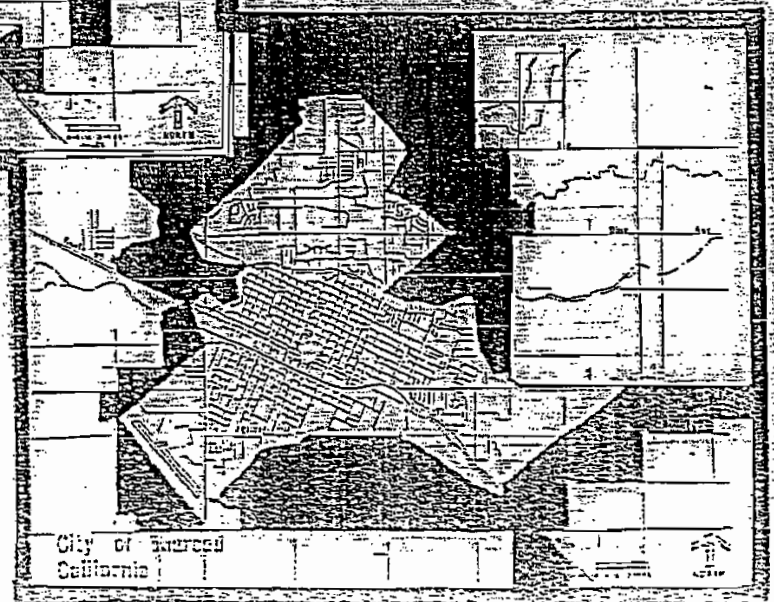
**EXHIBIT C**

# MERCED FIRE DEPARTMENT FACILITIES STUDY



1987

2002



### Reflex Time Schedule

1. Reporting and dispatch time - 1 minute: Reporting party dials 911 emergency number, provides information to dispatcher, dispatcher tones out alarm and dispatches appropriate units.
2. Response time - 3-5 minutes: Receipt of alarm information by responding units, turn-out time (donning of safety gear, etc.) actual travel time to scene.
3. Set-up time - 4 minutes: Arrival/on-scene size-up and report, initial equipment layout and initial quick attack.

The above reflex schedule is designed to establish a minimum acceptable reflex capability with the objective of an average response distance of approximately one and one-half miles within 3-5 minutes maximum. Medical emergencies within this distance are responded to within the six-minute time frame and an initial fire attack (resources to attack a dwelling fire with our basic manpower commitment and a fire flow of 100 gpm) is achieved within a ten-minute time frame.

### DATA DEVELOPMENT AND PROCEDURES

In order to implement the fire location study, there were several fundamental data bases of information which needed to be established:

1. Time, rather than distance, is a more valid unit of measure for emergency response criteria. The achievable speed over a given distance varies depending on street conditions, street width, volume of traffic, and

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various other factors affecting traffic flow. Because of these variables, it is possible for fire apparatus stationed two miles from an incident to arrive prior to another fire company stationed only one mile from the same incident. A standard response (travel) time of three to five minutes was developed, using the criteria of an average apparatus response speed of 30 m.p.h., or an approximate distance of one-half (1/2) mile per minute.

2. A land-use study was conducted and undertaken to establish "what" there is to burn within the City (the fire problem) . Surveys by fire company officers within their assigned first-in districts, coupled with data collected by the Planning Department, identified current and projected land uses, so that required equipment and resources could be located to respond within time requirements (based upon such factors as occupancy, construction and contents).
3. With the availability of the land-use study, it was possible to identify target hazards and define fire management zone (F.M.Z.) boundaries. The general criteria used to establish the F.M.Z. boundaries was based on four basic considerations:
  - a. What there was to burn (the fire problem);
  - b. life hazard involved;
  - c. permanent and built-in fire protection features; and
  - d. value to the community.

These considerations resulted in five priorities being established with the time required to respond from the nearest fire station (origin) to the boundary line (destination) as follows:

	<u>Time in Minutes*</u>
Maximum priority -	
High density, 3 or more story, etc.	3
High priority -	
Medium density, multi story, etc.	4
Standard priority -	
Residential	5
Low priority -	
Rural Residential	6
Minimum priority -	
Agricultural	7+

\* Includes one-minute turn-out time.

4. Sites which could be used as potential station locations were to be identified next. A list of sites, including all existing station locations within the Merced urban area were identified (City and County).

In projecting the relocation of this facility to the south and east, an item deemed mandatory is the development of Engine Company Five in the northeast area of the city as discussed earlier. The development of this facility is necessary to maintain current levels of coverage of the area east of "G", south of Bear Creek, and north of the Santa Fe railroad tracks.

### Phase III

Phase III is keyed to acquisition of property and the development of Engine Company No. Six and Seven in the North Central Merced area.

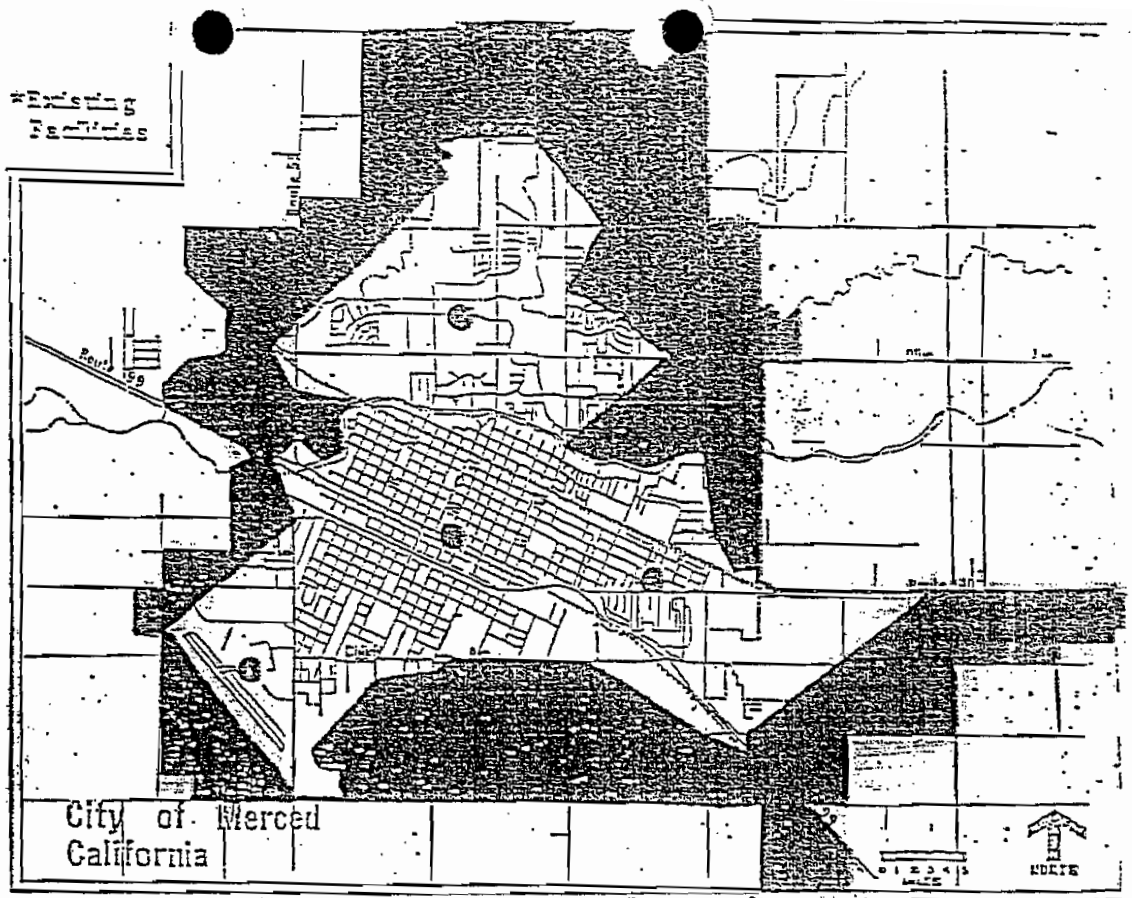
Current growth trends indicate a possible need to acquire property within the North "M" Street/Cardella Road area within 10 to 12 years for the development of Fire Station No. Six. Experienced growth may require the actual purchase of property and facilities development prior to our projections. Annual updates of this study must be developed to project actual movement on this facility and Station No. Seven, projected further north in the Bellevue Road area.

### SUMMARY

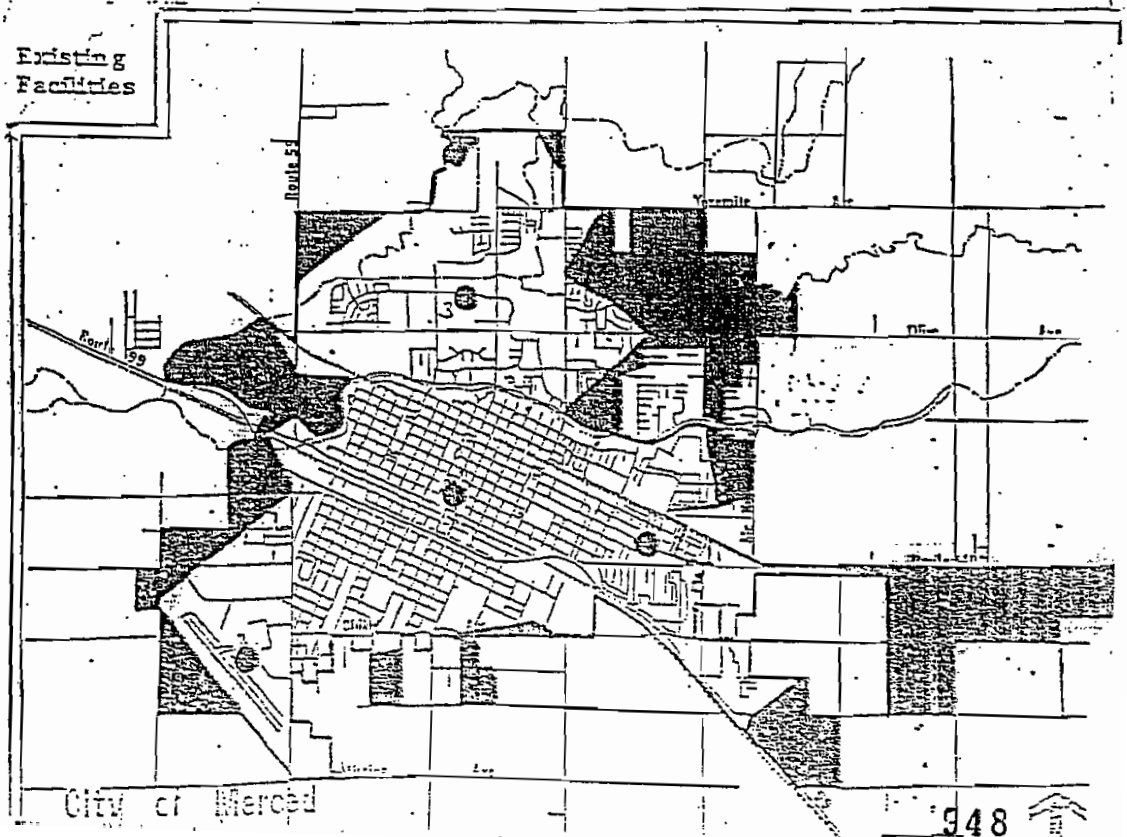
The results of this study indicate that there is a need to initiate a fire station capital improvement and relocation program, using the data as submitted within the Recommendations as a guideline. It is due to the complexities associated with projected growth and development and the major expenditures associated within such a program that the time frames be considered as general in nature, and that annual reviews be undertaken to insure timely facilities

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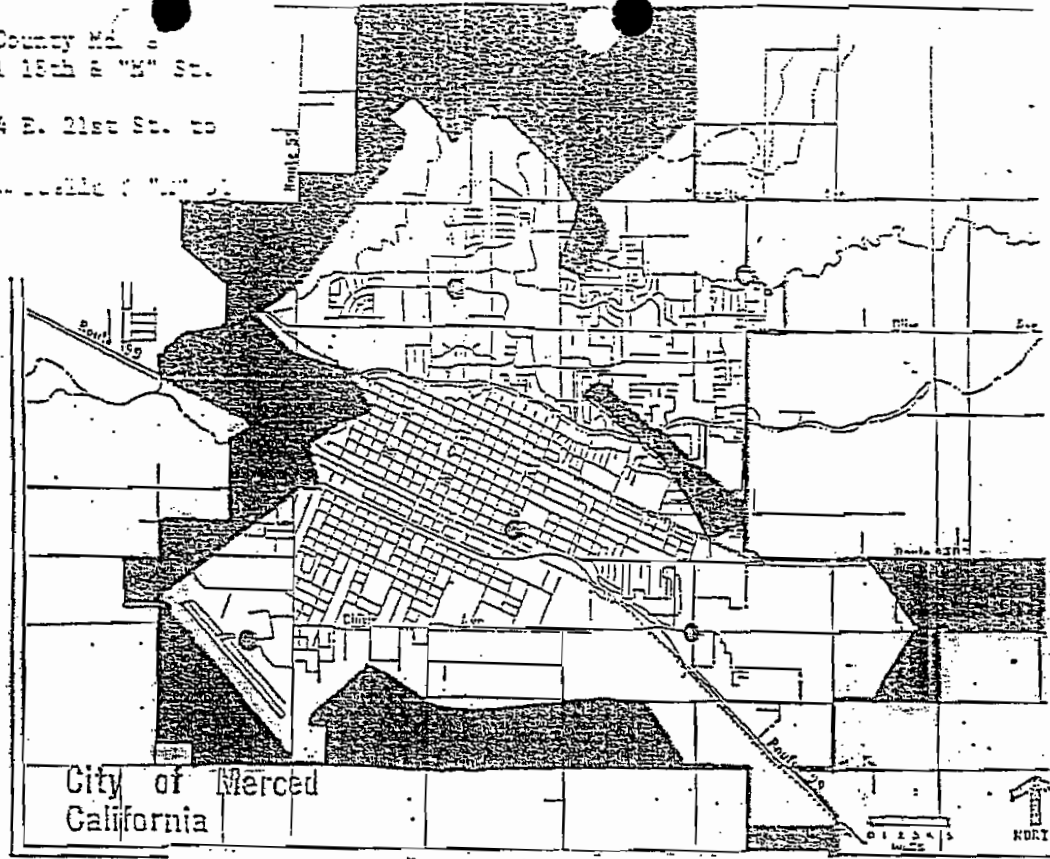




GENERAL PLAN CITY LIMITS

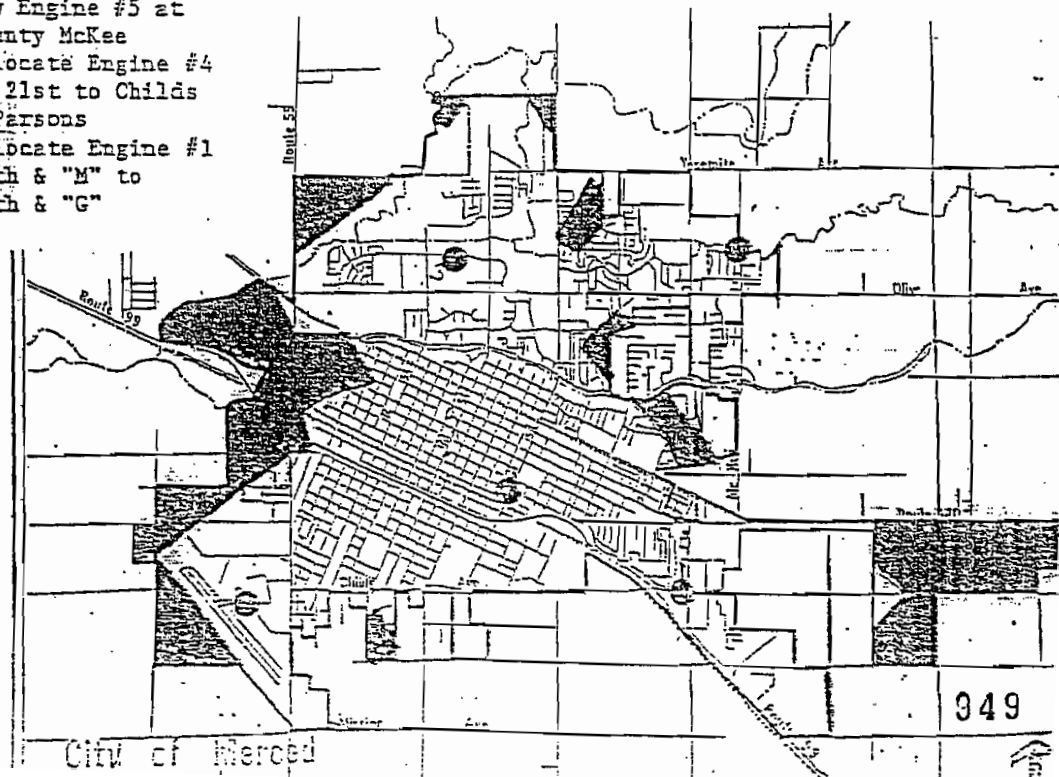


\*New Engine #5 at County McKee  
 \*Relocate Engine #1 18th & "M" St.  
 to 16th & "G" St.  
 \*Relocate Engine #4 E. 21st St. to  
 Childs & Parsons

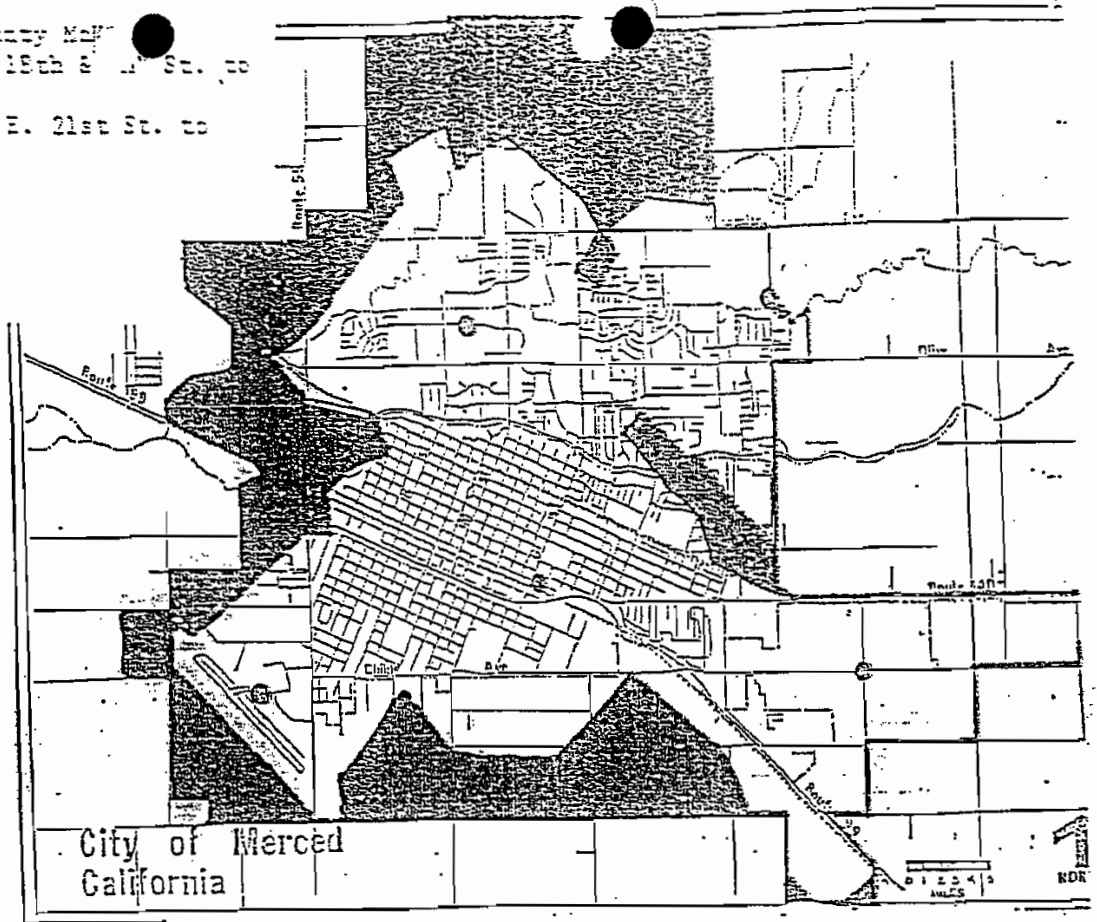


GENERAL PLAN CITY LIMITS

\*New Engine #5 at  
 County McKee  
 \*Relocate Engine #4  
 E. 21st to Childs  
 & Parsons  
 \*Relocate Engine #1  
 18th & "M" to  
 16th & "G"



\*New Engine #5 at County McKee  
 Relocate Engine #1, 18th & "L" St. to  
 16th & "G" St.  
 Relocate Engine #4, E. 21st St. to  
 Childs & Coffee



GENERAL PLAN CITY LIMITS

\*New Engine #5 at County McKee  
 \*Relocate Engine #1 18th & "M" St.  
 to 16th & "G" St.  
 \*Relocate Engine #4 E. 21st St. to  
 Childs & Parsons  
 \*New Engine #6 at Cardella & "M" St.

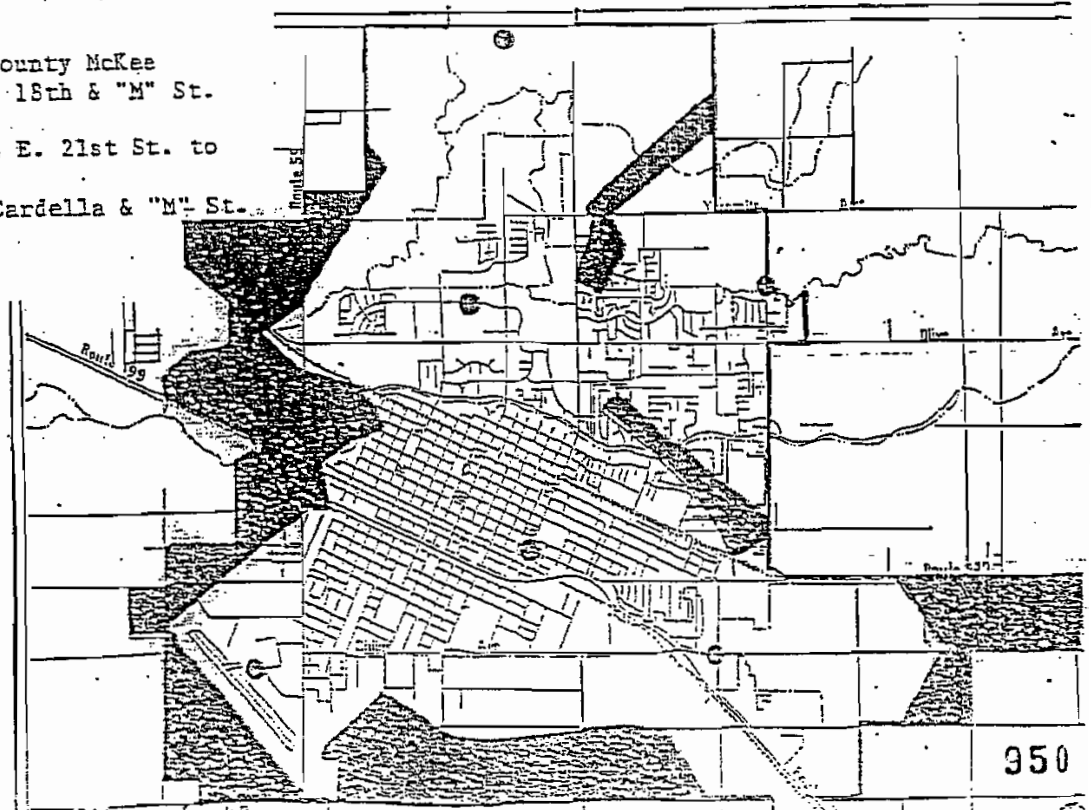


EXHIBIT D

951

CITY OF MERCED



1990

FIRE DEPARTMENT

SERVICE LEVEL REPORT

KENNETH W. MITTEN, FIRE CHIEF

952

A typical example of an emergency medical "reflex time" to a heart attack victim would be ~~four to six minutes~~. This medical "reflex time" standard, as established by the American Red Cross and Heart Associations, is based upon the fact that if basic life support, cardiopulmonary resuscitation (CPR), can be provided to a heart attack victim within four to six minutes after the heart ceases to beat, the victims chances of survival are better than 50 to 70 percent. However, if CPR cannot be provided within this four to six minute time frame, the victims chances of surviving are greatly reduced. Therefore, an accepted medical "reflex time" for a heart attack victim has been established at four to six minutes maximum.

Again, in fire combat situations the acceptable response "reflex time" for providing initial fire attack at the typical building fire, as established by the National Fire Protection Association and United States Fire Administration, is five to ten minutes. Fire response "reflex time" is based upon the fact that if fire control operations are not underway within the first five to ten minutes of a building fire, the fire will most likely spread from the area or room of origin and threaten the entire building. Therefore fire attack response "reflex time" is based upon a one and one-half mile response distance with a turn-out and travel time of four to five minutes and a initial set-up time of four to five minutes.

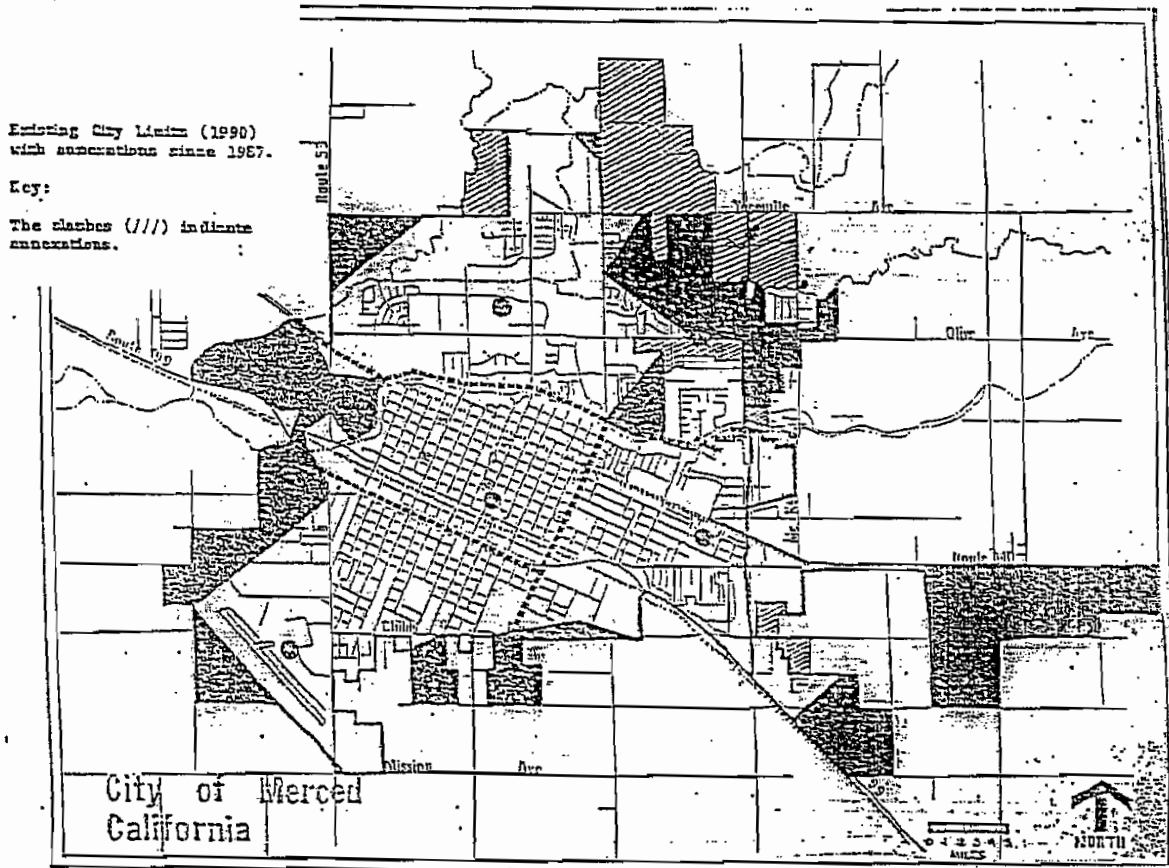
Within the 1983 report it was recommended that an acceptable maximum fire department "reflex time" response standard for the City of Merced fire protection system should be the ability to put at least one fire department unit on the scene of an emergency incident, anywhere in the city limits, within four to five minutes. This would allow the MFD to maintain an acceptable fire/emergency and medical service-level to our community, as per the standards cited.

After this report was presented to and approved by the city council in 1983, efforts within the MFD were then directed towards meeting the identified goal of developing a Fire Department emergency response system for the City of Merced that would meet and maintain the four to five minute response standard.

With our basic response standards established, a second fire service report was developed and presented to the council, to provided an analysis of the existing fire department facilities and to project our ability to maintain the desired service level from these facilities, for the next 12 to 15 years.

Again, the map below (Figure 2) compares not only the areas outside of the acceptable "reflex time" response standard, as identified in 1987, but also shows annexations since that time (lined areas) which are now within the city limits. Most of which are outside of our existing response "reflex time" capabilities.

Figure 2:



After reviewing these two illustrations it is obvious that we are not meeting the adopted emergency response standard in a portion of the city. A fact that has been commented on frequently during the last several years, as each annexation was being considered. If the City is going to attempt to maintain the desired response standard, and retain our Class II fire insurance rating, several activities (recommendations) need to be considered in our fire protection systems facilities, apparatus and equipment.

Fire station number five would not only address the existing response deficiency in the Northeastern section of the city, but also would increase the daily fire department manning, an area in which the City received only 5.75 points, out of a possible 15, during the last ISO evaluations (see attachment "A").

The cost associated with the development and first year manning of this facility is projected at approximately \$1,108,885 as follows: (1) 1990-91 budget \$400,000 for land acquisition and station design, (2) 1991-92 budget \$350,000 for construction, and (3) 1992-93 budget \$358,885 for the first year manning and station operating cost.

It is anticipated that with the addition of fire station five the City will be able to adequately cover the North-Eastern section of the City for the next three to five years. The exact time factor is based upon the projected build-out of the Wathern and Bellevue Ranch projects. It is projected, however, that prior to both of these developments being completed, the City will then need to locate another fire station, somewhere in the "G to "M" and Cardella to Bellevue Road area.

Another response issue that was discussed in the 1987 facilities report was the coverage of the South-Eastern section of the City. To adequately cover this area it is recommended that both the central and East 21st street fire stations be relocated. The central station would move from 18th and "M" streets, to 18th and "G", while the 21st street station would need to be relocated somewhere in the Parsons/Childs Avenue area. These two relocations projects are recommended not only due to the growth of this area, but as the Parson Avenue project moves along and in-fill occurs, operationally the fire department will need these two facilities relocated to adequately maintain City coverage.

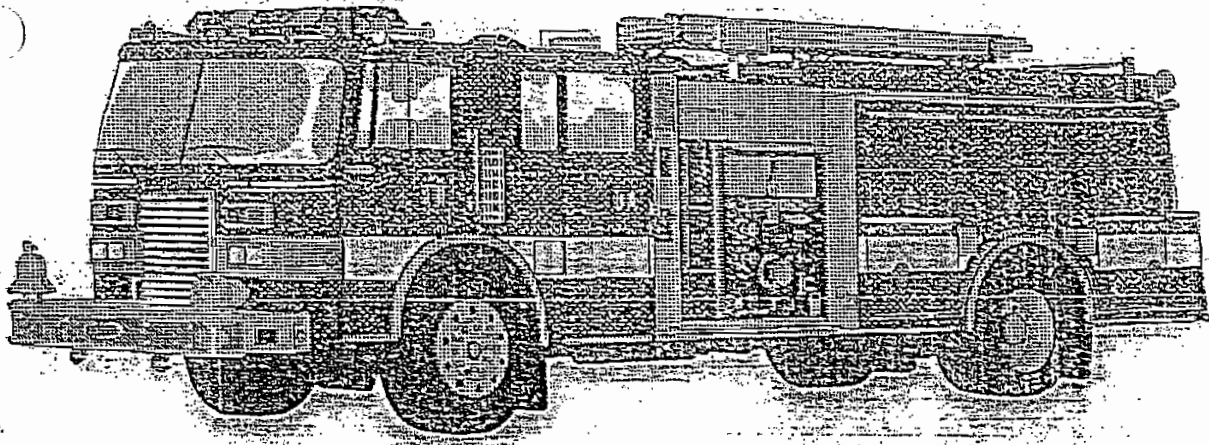
#### APPARATUS AND EQUIPMENT:

The second recommendation has to do with the rapid growth of our city and the increase in service demands being placed on the fire department. As can be seen in attachment "B", the fire department responded to 990 service calls in 1983. In 1989 the fire department responded to 1891 incidents. A 91% increase in call volume in only six years. This increase in service demand plus the fact that the city is divided into three separate response areas by the rail roads, has on many occasions put the fire department in the position of not being able to cover the city within the 1983 adopted response time standards.



**EXHIBIT E**

# STRATEGIC PLAN



## MERCED CITY FIRE DEPARTMENT

1002

057

## ASSUMPTION FOR PLANNING

- \* Merced currently consists of over 16.7 square miles, with a population of 60,000 people.
- \* Merced's General Plan and "How Should We Grow" study projects a 40-year population growth to 250,000 plus by the year 2030.
- \* Merced Fire Department's "Master Plan" and "Fire Station Facilities Study" need to be reviewed annually.
- \* Existing services delivered by the fire department meet expectations, when viewed by the majority of Merced's residents.
- \* Steady improvements in the fire-related provisions of the Uniform Building and Fire codes will have a positive impact on new construction.
- \* The department's positive relationship with other city/county department/agencies will be maintained and enhanced in an effort to provide highly effective emergency services to Merced residents.
- \* The development of the California State University at Merced will present unique challenges for the community and the Merced Fire Department.
- \* Demand for delivery of emergency medical care will continue to increase in relation to population growth and progressive and national health care standards.
- \* Fire and emergency response will increase proportionally to growth, degradation, hazardous materials production and transportation, and environmental regulations.
- \* Improvements in technology and tightened budgets mandate that we must plan ahead if we are going to maintain an adequate yet affordable fire protection system for the community.

## ADMINISTRATIVE DIVISION ACTION OBJECTIVES

### 1992-93

- \* Continue to fine tune the department-wide customer service strategy in support of the City Customer Service Program.
- \* Update and revise the Merced Fire Department Facilities Study document based upon current demographics and projections.
- \* Pursue the development and staffing of Merced Fire Department Station Five to service the north/east sector of the city limits.
- \* Develop a plan and provide upgrades to fire department facilities which will comply with all current and projected requirements of the American Disabilities Act (ADA). Incorporate same into new facilities planning.
- \* Provide for the complete computer automation of all administrative functions department-wide in order to maximize work production and efficiency.
- \* Provide appropriate revisions within the Master Plan to facilitate updates to the city general plan.
- \* Study the potential of developing a joint training center in conjunction with Merced Community College.
- \* Develop a plan with Merced County Fire authorities to efficiently meet increasing service demands without duplicating efforts.
- \* Review and update our mutual aid agreements with Castle, Atwater and County Fire Departments.
- \* Review and update the MFD Strategic Plan for the 1993-94 budget year.

### 1994-97

- \* Study and prepare an updated planning document that identifies the most efficient manning levels, including support staff, needed to provide comprehensively for the efficient delivery of protection and prevention services to a rapidly changing and growing community.
- \* Pursue the relocation and the development of a new combination administrative offices and fire station facility.

\* Provide a continual updating of the department's Official Action Guide to address updates in technology and mandates.

\* Develop a very specific "pro-active" plan for remodeling facilities which have been ear-marked for long term use. Development of the plan will emphasize maximum long-term use and overall cost-efficiency.

\* Develop an updated emergency response "reflex time" model for the city.



# OPERATIONS DIVISION

## HISTORY/DISCUSSION:

The current Merced Fire Department emergency response system is composed of six first-line units and four reserve pieces of apparatus housed in four fire stations located in the northern, southern, eastern and central sections of the city. The first line units are staffed by 13 officers and members of the department on a 24-hour basis and are coordinated by an assigned fire division chief (duty officer).

Upon notification of an alarm (emergency), a pre-determined assignment of apparatus and manpower is dispatched/responds to and operates at the emergency scene under a fire/emergency incident command system (ICS). Additional assistance can be obtained by the sounding of "extra" alarm assignments which will bring additional manpower and equipment to the scene by recalling off-duty personnel and/or mutual aid from Castle, Atwater or the County Fire Department.

## EMERGENCY OPERATIONS

Historically, the general public has been impressed, and particularly in recent years through such media as television, that the organization to call in the case of an emergency is the fire department. As the primary "emergency first responder" for the city, the fire service has generally utilized the Insurance Services Office (I.S.O.) and response time criteria for the locating of facilities, the purchasing of apparatus and equipment, and the setting of manpower levels.

Because of the physical characteristics of a fire, the temperature within a building rises extremely rapidly from the fire's incipency to a point when all of the combustible contents within a confined area will ignite in a "flashover" phenomenon. Through testing and experience, flashover usually occurs within the first five to ten minutes of a fire. If an extinguishing effort can be initiated prior to the time the fire reaches this "flashover" point, the rescue of occupants is anticipated and the difficulty of control is greatly reduced. In addition to fire response capability, the accepted emergency response time for life threatening medical emergencies, i.e., bleeding and cardiac arrest, has been identified as four to six minutes. Therefore, the fire protection system response time of four to six minutes is an important aspect in policy issues when considering an adequate service level.

Currently the MFD average emergency response is less than four to six minutes. Once the fire crews are on scene it takes an additional two to three minutes of set-up time before they are operational. Emergency "reflex time" is identified as the total time from dispatch of fire companies until they arrive on scene and are operational. Fire station

CITY OF MERCED

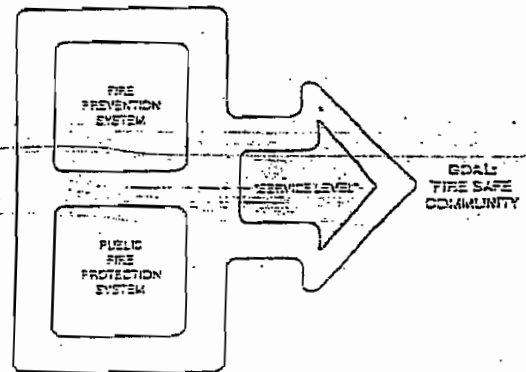
INTER-OFFICE MEMORANDUM

TO: Jim Marshal, City Manager  
FROM: Kenneth W. Mitten, Fire Chief  
SUBJECT: Fire Protection Service Level - Response Times

DATE: June 4, 1992

FILE:

As presented in the last report, when the fire prevention (pro-active) side of our system fails, the fire protection (re-active) part of the system is activated. Due to the emergency nature of fires, medical and other life/property threatening incidents, the amount of time it takes to respond to the incident becomes one of many very critical elements.



As an example, in heart related medical emergencies, a 4 to 6 minute time frame is identified as the critical period in which basic medical aid can save a life. The use of CPR on the victim during the clinical death period (no pulse or respiration), has proven to be effective; a fact that has been well published by the American Red Cross and Heart Associations. However, after 4 to 6 minutes bio-logical death occurs with the chances for survival rapidly deteriorating. Therefore, in these emergency medical incidents our ability to respond consistently and initiate basic life support activities prior to six minutes is mandatory, if the system is to be viewed as effective.

Unlike heart related medical emergencies, most american households are unaware of the critical time frames associated with effective fire fighting operations. Through testing and experience it has been documented that the first five to ten minutes of a fire are the most critical. This is due to a condition called flashover. In a residential fire, for example, if you expect to save the occupants and limit the amount of damage within the building, trained personnel must be dispatched and deployed prior to flashover occurring.

Flashover occurs when the contents and smoke within a room or building have been preheated to a point that the entire area explodes into flame. Once flashover occurs, survival of the occupants and containment of the fire to the room or area of origin is doubtful.

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Fire Protection Service Level - Response Times

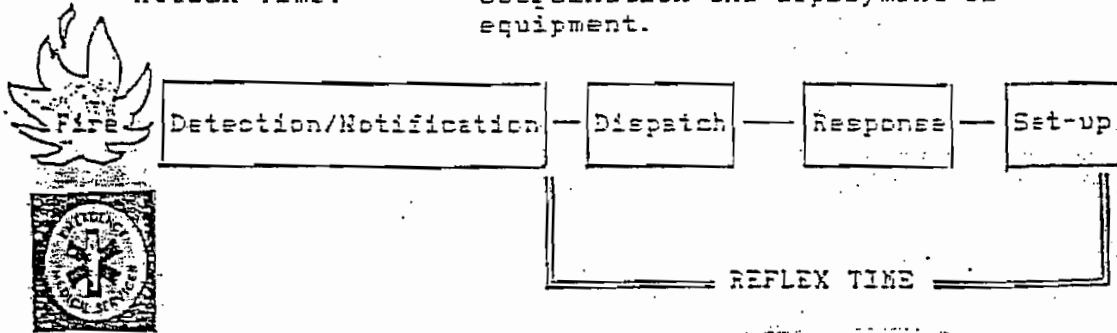
June 4, 1992

Page 2

An effective response capability is based upon rapid detection and notification reporting of the emergency to the dispatch center, dispatch time (1 minute), response time (4-5 minutes) and set up time (2-3 minutes), once the emergency response personnel are on scene.

Key facts include:

- (1) Detection Time: Critical, i.e. witnessed arrest or smoke detector activities
- (2) Report Time: Public education and 911 calling
- (3) Dispatch Time: Less than 1 minute to get necessary information and determine/notify responders
- (4) Response Time: Receipt of alarm, putting on protective clothing, and driving time
- (5) Arrival and Attack Time: Size-up and plan of attack includes coordination and deployment of equipment.



$$\text{Reflex Time} = \frac{\text{Standards/Resources} \times \text{Service Level}}{\text{Minutes/Performance}}$$

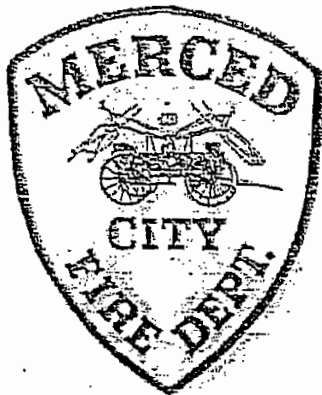
Currently the MFD average emergency response time is less than four to six minutes. Once the fire crews are on scene it takes an additional two to three minutes of set-up time before they are operational. Emergency "reflex time" is identified as the total time from dispatch of fire companies until they arrive on scene and are operational. Fire station location and apparatus need to be strategically located within the geographical areas that will best insure response times within established parameters. The standard criteria is a maximum response distance of one and a half to two miles (4-5 minutes). As the City of Merced grows, it is imperative that the emergency services response times remain within the identified parameters if our service levels are to be maintained.

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**EXHIBIT F**

**MERCED  
FIRE  
DEPARTMENT**



**STRATEGIC  
PLAN**

**1997**

## *Administration Division*

The goal of the Administration Division is to coordinate the efforts of the Fire Department to meet the expectations of the "Merced Master Plan" and to effectively manage goals and objectives so that they meet the current and projected needs of the residents.

### 1992-1996

Goals reached by the Administration Division include:

- \* Upgraded the computerized incident reporting system and delivered training to all members.
- \* Provided Standard Emergency Management System (SEMS) training to the city management team.
- \* Developed and awarded construction for a new combination administrative offices and fire station and Emergency Operations Center (EOC).
- \* Adopted the Fire/Emergency Radio Master Plan.
- \* Updated the Facilities Master Plan.
- \* Revised the Merced City Emergency Plan into a Multi-Functional Hazard Plan in accordance with state and federal guidelines.

### 1997 Objectives

- \* To increase the awareness of the citizenry for self preparation during disaster situations through mailings and classes.
- \* To maintain and progress in computer technology to remain efficient and in line with city direction.
- \* To maintain the standards necessary for classification at the current ISO rating and maintain career development by appointing a full time training officer.
- \* Maintain and upgrade the city's ability to effectively manage large scale incidents by establishing an Emergency Operations Center at the new fire/administration complex.
- \* To maintain 4-5 minute response times and adhere to the Facilities Master Plan by developing and acquiring Station 55.

EXHIBIT G

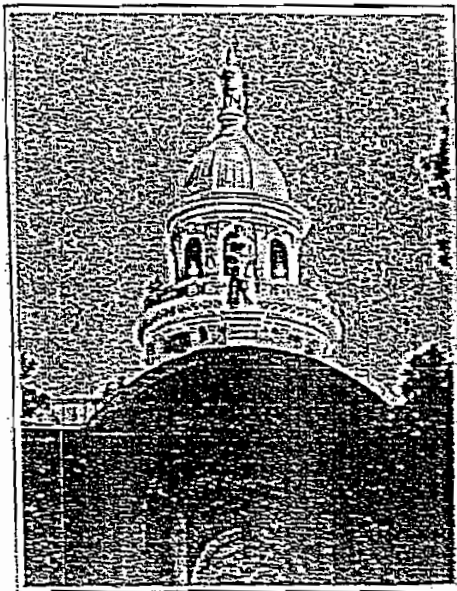
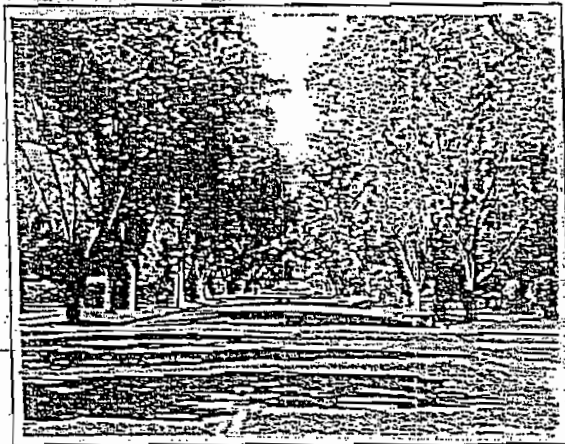
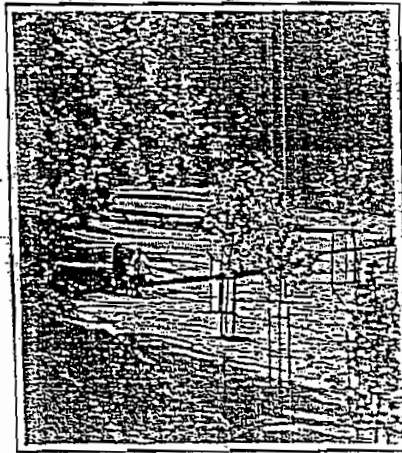
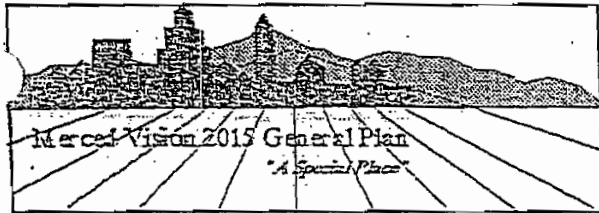
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# Merced Vision 2015

## General Plan



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April 1997

968

Policy UE-13

Control of the Annexation Timing, Density, and Location of New Land Uses Within the City's Urban Expansion Boundaries

Implementing Actions:

1.3.a The City should require that all new urban development and annexations be contiguous to existing urban areas and have reasonable access to public services and facilities.

"Leap-frog development" tends to be cost-prohibitive in these times due to the high up-front costs of extending utility lines, streets, etc., across undeveloped properties to outlying areas. Such development should be discouraged in most cases because of the service inefficiencies it creates. Exceptions can be made for industrial areas which for business recruitment reasons often need to provide infrastructure and services prior to development. Other exceptions may be made, with strong justification on a case-by-case basis, for other areas which may serve the public interest through early development.

1.3.b The City should adequately plan for public improvements/services to support designated land uses for all areas as they become suitable for development and/or proposed for annexation.

The City should prepare master plans for providing sewer, water, fire protection, police protection, drainage, and other services for all new growth areas after the adoption of the General Plan. Refer to Chapter 5—Public Services and Facilities for specific policies regarding each of these areas.

1.3.c The City should develop systems to evaluate the cost of providing various services to new development and/or areas proposed for annexation and establish clear policy for meeting those costs.

The City needs to develop appropriate tools and techniques for evaluating the fiscal impacts of new development, including the costs of providing services and needed infrastructure. Policies (such as those contained in the Public Services and Facilities Chapter of this plan) need to be established to insure that new development pays for the impacts it causes, so that the burden does not fall on current City residents.

1.3.d The planning for land uses in newly developing areas should reflect a mix of land uses which will support a neighborhood, including a variety of residential densities and price ranges, neighborhood and convenience shopping facilities, and public facilities such as schools and parks.

The City will promote the use of the mixed-use, pedestrian- and transit-friendly neighborhoods ("Urban Villages") in all new growth areas of the City as much as feasible.

1.3.e Work with the County to implement the land use provisions of the "Property Tax Sharing Agreement between the City of Merced and the County of Merced" (Section 2.3.4).

The City will work closely with the County to implement the land use provisions of the agreement, which include a) maintenance of existing agricultural zoning within the SUDP; b) requirements and procedures for areas currently zoned for urban development; c) agreement by the County not to expand the existing Rural Residential Centers in the Sphere of Influence outside the University SUDP; and, d) cooperative planning and referral of projects within the University Community SUDP.

**EXHIBIT B**

EXHIBIT H

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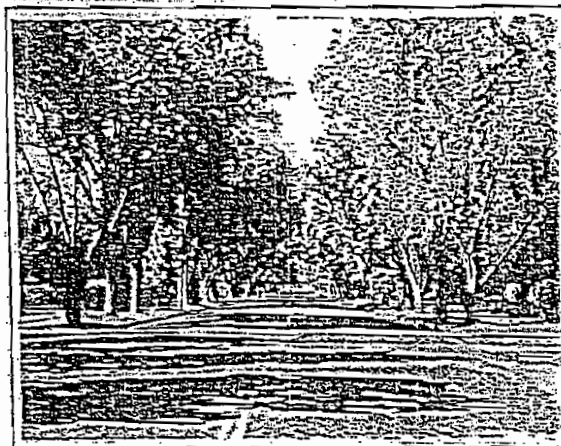
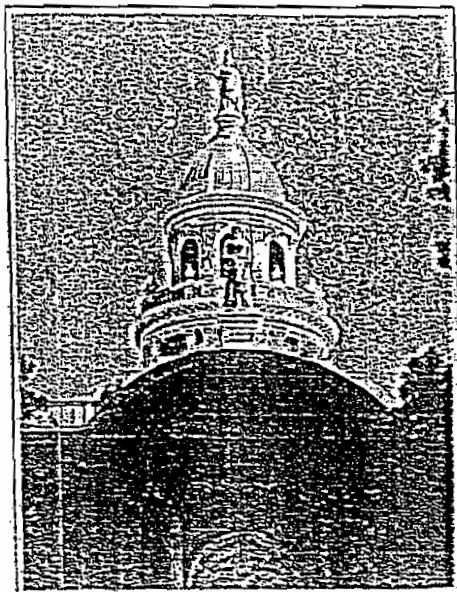
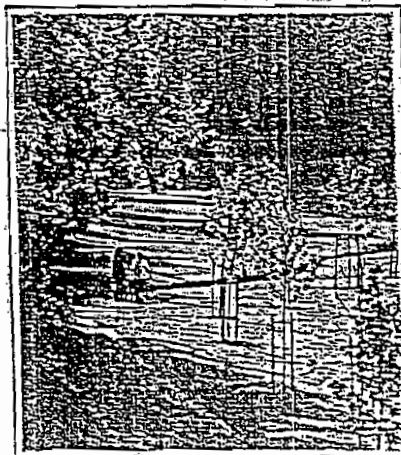
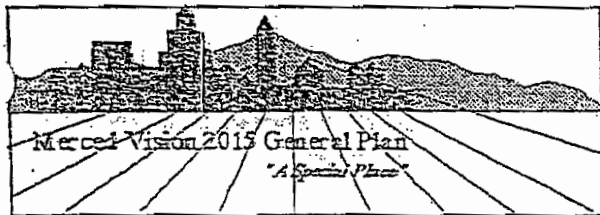


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# *Merced Vision 2015*

## *General Plan*



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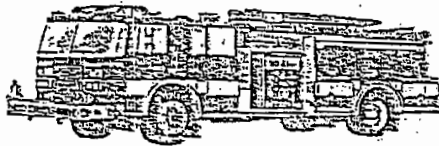
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- Fire and Police Protection
- Water
- Wastewater
- Storm Drainage/Flood Control
- Solid Waste Disposal
- Schools
- Library and Cultural Services
- Health and Justice Services

Transportation and transit services are addressed in the Transportation and Circulation Element (Chapter 4), and recreational facilities are addressed in the Open Space, Conservation, and Recreation Element (Chapter 7).

## 5.2 SETTING



### 5.2.1 Fire Protection

#### History of the Merced Fire Department

The concern for fire protection in the City of Merced can be traced back to 1873 when the first fire department, "Eureka Engine Company No. 1," was formed. A used fire engine was obtained in 1874 and christened "Old Betsy." The first engine house wasn't built until 1885 on 18th and Canal Streets. In 1889, the second floor of this engine house was converted into the city hall and council chambers for the newly-incorporated City of Merced. In 1891, the original engine company was replaced by "El Capitan Hose Company No. 1," a volunteer group which served until 1952 when it opted to disband.



*City Hall and Fire House (1925)*

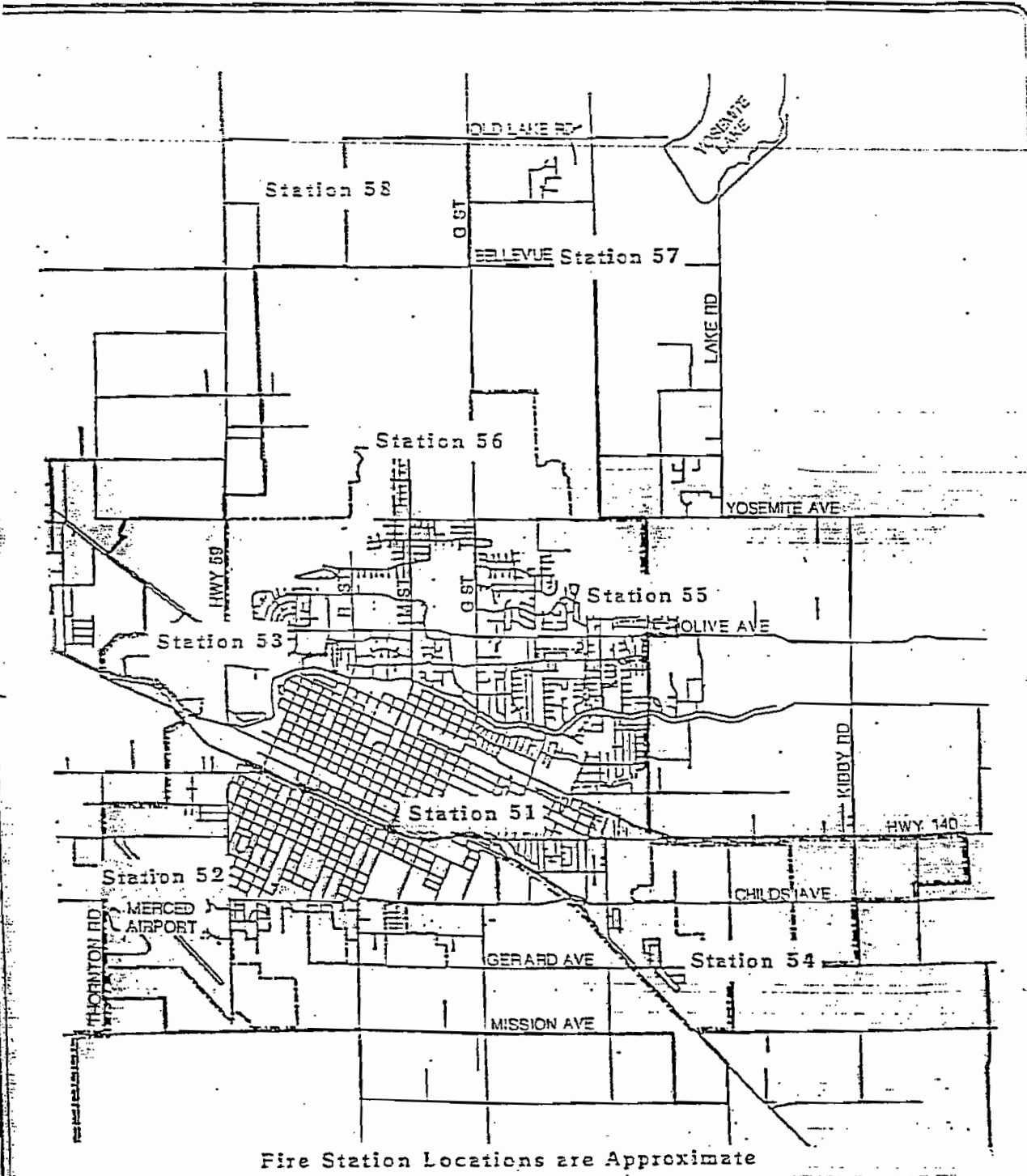
#### Merced Fire Department

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from four fire stations throughout the urban area. The City central fire station is located in the downtown area. (This facility is scheduled to be moved to 16th and G Streets by 1997.) A station on East 21st Street near Yosemite Park Way, a station north of the Merced Mall on Loughborough Drive, and another at the Municipal Airport are the other three stations.

Fire Department personnel are typically assigned on a three-platoon work schedule, which provides the City coverage 24 hours a day, seven days a week. The Department equipment includes first-line engine companies (carry and pump water), ladder companies, reserve engines and ladder trucks, and other miscellaneous vehicles.

Merced's fire protection system operates according to a central station concept. Under this concept, a central station can respond to calls from within its own service area or district, and can provide back-up response to other districts as well. From 1990 to 1995, response activity doubled.

973



Fire Station Locations are Approximate

SOURCE: Merced City Fire Department

Figure 5.1

The Department is rated under the auspices of the Insurance Services Office (ISO) which defines protection services on a scale of 1 to 10-1 representing the best level of protection and 10 indicating no protection at all. The Department's 1995 rating is Class 2, which is considered to be well above average, despite manning levels well below national averages. This rating helps keep the costs of fire insurance premiums low for City businesses.

The City's Fire Department Master Facilities Plan is used in the planning of stations that will provide protection within a primary service area. The Department has a goal of maintaining a response time of four to six minutes for the first crew to arrive at a fire or medical emergency within an assigned district. This goal was chosen on the basis of proven factors affecting property damage and, more importantly, life.

As the City continues to grow in population and area, the fire protection system will have to change if it is to maintain this response time standard. This would require three existing stations to be relocated and four new facilities with personnel and equipment to be added to the system. Figure 5.1 shows tentative fire station locations.



### 5.2.2 Police Protection

Police protection for the entire City is provided by the City of Merced Police Department. The Police Department

employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The 1995 service standard used for planning future police facilities is approximately 1.32 sworn officers per 1,000 population.

Merced is divided into three police districts (Figure 5.2), each with its own police facility and officers. District One serves the area north of Bear Creek from the North Station on Loughborough Drive. District Two serves the area between Highway 99 to the south and Bear Creek to the north from the Central Station at M and 22nd Streets. District Three serves the area south of Highway 99 from the South Station in McNamara Park.

The primary reason for the three districts is to place police officers closer to the neighborhoods and citizens they serve. The Police Department feels that this "community policing" concept will be successful in combating a growing incidence of crime as the City grows. Citizen councils have been established in each district to meet with area commanders and develop strategies for combating crime in their neighborhoods. Neighborhood Watch programs are located throughout the City and have been highly successful.

Criminal activity and calls for police service will increase due to population growth alone. By 2015, officer responses to incidents could increase from 45,000 in 1994 to over 100,000 annually if current population trends hold true. To cope with this anticipated workload, additional officers, equipment, and facilities will need to be added. Police districts may be revised or added.

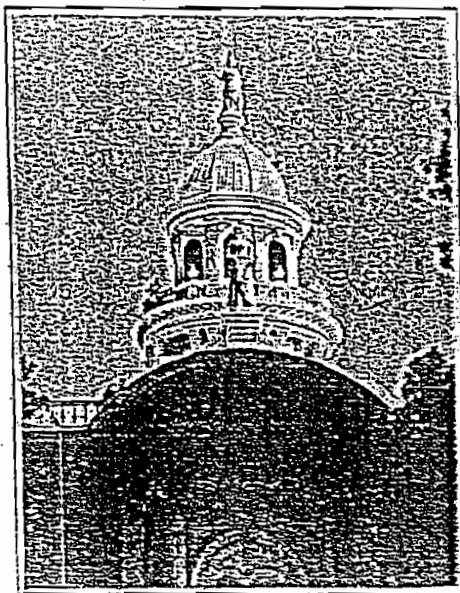
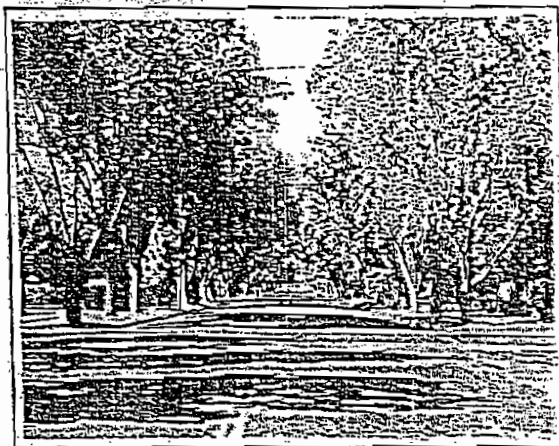
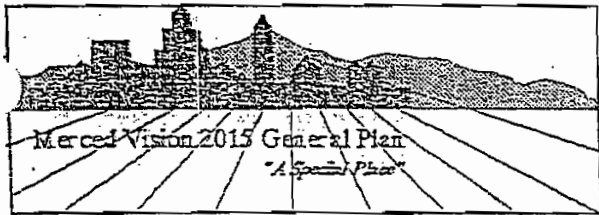
EXHIBIT I

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# *Merced Vision 2015*

## *General Plan*



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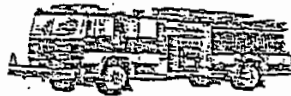
*April 1997*

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### 5.3 ISSUES AND INTENT

In order to ensure the provision of high-quality, cost-effective public facilities and services for the City of Merced as it grows, several issues needed to be addressed in the Goals, Policies, and Actions (Section 5.4) of this chapter. A brief summary of the issues covered under each of the goal areas follows.

General public facilities and service issues are addressed under Goal Area P-1. Master planning of major facilities and infrastructure, the cost-effective delivery of existing services, and the requirement for new development to provide its fair share of public improvements are some of the issues covered.



#### 5.3.1 Fire Protection

The location of fire facilities is a critical factor in providing adequate fire protection to the citizens of Merced. The time and distance that must be traveled to the scene of an emergency can determine whether fire suppression efforts will be successful. The goals, policies, and actions (Goal Area P-2) in this chapter address locational criteria and distribution goals for new fire facilities. Additional goals, policies, and actions relating to fire prevention methods, disaster preparedness, and hazardous materials safety can be found in the Safety Element (Chapter 11).



#### 5.3.2 Police Protection

Community-based policing aims to bring police officers into the neighborhoods they serve to try to deter criminal activity before it starts. This chapter includes goals, policies, and actions (Goal Area P-2) designed to implement these concepts. Additional goals, policies, and actions relating to community-based policing concepts and crime prevention can be found in the Safety Element (Chapter 11).



#### 5.3.3 Water

The Merced Water Supply Plan has evaluated the City's water needs through 2030 and suggested strategies for meeting those needs. In cooperation with the County and MID, the City will develop conservation and recharge efforts to stabilize the region's aquifer. The goals, policies, and actions (Goal Area P-3) in this chapter address those efforts. Additional policies regarding water quality and water conservation are contained in Chapter 7, Open Space, Conservation, and Recreation, and a discussion of water resources can be found in the Sustainable Development Chapter (8).

EXHIBIT J

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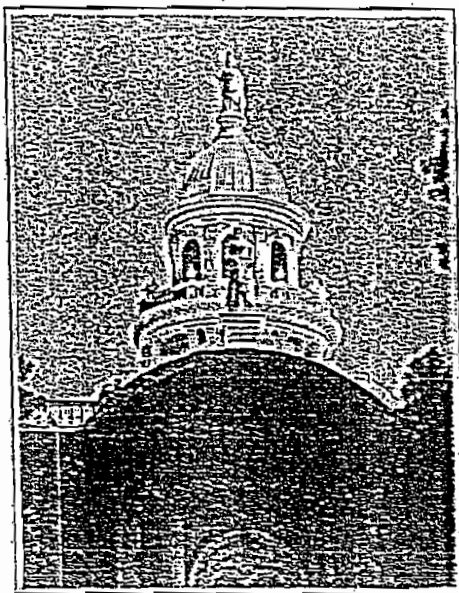
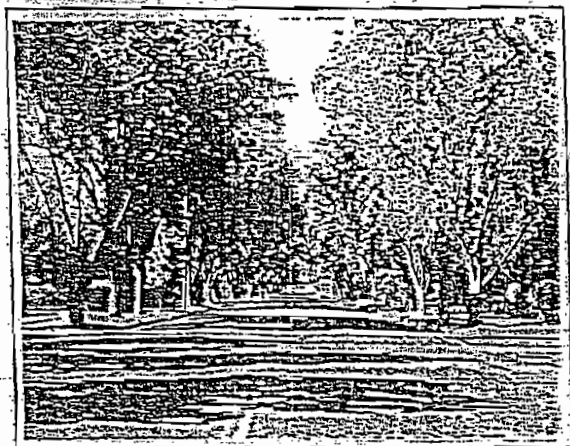
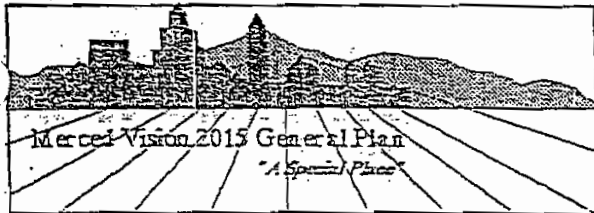


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# *Merced Vision 2015*

## *General Plan*



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## 5.4 PUBLIC SERVICES AND FACILITIES GOALS, POLICIES, AND ACTIONS

<i>Goal: Provide Public Facilities and Services</i>
<b>GOALS</b>
<ul style="list-style-type: none"><li>☐ Maintenance and Improvement of Merced's Existing Infrastructure</li><li>☐ New Development Which Includes a Full Complement of Infrastructure and Public Facilities</li><li>☐ Efficient and Cost-Effective Public Service Delivery</li></ul>
<b>POLICIES</b>
<p>P-1.1 Provide adequate public infrastructure and services to meet the needs of future development.</p> <p>P-1.2 Utilize existing infrastructure and public service capacities to the maximum extent possible and provide for the logical, timely and economically efficient extension of infrastructure and services where necessary.</p> <p>P-1.3 Require new development to provide or pay for its fair share of public facility and infrastructure improvements.</p>

<i>Policy P-1.1: Provide Adequate Public Infrastructure and Services to Meet the Needs of Future Development</i>
<p><i>One of the key elements to promoting a healthy local economy in Merced is the quality of life enjoyed by the City's residents. The quality and availability of urban services and infrastructure is found to be an important measure of urban quality.</i></p> <p><b>Implementing Actions:</b></p> <p>1.1.a Through development review, ensure that utilities are adequately sized to accommodate the proposed development and, if applicable, allow for extensions for future developments, consistent with master plans.</p> <p>Improvement standards applied through the development review process should be based upon existing and potential utility needs to a site. The review process will consider both municipal utility services—and utility services provided by quasi-public or private utility service providers as much as feasible.</p> <p>1.1.b Master infrastructure plans for newly developing areas may be prepared and adopted as necessary.</p> <p>The City may prepare master infrastructure plans for newly developing areas. Individual development proposals will need to develop plans and specifications for accessing planned City infrastructure.</p>

1.1.c Include in Specific Plans and master plans, a phasing plan for providing access, sewer, water, drainage, flood control, schools, parks and other appropriate governmental facilities and services.

A phasing plan helps ensure that adequate service facilities can be accommodated in the planning area and that new facilities and services will be provided in a manner that keeps pace with population growth.

1.1.d Construct a stormwater drainage system, water system and sewer system in accordance with master plans.

Master plans which identify needed infrastructure improvements and extensions, phasing options, cost estimates and potential funding alternatives may be prepared.

1.1.e Apply for Federal, State and regional funding sources set aside to finance infrastructure costs to the maximum extent feasible.

Use of public funding sources to help off-set infrastructure costs could benefit the entire community by increasing housing and employment opportunities.

*Policy P-1*

*Utilize Existing Infrastructure and Public Service Capacities to the Maximum Extent Possible and Provide For the Logical, Timely and Economically Efficient Extension of Infrastructure and Services.*

*It is in the community's interest to maintain an efficient and cost effective public service delivery system. To this end, the City supports development that utilizes and improves existing infrastructure and service delivery systems as much as possible.*

*Implementing Actions:*

1.2.a Develop plans which establish priorities to address existing inadequacies in the City's infrastructure system.

Present sewer, water, drainage and circulation plans need to be periodically reviewed and updated to reflect existing circumstances and to note system deficiencies and possible corrective measures.

1.2.b Expand existing facilities to the extent possible at present locations.

As long as it remains cost-effective, existing facilities (such as the Wastewater Treatment Plant) should be expanded at their present locations to save the cost of obtaining and constructing new facilities. Long term facility development plans should include adequate area for future expansion. Shared or regional facilities are also encouraged where appropriate to avoid duplication of services.

1.2.c Periodically evaluate the City's service delivery system and identify policies and programs which may improve operating efficiency and/or reduce service delivery costs.

The City will on a continuing basis evaluate its service delivery systems to search for ways of improving efficiency and service, reducing costs, etc.

EXHIBIT K

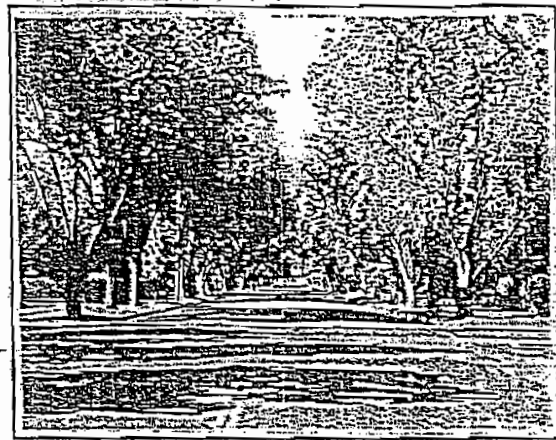
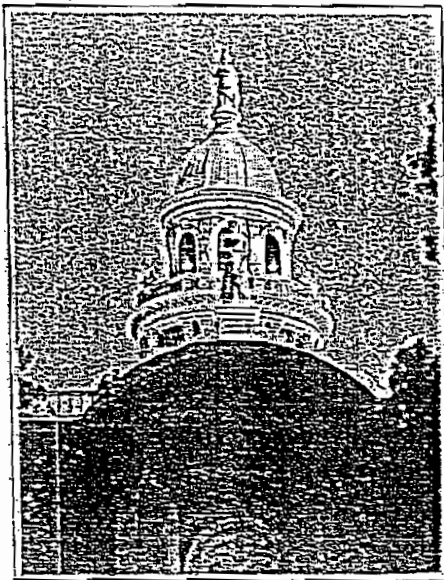
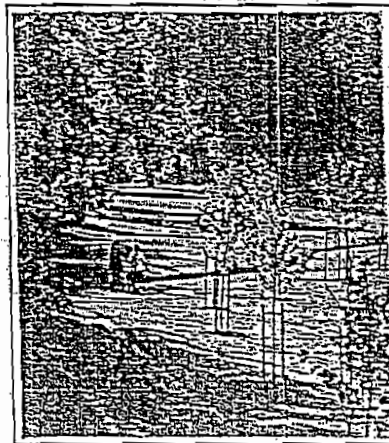
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# *Merced Vision 2015*

## *General Plan*



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**Goal Area P-2: Police and Fire Protection Services**

**GOAL**

**E** A Community Reasonably Safe From Crime and Fire

**POLICY**

**P-2.1** Maintain sufficient public protection facilities, equipment, and personnel to serve the City's needs.

**Policy P-2.1**

**Maintain Sufficient Public Protection Facilities, Equipment, and Personnel to Serve the City's Needs**

*Public protection services and facilities are to be maintained in the City of Merced at a level that promotes the health and welfare of the city's residents. The City is committed to assuring that facilities, equipment and staffing levels of its fire and police service units meet the highest standard that can be accommodated within the resource constraints of the City.*

*Implementing Actions:*

**2.1.a** Periodically review existing and potential station facilities, equipment and manpower in light of protection service needs.

Fire-fighting equipment and companies of personnel should be sufficient in number and adequately distributed throughout the planning area in order to allow optimum response time to calls within the primary service areas of a fire station and to ensure prompt availability of additional companies for serious or simultaneous fires. Police service districts should be sized to promote community-based policing concepts and to maintain sufficient personnel to promote crime prevention and to combat criminal activity.

**2.1.b** Determine that new development is adequately served by fire and police protection services.

Fire stations should be located so that no development in the City is outside the primary response areas (4 to 6 minutes) of at least one firehouse. Development plans should be reviewed with respect to existing and planned future fire station sites and police resources.

**2.1.c** Fire station sites should be selected based on the distribution of land uses and population projected when the area is fully developed.

Future sites should be located within planned urban service centers based on future use.

**2.1.d** Ease of access should be a primary consideration in selecting a fire station site.

The following guidelines should be considered when siting new firehouse facilities:

- a) Fire stations should be located on streets close to and leading into major or secondary thoroughfares.
- b) Fire stations should be so located as to minimize delays caused by incomplete street patterns.

- c) A fire station should be near the center of its primary service area, measured in terms of driving time to the periphery of this area.
- d) Fire stations should be convenient to high value areas of commercial or industrial districts, but not located in them unless such a location is necessary to maintain the required service radius.
- e) Fire stations should be located, as much as feasible, away from other uses which may be sensitive to the noise impacts of frequent alarms.
- f) Fire stations and their sites should be designed to fit in with their surroundings, including consideration of open spaces, off-street parking, landscaping, and general appearances, especially when located in residential districts.
- g) In residential service areas, fire stations should be located in or near those sections which have the highest density.

**2.1.e Maintain an adequate and reliable water system to serve fire protection needs.**

An adequate and reliable water system is a key element in maintaining adequate fire protection to the community. In fact, the adequacy of the water system is one of the criteria used for determining the City's fire protection rating from the Insurance Services Office (refer to Section 5.2.1).

**2.1.f Provide fire facilities and related resources to support the "central station concept."**

In order to maintain above-average fire insurance ratings, fire facilities should be provided and sited to support the "central station concept" described in Section 5.2.1 of this chapter.

**2.1.g Utilize existing community resources, to the maximum extent feasible, in the provision of public protection services.**

The City should continue participation in and support in community level crime prevention programs such as the Neighborhood Watch and VIP (Volunteer In Police) programs.

**2.1.h Assure that new development utilizes modern public protection concepts in their design and development.**

Development review processes should involve public protection service providers in the city. Public protection planning concepts such as "defensible space", security lighting, access, visibility, etc., may be applied to new development to reduce policing problems and improve police effectiveness.

*(Notes: Additional policies and implementing actions regarding police and fire protection services can be found in the Safety Element, Chapter 11.)*

EXHIBIT L



# MERCED FIRE / RESCUE STRATEGIC PLAN 2003



**DEVELOPMENTAL**

- 1) Due to community growth and development, review and revise the City of Merced Community Fire Protection Master Plan (CFPMP) to maintain adequate and affordable service levels, as directed by the City Council.
  - confined space, trench rescue, hazardous materials, burn facilities, simulations, and satellite Federal FETN training (dubbing/digital AV).
- 2) Develop a training complex, which includes props and resources for
- 3) Establish a level "A" Hazardous Materials Response Team.

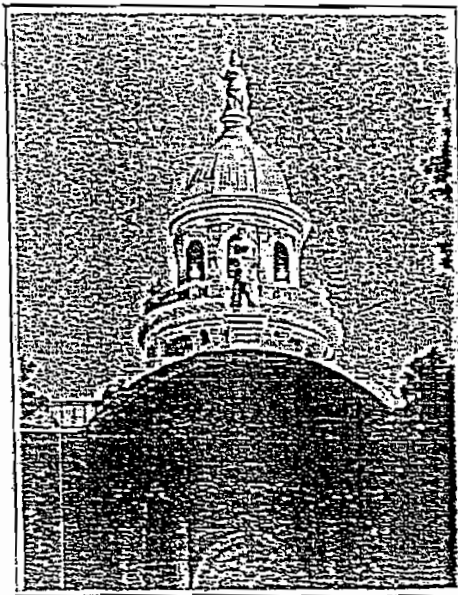
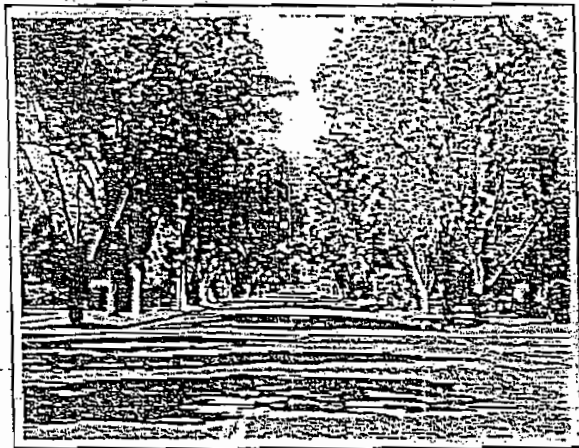
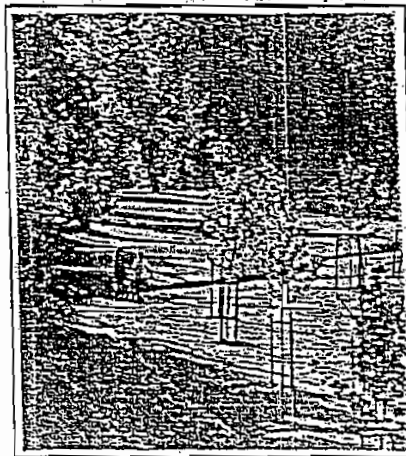
EXHIBIT M

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# Merced Vision 2015

## General Plan



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April 1997

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abatement during the year. Each property within the City is served annually each spring with notice sent for removal of weeds, etc. The City Fire, Police, and Public Works Departments also pick up abandoned vehicles, and a "Spring Clean-up" conducted annually allows people to have bulky refuse picked up without charge.

Naturally, the use of built-in protection such as fire resistant materials and automatic sprinklers in all structures above that required by the Uniform Building and Fire Codes significantly reduces the risk of urban fires and may reduce the City's reliance upon fire suppression crews.

#### Land Use

Merced has a variety of land use types. Many of these require tailored fire protection considerations. These land uses are included as follows:

##### High-Hazard Occupancies

(schools, hospitals, nursing homes, and other high life hazard or large fire potential occupancies)

##### Medium-Hazard Occupancies

(apartments, offices, mercantile and industrial occupancies)

##### Low-Hazard Occupancies

(one-, two-, or three-family dwellings and scattered small businesses)

##### Rural Operations

(scattered dwellings, outbuildings, vacant lots)

Each of these land use types requires somewhat different fire suppression resources (e.g., emergency medical services, hazardous materials response,

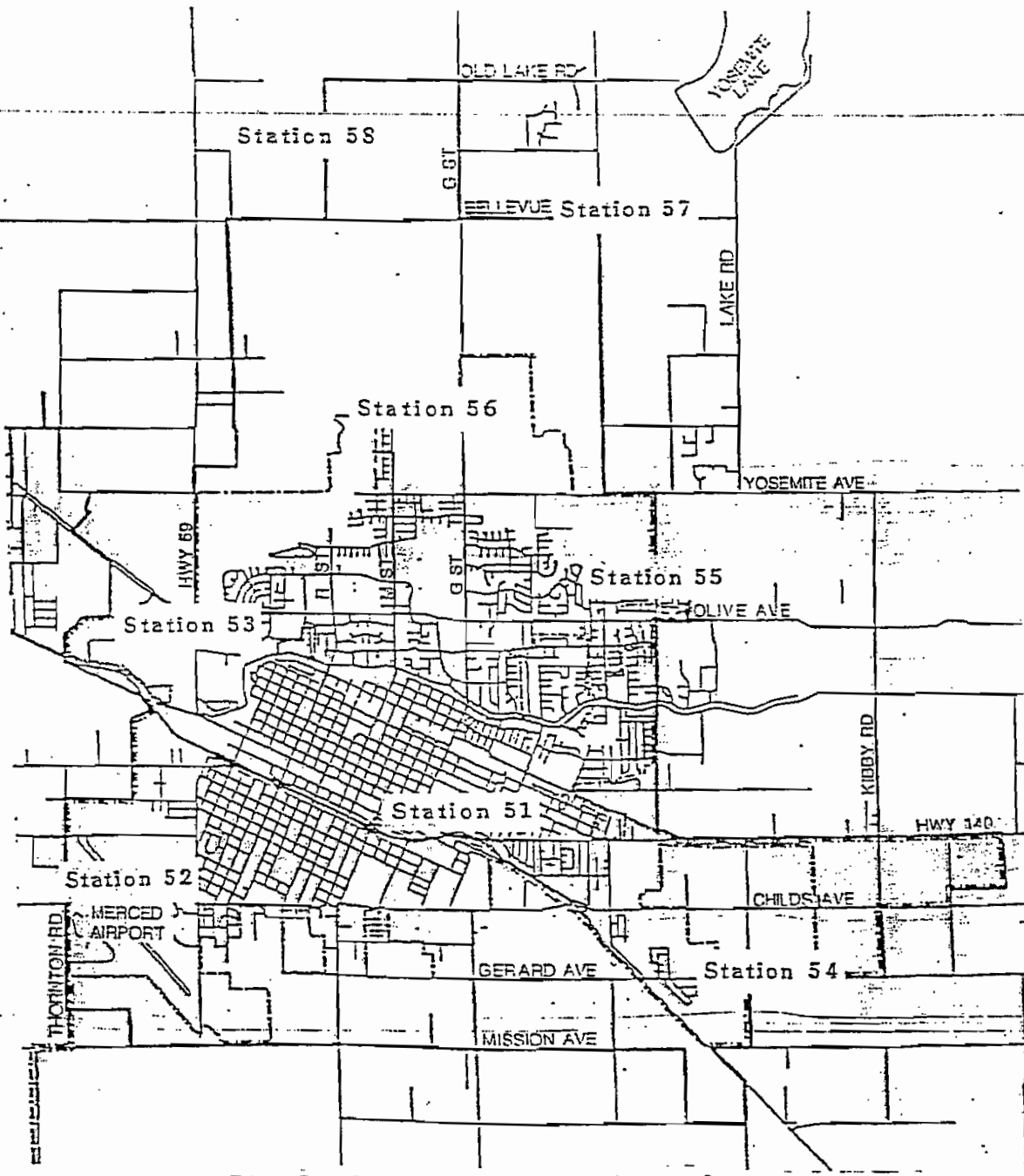
and heavy rescue). Merced's current policy is to provide emergency response within 4 to 6 minutes and to provide adequate resources to combat fires in these occupancies. The target of this response is to place a fire unit on scene at 95 percent of incidents in five minutes. Therefore, it is important that those industries using hazardous materials, large facilities, or requiring special fire hazard considerations going into new areas of the City not currently occupied by these types of businesses be accompanied by additional fire department equipment and/or personnel.

The current response practice provides for a first-alarm assignment of two pumpers, one ladder truck, one mini-pumper, and a chief officer for all structure fires. The increased awareness and use of hazardous materials, and the need for heavy rescue services as illustrated during the Loma Prieta Earthquake, however, have led the Fire Department to develop programs to provide expanded services.

##### Wildland Fires

Wildland fire hazards exist in varying degrees over approximately 90 percent of Merced County, mostly outside urban areas. The Valley's long, dry summers and extensive vegetation makes for a fire season that extends from late spring to early fall. Approximately fifty to one hundred wildland fires can occur in Merced County in any one year. Irrigated agricultural land, however, is less susceptible to wildland fires than grazing areas.

As the City has increasingly annexed large blocks of undeveloped land, the potential for wildland fires (mainly



Fire Station Locations are Approximate

SOURCE: Merced City Fire Department



Figure 11.6

**EXHIBIT N**

**CITY COUNCIL/REDEVELOPMENT AGENCY PUBLIC HEARINGS**  
**CONTINUED**

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**STAFF'S RECOMMENDATION:** Adopt a motion denying the applicant's requested modification of Condition No. 2, but approving Vesting Tentative Subdivision Map No. 1292, subject to the conditions as recommended by staff to the Planning Commission on November 8, 2006, and modification of Condition No. 21, plus Findings A through S of Planning Commission Staff Report No. 06-42 - 4<sup>th</sup> Addendum.

**L. CITY COUNCIL AND AGENCY REPORTS**

- 1. ESTABLISHING PRIORITIES FOR DEVELOPMENT OF FIRE STATIONS** *(At its December 18, 2006 meeting, the City Council directed staff to prepare an agenda item for City Council review concerning the priorities for development of fire stations within the City.)*

**RECOMMENDATION:** Adopt a motion:

- A. Establishing priorities as recommended for the development of fire stations; and
- B. Directing staff to seek proposals from architects for the design of Fire Station 56, to be located at the Merced College site.
-



## ADMINISTRATIVE REPORT

AGENDA  
ITEM: \_\_\_\_\_

MTG  
DATE: \_\_\_\_\_

TO: James G. Marshall, City Manager  
FROM: Jack D. Lesch, Director of Development Services  
Ken Mitten, Fire Chief  
Brad Grant, Finance Officer  
William D. Cahill, Assistant City Manager  
DATE: December 21, 2006  
SUBJECT: Establishing Priorities for Development of Fire Stations

**RECOMMENDATION:** Adopt a motion:

- A. Establishing priorities as recommended for the development of fire stations;  
and
- B. Directing staff to seek proposals from architects for the design of Fire Station 56, to be located at the Merced College site.

**POSSIBLE ACTIONS:**

- 1. Adopt the motion as recommended.
- 2. Modify the action.
- 3. Direct further staff work (specify in motion).
- 4. Deny the action.

**AUTHORITY:** Charter of the City of Merced, Section 200; Merced Municipal Code Section 2.36.20.

**DISCUSSION:** At its December 18, 2006 meeting, the City Council directed staff to prepare an agenda item for City Council review concerning the priorities for development of fire stations in the City of Merced. This item was prompted by discussion of a development proposal in northeast Merced, but has broader implications for the community as a whole.

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**Past Fire Station Planning and Response Standards:** The City has had an adopted Fire Station Master Plan since the middle 1980s. This Plan addresses future locations of fire stations to serve the existing Specific Urban Development Plan area, and is further incorporated into the City's General Plan. Fire station master planning is a process designed to provide adequate, yet affordable fire protection.

Pursuant to this longstanding plan, the City developed and opened Fire Station #55 on Parsons Avenue at Carpenter Park in early 2006. The City also followed the Plan in recently purchasing a site from Merced College for the planned Station #56. See Attachment 1 for map of existing coverage area and Attachment 2 for expanded area with Merced College and Southeast stations.

The Plan is based on accepted national fire response standards, especially those prescribed by the Insurance Service Office (ISO) for fire company distribution "standards of coverage" response areas. These include:

- Engine Company within 1.5 miles (circles)
- Response criteria of 4 to 6 minutes
  - 1 minute - alarm receipt
  - 1 minute - turn-out time for crews
  - 4 minute - road time average of 30 mph (2 miles max)

Accreditation criteria within the ISO grading process allows for an average of 90% of calls to be responded to within 5 minutes.

**Setting Priorities:** The City's Fire Master Plan and Public Facilities Financing Plan (PFFP) provide for six additional stations in the 20-year time horizon of the PFFP (two relocations and four new stations):

- Station 53 (replace Loughborough, move to near Hwy 59 & Olive)
- Station 54 (Southeast: replace 21st Street, move to near Gerard and Coffee)
- Station 55 (on Parsons Avenue, at Carpenter Park – already completed)
- Station 56 (Merced College)
- Station 57 (Bellevue between G and Lake)
- Station 58 (near Bellevue and R)

These stations are to be constructed as growth occurs, to serve expanded areas of the community. With Station 55 completed and opened, the question is prioritizing remaining stations.

In considering priorities and scheduling of construction, the following factors should be considered:

- Need for the station, as evidenced by call volume and the build-out of development within the service area of the station (see Attachment 2 which illustrates the degree of development within the service areas of each of the planned stations). Approximately 40% of calls in Merced are experienced north of Bear Creek.
- Readiness to build the station (in terms of ownership of the site and other factors)
- Vehicular circulation allowing adequate response times (any special limitations in the road network of the service area, creating difficulties in access). For example, in the case of the Absolute-Leeco annexation area, the lack of completion of Gardner and Cardella Roads prolongs response. In southeast Merced, the lack of completion of the road network generally also prolongs response.
- Availability of staffing for the stations. Funding is available to support staffing for one new station. Relocations of Stations 53 and 54 do not require additional funding for operations. However, new Stations 57 and 58 would require more operating funding than is currently available.

After considering these factors, staff recommends the following priority/scheduling list:

1. Station 56 (Merced College)
2. Station 54 (Southeast: replace 21st Street, move to near Gerard and Coffee)
3. Station 53 (replace Loughborough, move to near Hwy 59 & Olive)
4. Station 58 (near Bellevue and R)
5. Station 57 (Bellevue between G and Lake)

Station 56, Merced College: This station location is recognized in Merced College's Campus plan as well as City plans, and is ready to proceed to construction. The City owns the site, which was recently purchased from Merced College. Staffing for an additional station is available, due to revenues from Community Facilities Districts. The need for this station is the most immediate, evidenced by both growing call volume in the area, and the amount of development in the area to be served by the station (see Attachment 2). This station would serve Bellevue Ranch, recently annexed land (e.g. Absolute-Leeco), and proposed annexations shown in Attachment 2.

Crosswinds is also proposing phases to the north of Bellevue Road, which would rely on Station 56 and additional measures to provide adequate service, yet to be

determined by further City staff evaluation. While the developer may wish to advance this development north of Bellevue and west of "R" Street (extended), it will need to be evaluated in terms of adequate safety services.

Station 54, Southeast: This station is less ready to proceed to construction than the Merced College site. Although a site has been identified, the City does not own it, and precise location and acquisition are dependent upon negotiations with developers intending a large-scale commercial development. If put in line before the Merced College station, the result is likely to be lengthier development times for both. While the service area is developing, it is far less developed than the service area for the College station, and call volumes in the southeast Merced area are less. However, as development progresses in the southeast area, additional fee income will be generated which will help support the station's construction. This includes proposed large commercial and industrial projects starting in 2009-2010. No new staffing is needed, because this station is a relocation of the 21<sup>st</sup> Street station, not a net new addition.

Station 53, Olive/59: While the relocation of the Loughborough station has been long anticipated, there is no specific site identified for it. It is not near construction readiness. The station in its present location is adequately located, but as development progresses to the north and west, there will be increasing need to move. No new staffing is needed, because this station is relocation, not a net new addition.

Stations 58 and 57: These are both seen as much longer-term for development. Neither location has any significant urbanized development around it, so there is no current need for either. Neither has a firmly identified site. Staffing costs for these stations are not yet affordable. However, it should be recognized that Crosswinds, the developers of Bellevue Ranch, would like to proceed with development of an area in the far northwest of Bellevue Ranch – north of Bellevue Road and west of R Street. Aside from this request, the City has no other reason to build this station in the near future.

Finances for Construction: Each of the future stations would be built for the purpose of serving newly-developed areas. Because new stations serve new growth, the capital costs of building new stations is provided for in impact fees charged to new development, as established in the City's adopted Public Facilities Financing Plan (PFFP). Fee levels are adjusted annually to assure adequate collection of funds. Although impact fees are deposited into separate accounts for various purposes (fire, police, roads, parks, etc.), the City Council may transfer money between the accounts as needed for construction of a particular project.

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Existing balances and expected revenues in fire-related impact fee funds are not sufficient to build a new fire station in the coming three fiscal years. If a station is to be constructed in that time, it is likely that the Council would need to authorize transfers from other impact fee funds, provided that the other funds have money available.

Stations 53 and 54 are relocations. Their current locations may be sold, raising revenues to support the replacements for these stations. Alternate uses for these location may be City operations – Station 54 has been discussed for recreation center use, and Station 53 for police use. Whatever the use, the sales revenues are already included in the City’s adopted PFFP, for a combined total of \$750,000. Even if market conditions increase the sale prices, the basic conclusion is still that the Council would need to transfer revenues among PFFP funds in order to obtain funding for multiple fire stations in the short term.

**Development Process:** The development process for fire stations can be summarized as four steps: (1) site acquisition (by purchase or dedication), (2) design, (3) construction, and (4) opening and operation.

The chart below summarizes recommended steps in the development process for the three stations which should be planned for now. Given the financial projections for fee income, the schedule shows construction and opening of the next station (#56) three years from now at the earliest, in FY 2010. This scheduling is likely to require some transfers by the City Council between impact fee funds, if the other funds have sufficient money available. If fee income is greater than expected, it may be possible to achieve construction earlier.

	Site Acquisition	Design	Construction	Opening/Operation
Station 56 (College)	2007 **	2008	2010	2010
Station 54 (Southeast)	2008	2010	future	future
Station 53 (Olive/59)	2011	future	future	future

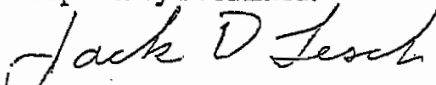
\* All years are fiscal years and are for the completion of that step. For example, "2007" means the fiscal year ending June 30, 2007.

\*\* Acquisition of Station 56 site is complete.

It is advisable to commence the design process for Station 56 now by seeking architectural proposals. While some of the design concept from the recently-completed Station 55 can be used, new construction drawings are needed because Station 56 will have a ladder truck (Station 55 does not), requiring additional space in the equipment bays.

**RECOMMENDATION:** Staff recommends the approval of Fire Station priorities, with the Merced College site (#56) being ranked first, the Southeast site (#54) second, and the relocation of the Loughborough Station (#53) third. Staff also seeks approval for requesting architectural proposals for the development of Station 56 at Merced College. Proposals and costs will be returned to the Council at a later date for consideration.

Respectfully Submitted:



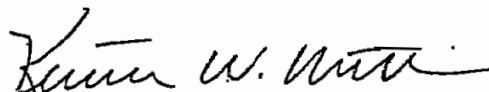
Jack D. Lesch  
Development Services Director



William D. Cahill  
Assistant City Manager

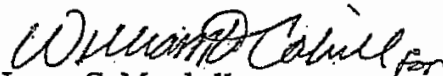


Bradley Grant  
Finance Officer



Ken Mitten  
Fire Chief

Reviewed and Approved:



James G. Marshall  
City Manager

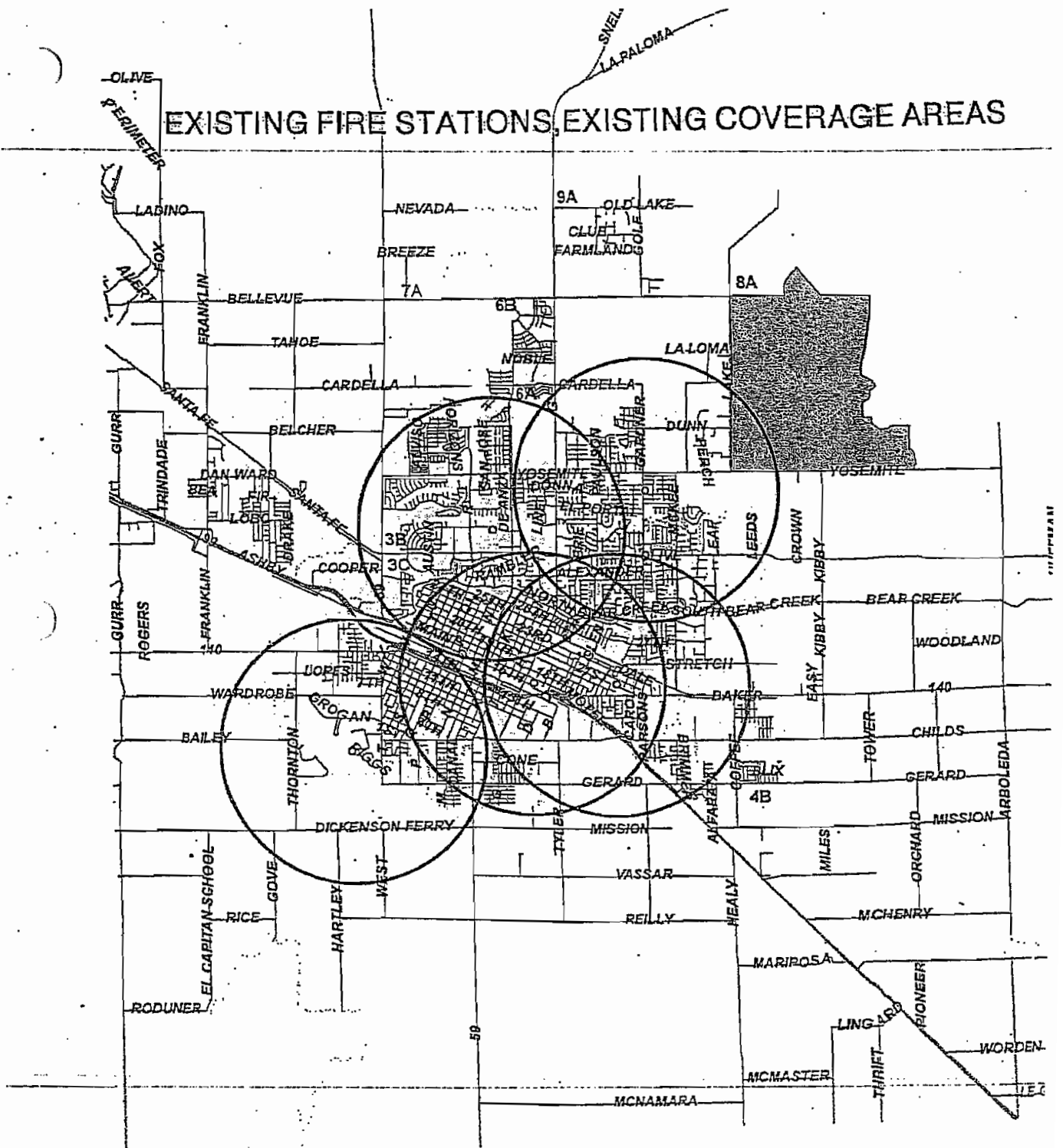
Attachments:

1. Existing Fire Stations, Existing Coverage Areas
2. Proposed Fire Stations, Proposed Coverage Areas

*m-cc-fire priorities-12-26-06*

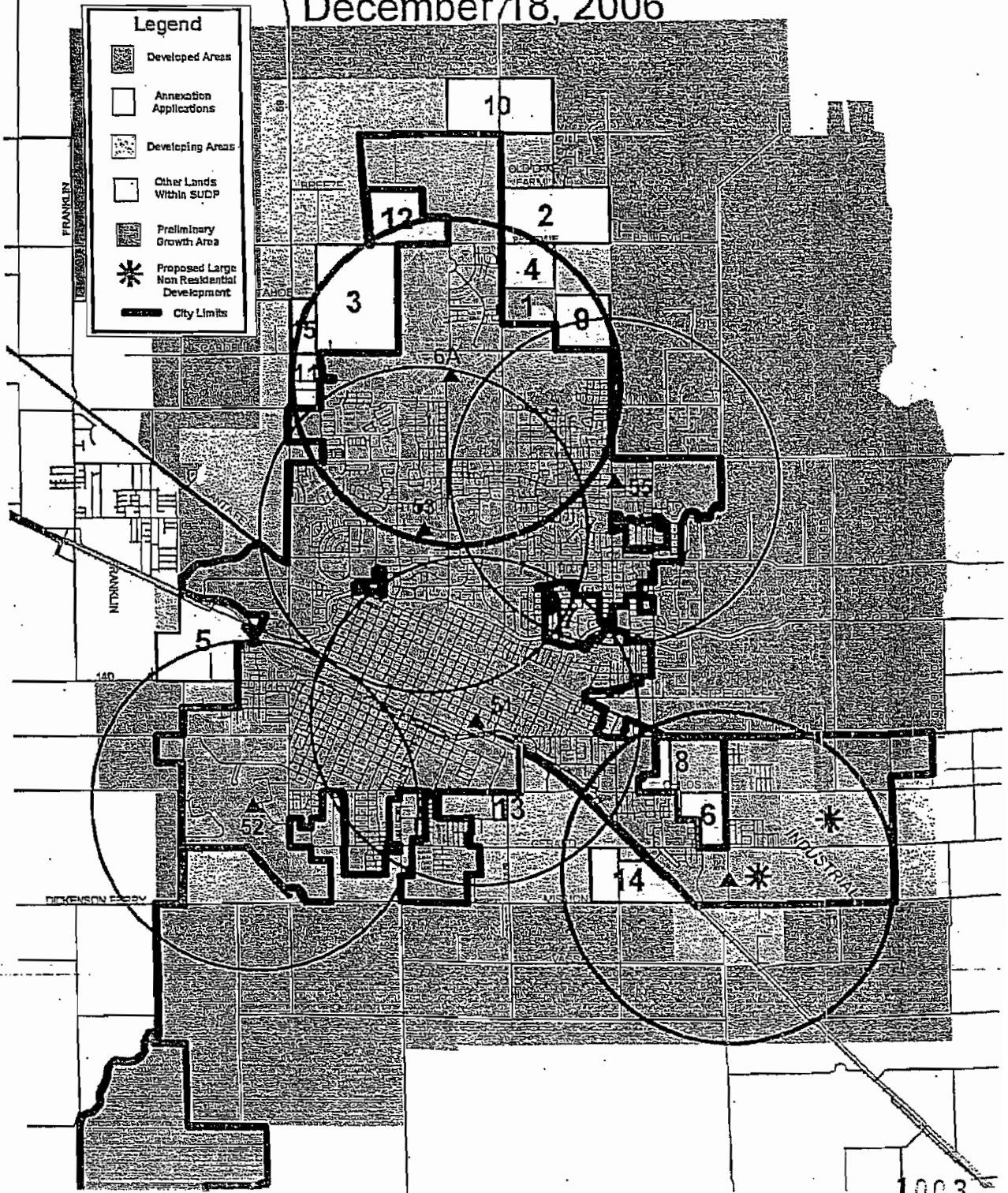
1001

# EXISTING FIRE STATIONS, EXISTING COVERAGE AREAS



# City of Merced Growth Activity Map

## December 18, 2006



1003



BY THE FOLLOWING VOTE:

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AYES: COUNCIL MEMBERS: OSORIO, SPRIGGS, CORTEZ,  
GABRIALT-ACOSTA, POLLARD, SANDERS, WOOTEN  
NOES: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE

**(L-1) Establishing Priorities For Development Of Fire Stations**

Fire Chief KEN MITTEN reviewed the administrative staff report.

Council Member SPRIGGS stated geography and access could make the relocation of Station 54 to the Gerard and Coffee area a prudent choice.

Council Member GABRIALT-ACOSTA suggested using the Loughborough station as a youth recreation center if the Police Department does not re-use.

Speakers from the Audience in Favor:

CHARLIE HUDDLESTON, Merced

ROBERT HADEN, representing Crosswinds Communities -- in favor of utilizing developer funding and construction to locate an interim facility located at the M Street traffic circle south of Bellevue Road. Council Member SPRIGGS stated he was in favor of the interim station idea.

DAVID HAHN, representing Crosswinds Communities

ON MOTION OF COUNCIL MEMBER OSORIO, SECONDED BY COUNCIL MEMBER POLLARD, DULY CARRIED, RESOLVED, TO ESTABLISH PRIORITIES AS RECOMMENDED FOR THE DEVELOPMENT OF FIRE STATIONS; DIRECT STAFF TO SEEK PROPOSALS FROM ARCHITECTS FOR THE DESIGN OF FIRE STATION 56, TO BE LOCATED AT THE MERCED COLLEGE SITE; AND TO CONDUCT A JOINT FIRE STATION STUDY SESSION ON TEMPORARY A (INTERIM) FIRE STATION FOR BELLEVUE RANCH NORTH.

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2007-12

(Merced City Council Meeting January 2, 2007)

BY THE FOLLOWING VOTE:

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AYES: COUNCIL MEMBERS: OSORIO, SPRIGGS, CORTEZ,  
GABRIALT-ACOSTA, POLLARD, SANDERS, WOOTEN  
NOES: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE

**(K-4) Continued Public Hearing – Appeal for Planning Commission Denial  
of Tentative Subdivision Map No. 1292-Palisades Park**

Director of Community Development JACK LESCH reviewed the administrative staff report.

Speakers from the Audience: RICK TELEGAN, representing Absolute/Leeco LLC - in favor of recommendation with modifications of condition number twenty-one, plus Findings A through S of Planning Commission Staff Report.

The public hearing was closed at 9:20 p.m.

ON MOTION OF COUNCIL MEMBER OSORIO, SECONDED BY COUNCIL MEMBER SANDERS, DULY CARRIED, RESOLVED, TO DENY THE APPLICANT'S REQUESTED MODIFICATION OF CONDITION NO. 2, BUT APPROVE VESTING TENTATIVE SUBDIVISION MAP NO. 1292, SUBJECT TO THE AMENDED CONDITIONS AS RECOMMENDED BY STAFF TO THE PLANNING COMMISSION AND MODIFICATION OF CONDITION NO. 21, PLUS FINDINGS A THROUGH S OF PLANNING COMMISSION STAFF REPORT NO. 06-42 - 4<sup>TH</sup> ADDENDUM.

BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: OSORIO, SPRIGGS, CORTEZ,  
GABRIALT-ACOSTA, POLLARD, SANDERS, WOOTEN  
NOES: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE

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1005

**EXHIBIT O**

**1006**



## ADMINISTRATIVE REPORT

AGENDA  
ITEM: L-1-I

MTG.  
DATE: 5/5/08

TO: James G. Marshall, City Manager

FROM: Kenneth W. Mitten, Fire Chief

DATE: May 1, 2008

SUBJECT: Report on the Progress of Fire Station Development

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### RECOMMENDATION:

For Information Only, no City Council action is necessary.

### AUTHORITY:

Article II, Section 200 of the Merced Municipal Code, the power make legislative decisions in respect to municipal affairs.

### DISCUSSION:

The purpose of this Administrative Report is to provide the Merced City Council with an update in regards to the development and relocation of City fire stations. This Report shall address the history, the current needs, status of current station development projects, and provide a response to information which was requested at the April 7th, 2008 City Council meeting.

Merced Fire Department ("MFD") facilities locations have been generally planned and are documented in Figure 5.1 of the Merced Vision 2015 General Plan. In April 1997, when the General Plan was adopted, it was projected that the Department would grow to total of eight stations at the build out of the Plan. The projected number of fire stations and their locations are based on the trends of population and area growth. Accordingly, an increase in population and development is directly proportionate to an increase in demands for service.

1007

The Insurance Services Organization ("ISO") Public Protection Classification ("PPC") system has been developed to rate the level of fire protection that is delivered within a specific geographic area. The PPC is used to determine fire insurance premium rates for the area. The PPC is expressed on a scale of one to ten, with Class 1 being exemplary where Class 10 fails to meet any of the ISO requirements. The City of Merced has been assigned and rated as an ISO PPC Class 2 since the mid 80's, which is considered to be outstanding and is one of the highest ratings of any city in the Valley. The ISO rating system considers a number of factors including how well an agency receives and dispatches fire alarms to the fire department (10% of the rating); the fire department including distribution of fire companies and equipment, training, response time, and equipment maintenance (50% of the rating); and water supply focusing on the ability of the community to meet fire suppression needs beyond maximum daily consumption—including the rate of flow for firefighting purposes at various locations throughout the community as well as the distribution of fire hydrants through the community (40% of the rating). To receive the ISO PPC Class 2 rating, the City had to rate near the top in each of these categories.

Specific fire station locations are to be based upon the complete build-out of an area, as projected within the adopted General Plan, as it relates to the ability to provide an acceptable level of service. Travel distance, population, and response routes are considered during the planning phase so as to maintain an acceptable emergency response time.

The City has taken several actions to meet the projected fire protection needs of the City of Merced, since the adoption of the current General Plan. By way of example, the City has completed the relocation of Station 51 from West 18<sup>th</sup> Street to 99 East 16<sup>th</sup> Street. The City has also completed the design and fabrication of Station 55, which has been fully functional since 2006.

Additionally, the current MFD fire station development plans are as follows:

Station 53 - Relocate the facility to the area of West Olive Avenue and Highway 59.

Station 54 - Relocate the facility further to the East and South of its current location to an area within the East Mission Avenue and Highway 99 Interchange commercial development project.

Station 56 - Develop a combination fire station and college fire training facility, contiguous to Merced Community College.

Station 57 - Develop a facility in the area of Bellevue and Lake Roads.

Station 58 - Develop a facility in the area of Bellevue Road East of Highway 59.

Two fire station Capital Improvement Program Projects ("CIP") are currently in different stages for development. These CIP funds come primarily through the payment of development impact fees by developers into the City's Public Facilities Financing Plan ("PFFP") fund. These projects include: relocation of Fire Station 54 and development of Fire Station 56. Station 53 is not currently in the CIP process because Station 56 needs to be completed and functional before relocation of Station 53 is practical. However, staff continues to look at opportunities to acquire property for this purpose and to monitor growth in the part of the City to be served by a relocated Station 53. The status of these two current Fire Station CIP projects is as follows:

#### Station 54 – Relocation

Over the past few years, negotiations have been underway between the City and commercial developers to relocate Station 54 from East 21<sup>st</sup> Street to the East Mission Avenue at Highway 99 Interchange area. Approximately one-year ago, the consortium that was leading the development of a major retail complex disbanded and the project was dropped. Since the beginning of the year, talks with developers have resurfaced. Currently, there are four projects being negotiated in the Mission Interchange area; the fabrication of a fire station is being included in these discussions.

CIP funds are currently being requested in the FY2008-09 budget to start the design process.

#### Station 56 – M Street at Ironstone Drive

The City has purchased 2.83 acres from Merced College for the purpose of developing a fire station, a fire department training facility, and a City fuel island. The planned fire station will be large enough to accommodate two fully staffed fire companies: one engine and one truck. To date, both Phase I and Phase II Environmental Assessment Reports have been completed and no further actions are required for clearance. These reports help determine if the real property has

any existing contamination which would be hazardous to humans or preclude the proposed use.

CIP funds are currently being requested in the FY2008-09 budget to re-start the design phase of this project. ←

On January 2, 2007, the City Council approved a motion directing staff to seek proposals from architects for the design of this fire station. The time frame to hire an architect to design any fire department facility is projected at one year to 18 months. Upon completion of the selection process, but before the architect was hired, the project was put on hold for two reasons: the slowdown in building resulting in the slower than anticipated generation of PFFP fees for capital and CFD taxes for personnel, and the proposal to develop a temporary fire station. ←

#### Developer-Funded Temporary Fire Station – M Street Circle at Mandeville Lane

J.B. Anderson Land Use Planning is the primary contact for the Crosswinds Project Team who has requested permission from the City to build out-of-phase in the northwestern corner of the City. The change in Bellevue Ranch North phasing poses concerns for the ability of the Fire Department to provide adequate levels of service to the citizens who will live in this area upon build-out. Therefore, it was proposed to have the developer design and build a temporary fire station to meet the Fire Department's response requirements while at the same time having a facility that is reusable by the community when a permanent fire station is built.

Generally, the City has avoided temporary facilities, especially temporary fire facilities. One of the reasons for this is that temporary facilities have the tendency to become permanent facilities. Moreover, as representatives of the school districts have stated to the City Council, the maintenance and operations costs for temporary facilities are significantly higher than for permanent facilities. In addition, one factor in making fire stations expensive is that they are designed and constructed to higher standards so that they can withstand most natural disasters. In the event of a natural disaster, the City would not want to have its front-line first responders or their equipment lost to the disaster and thus unavailable to meet the City's emergency needs. Finally, the investment in temporary facilities simply postpones from a financial perspective when permanent facilities designed to meet the City's long-term needs can be built.

In addition, given the current restrictions on the use of the funds in the Fire PFFP Account (e.g., by law, they can only be used for the identified facilities), the City

City of Merced  
Report on the Progress of Fire Station Development  
Page 5

would not be in a position to use its Fire PFFP funding for such temporary facilities because temporary facilities are not an identified project within the program.

The proposed facility would be located on M Street Circle at Mandeville Lane. This location will meet all current response needs of north Merced. Further, the proposed facility will also have dedicated office space for the Merced Police Department. With a design that meets both short-term and long-term reuse needs, such a facility in this location would make sense. However, it only makes sense at this time if the developer's "out of phase" request is approved by the City.

On Monday April 7th, 2008, Mr. Richard Harriman appeared before the City Council regarding the status of fire station planning and development. He specifically asked for the following:

**Question:** The account balance in the PFFP Fire Account and any transactions involving loans to or from the PFFP Fire Account:

**Answer:** No loans have been made to or from the Fire PFFP Account.

Current balances as of March, 2008 within the Fire PFFP Account total \$1,727,020.57. This includes \$645,715.87 City and \$1,081,304.70 developer. Under the PFFP program, funds collected are separated into two areas within each category. The first category is for projects determined by the City Council to be a City-wide priority. The second category, the "developer reimbursement" category is designed to reimburse developers for eligible improvements which they construct that are beyond their "fair share" of the need for the improvement created by their project. The City Council specifically divided the PFFP funds between the City category and the developer reimbursement category so that the community's needs and priorities are addressed rather than having infrastructure addressed on a piecemeal basis as individual projects develop.

**Question:** An indication of when the design for Fire Station 56 will be completed:

**Answer:** At the January 2, 2007 City Council meeting, the City Council voted to establish the priority of fire station development and



construction. Fire Station 56 was designated by the City Council as the top priority. The site acquisition has been completed. The schedule approved by the City Council was to undertake the design work in 2008, and construct the facility in 2010. It is currently projected that Fire Station 56 would be open and operational by the end of 2010. Design funds are being requested in the 2008-09 budget CIP program. The estimated time to hire an architect and have the architect design a fire station is 12 to 18 months.

**Question:** An explanation of why the land proposed to be dedicated for Fire Station purposes by Crosswinds was never accepted:

**Answer:** The Developer was required to dedicate a fire station site (Lot "O") unless an alternative, off-site location became available and was acceptable to the City. The site dedicated by the Developer was described as Lot "O." When the Lot "O" property was designated for a fire station it was contemplated that the City would continue to grow to the north. Subsequently, habitat and endangered species have been determined to be prevalent, making further growth to the north unlikely. Consequently, it is not practical to build and staff a fire station where its service area is only 180 degrees and not a complete 360-degree area. An alternative site has been identified and is acceptable to the City. This alternative site is the City property on "M" Street and Ironstone Drive, which had been discussed with Merced College for a number of years prior to purchase. Pursuant to the Subdivision Map Act, because the City no longer intends to use the originally identified site as a fire station, the City is obligated to return it to the developer. Specifically, Government Code Section 66477.5 requires the return of property dedicated to the City if it is not used for its intended purpose. For this reason, Crosswinds requested a quit claim of the City's interest in 2007. Crosswinds did so because in re-subdividing the area their engineer failed to note the relinquishment of Lot "O" as a fire station site on their final map. The Planning and Permitting Division of the Development Services Department of the City is preparing an initial study to determine any environmental issues prior to a

City Council decision on the return of Lot "O" as required by Government Code Section 66477.5.

**Question:** A "date certain" when fire service will meet General Plan policies and goals in North Merced:

**Answer:** Fire services responses currently meet the policies and goal of the City of Merced General Plan - "The department has a goal of maintaining a response time of four to six minutes for the first crew to arrive at a fire or medical emergency within an assigned district." In particular, General Plan Policy P-2.1 provides that:

"Public protection services and facilities are to be maintained in the City of Merced at a level that promotes the health and welfare of the City's residents. The City is committed to assuring that facilities, equipment and staff levels of its fire and police service units meet the highest standard that can be accommodated within the resource constraints of the City."

During the 2007 calendar year the fire department maintained a district average response time of less than six minutes. Accordingly, fire department facilities planning is a high priority, which is validated by the department's active involvement in the current General Plan update process.

**Question:** An analysis of how often Fire Station 53 responses meet current goals and policies of General Plan:

**Answer:** In the calendar year of 2007 fire station No. 53 responded to 941 incidents. The average response time was 4:24 minutes for the year. Accordingly, in order to maintain an acceptable level of fire service, fire department's facilities planning continues to be addressed. As the City progresses through the current General Plan update process, the information contained in current Vision 2015 document is being reviewed to revalidate that it remains current and accurate.

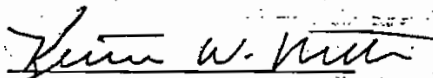
In conclusion, the Merced Fire Department is working closely with the community and developers to be able to continue to maintain exceptional levels of emergency response and fire protection to carry out the City Council's decision regarding the priority of the fire station construction. The Vision of the Merced Fire Department is to make our community fire and life safe for all who live here and visit us. Through effective planning and implementation we will continue to proximate the Department with its Vision.

**RECOMMENDATION:**

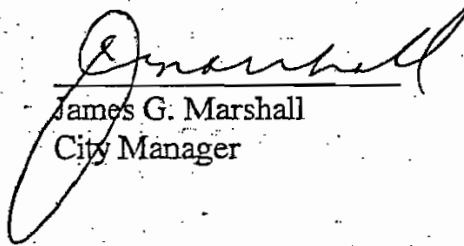
For Information Only, no City Council action is necessary.

Submitted:

Approved:



Kenneth W. Mitten  
Fire Chief.



James G. Marshall  
City Manager

*Merced Citizens for Responsible Planning and Valley Advocates v.  
City of Merced*  
[Merced County Superior Court Case No. 150872]

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am a citizen of the United States and a resident of the County of Merced; I am over the age of 18 years and not a party to the within action; my business address is 191 West Shaw Avenue, Suite 205B, Fresno, California, 93704-2826.

On May 5, 2008 I served the within

**VERIFIED SECOND AMENDED PETITION FOR MANDAMUS AND  
COMPLAINT FOR DECLARATORY RELIEF**

by placing a true copies thereof, and delivering them as follows:

Gregory G. Diaz, Esq.  
City Attorney  
City of Merced  
678 West 18th Street  
Merced, CA 95340  
[Fax No. (209) 723-1780]

M. Katherine Jenson, Esq.  
Rutan & Tucker, LLP  
611 Anton Boulevard, Fourteenth Floor  
Costa Mesa, CA 92626-1931  
[Fax No. (714) 546-9035]

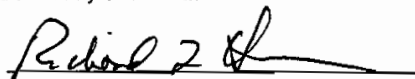
\_\_\_\_\_ **(By overnight courier)** I caused such envelope with postage fully prepaid to be sent by \_\_\_\_\_.

X **(By Mail)** I placed the envelope for collection and processing for mailing following the ordinary practice of this business which I am already familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with the postage fully paid. Addressed with the addresses above.

X **(By Hand)** I caused each envelope to be delivered by hand.  
Gregory G. Diaz, Esq., only

\_\_\_\_\_ **(By Facsimile)** I caused each document to be sent by telecopier to the following number(s):

The foregoing declaration is true and correct and is executed under penalty of perjury under the laws of the State of California on May 5, 2008, at Merced, California.

  
RICHARD L. HARRIMAN

**Espinosa, Kim**

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**From:** Richard Harriman [harrimanlaw1@sbcglobal.net]  
**Sent:** Monday, April 27, 2009 3:56 PM  
**To:** Espinosa, Kim  
**Subject:** Comments of Valley Advocates and Merced Citizens for Responsible Planning re Draft EIR for Wal-Mart Regional Distribution Center

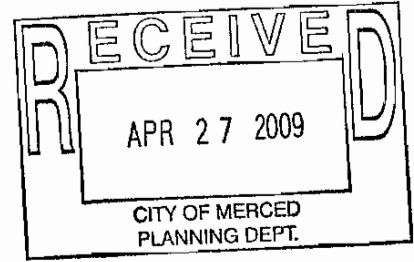
Dear Kim:

Attached please find the Comments from my clients referred to above, without Attachment A, which I am including in the Comments hand delivered to the City today.

Richard L. Harriman



4/27/2009



Law Offices of  
Richard L. Harriman  
1130 L Street, Suite B  
Modesto, California 95354  
Telephone: (559) 526-3429  
Facsimile: (559) 526-3674  
Email: harrimanlaw1@sbcglobal.net

April 27, 2009

**VIA HAND DELIVERY**

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

Re: Proposed Wal-Mart Regional Distribution Center  
Draft Environmental Impact Report (DEIR)  
SCH No. 2006071029  
Comments of Valley Advocates and  
Merced Citizens for Responsible Planning

Dear Ms. Espinosa:

This office has been retained to prepare and submit comments on the above-referenced Draft Environmental Impact Report. After reviewing the DEIR, including the Appendices contained in Volume 2 of the DEIR, my clients and I have set forth the following comments and objections.

**1. Inadequate Analysis and Mitigation of Cumulative and Secondary Adverse Impacts to Agricultural Resources**

Section 4.1 of the DEIR, pp. 4.1-1 through 4.1-13, purports to disclose and analyze the adverse impacts from the proposed project on agricultural resources. At p. 4.1-11, the DEIR states

“Because of (*sic*) the project would result in the conversion of 228.68 acres of Farmland and the significant LESA score, the effect on farmland soils is considered a significant impact. Furthermore, industrial uses adjacent to agricultural land can result in land use conflicts and create incentives for agricultural producers to discontinue agricultural operations and sell their land for development.

...

...The City’s General Plan EIR further concludes that to achieve the goals of maintaining a compact urban form, and other types of land-use compatibility issues,

mitigation that would eliminate the loss of agricultural land to urban development is not possible. Therefore, because no mitigation is available to reduce this impact, the impact would remain *significant and unavoidable*. This conclusion is consistent with the conclusion of the EIR prepared for the Merced Vision 2015 General Plan. It should be noted that the City considered the significant impact associated with the conversion of farmland resulting from the buildout of the General Plan and adopted a Statement of Overriding Considerations (Resolution No. 97-22).” (emphasis included in original)

Similarly, the Summary of Impacts and Mitigation Measures (DEIR, p. 2-5) makes similar findings and relies upon the current City General Plan EIR for the conclusion that:

“...mitigation that would eliminate the loss of agricultural land to urban development is not possible. Therefore, because no mitigation is available to reduce this impact, the impact would remain significant and unavoidable.”

However, as noted hereinbelow, the City General Plan and EIR were adopted in 1997, over twelve (12) years ago, and have not been comprehensively updated since then. These commentators respectfully submit that the City General Plan is outdated and inadequate in terms of the current mitigation measures available to and employed by other jurisdictions in the Central Valley, including the City of Davis, Yolo County, and Solano County and other jurisdictions which have adopted Agricultural Elements. Among the mitigation measures available and used by other jurisdictions Agricultural Land Trusts and off-site conservation easements or fee title acquisitions of comparable farmland. In fact, the City of Riverbank in Stanislaus County is in the process of considering the inclusion of such mitigation measures in its General Plan Update.

Thus, these commentators contend that the City General Plan EIR is outdated and inadequate and that there are readily available and feasible mitigation measures which can reduce or mitigate the cumulative impacts of agricultural land conversion to urban uses in the City and County of Merced and elsewhere in the San Joaquin Valley. Therefore, the Final EIR for the proposed project should include a complete and adequate disclosure and analysis of the specific agricultural buffers, easements, and purchases of comparable agricultural land in Merced County which will mitigate the acknowledged significant impacts to agricultural land.

Second, for purposes of the City’s proposed Statement of Overriding Considerations, the FEIR should contain a quantified analysis of the economic losses, including appropriate multiplier effects, to the local and county-wide economies, to be utilized in the City’s weighing and balancing procedure required by CEQA and the CEQA Guidelines in the City’s findings of overriding consideration.

Third, the disclosure and analysis of the cumulative adverse impacts to agricultural resources is inadequate, due to the fact that it is too limited in its scope. Specifically, the proposed project purports to serve the present and future Wal-Mart retail facilities, including super-centers, general merchandise stores, in the San Joaquin Valley and Northern California. Consequently, the proposed regional distribution center project in Merced will be the facilitator and “linchpin” of the San Joaquin Valley and Northern California by enabling the expansion of

the Applicant's retail store operations in the region referred to above. Since Wal-Mart has never provided any agricultural mitigation for **any** of its projects in the Central Valley or elsewhere in Northern California and since virtually all of its projects in these areas have been built upon agricultural land, the FEIR should contain a quantified disclosure and analysis of all of the true direct, secondary, and indirect cumulative impacts to the agricultural resources of the Central Valley and Northern California---not solely the 238-acre proposed project, but also the Porterville Distribution Center and all of the existing, currently proposed, and reasonably foreseeable future retail stores in these areas and should provide for off-site mitigation for the total cumulative impacts from the conversion of agricultural lands to urban use.

Finally, in addition, the cumulative adverse impacts to agricultural resources from the above-referenced projects should include a quantified disclosure and analysis of the adverse impacts in economic terms to the crop production caused by the cumulative mobile source air emissions should be included in the FEIR for the proposed project, which should include all of the above-referenced retail stores, so that the economic impacts may be weighed and balanced in the Statement of Overriding Considerations. Among the other factors to be considered and weighed should be the possible use of such off-site mitigation habitat to grow the fresh produce which will not be stored in the proposed regional distribution center, as an offset for the economic impact caused by the conversion of the agricultural land for the proposed project.

## **2. Inadequate Analysis and Mitigation of Cumulative Adverse Impacts of Mobile Sources to Air Quality**

The DEIR purports to disclose all adverse cumulative impacts to air quality from the proposed Wal-Mart regional distribution center. However, the DEIR fails to disclose and to require readily available and feasible mitigation measures which can substantially reduce the significant and unavoidable cumulative adverse impacts to air quality.

Specifically, the FEIR should require the following mandatory mitigation measures.

- A. The proposed project shall use on-site Photo-Voltaic and Photo-Thermal Solar panels to provide all electric power, heating, cooling, and hot water for the proposed project operations. In the event that there is not enough space on the distribution center roof [1,100,000 sq.ft. divided by 43,560 sq. ft. per acre = approximately 22 acres under roof], the Applicant shall be required to construct additional on-site solar panels to supply all electricity required for the proposed project.
- B. All on-site vehicles, including all fork-lifts and other support vehicles, shall be electric-powered vehicles.
- C. All trucks (tractors) which serve the regional distribution center and retail stores served by the proposed project shall be required to use engines fueled by Compressed Natural Gas or methane (CNG), Liquid Propane Gas (LPG), or other alternative



renewable fuels, such as bio-diesel, ethanol, or blends of renewable energy fuels and/or electric-powered vehicles.

- D. The on-site fueling station for the proposed project shall provide the fuels referred to in the preceding mitigation measure.
- E. The trucks (tractors) for the distribution of fresh produce to the retail stores served by the proposed regional distribution center shall be required to use the fuels referred to in the preceding mitigation measures.
- F. The Applicant shall be required to enter into an agreement with Merced Community College or the Merced Union High School District for the purpose of training and employing automotive mechanics with experience in alternative renewable fuel engines and in converting gasoline and diesel engines to use the alternative renewable fuels referred to in the mitigation measures set forth above.
- G. The proposed project shall provide fuel for its employees who use alternative renewable fuel powered vehicles to purchase on-site.
- H. The proposed project shall provide on-site electric recharging stations for use by employees, visitors, and guests to purchase electric power to recharge their vehicles on-site.
- I. The proposed project applicant shall provide an electric-powered bus or jitneys to provide transportation or carpooling for its employees who wish to use such service.

### **3. Energy Conservation**

These commentators reiterate and incorporate herein by reference the mitigation measures set forth in paragraph 2 above, which are readily available and feasible, for the purpose of reducing energy usage by the proposed project.

### **4. Inadequate Disclosure and Analysis of Fire Protection Services**

The total disclosure and analysis of Fire Protection Services for this proposed 1.1 million square foot project is contained on less than one (1) page at Section 4.12 (Utilities and Public Services), at p.4.12-6. This topic is also briefly mentioned on one(1) page in Appendix F, at p. 12. The Summary of Impacts and Mitigation Measures includes one brief reference to the group of services identified as “Public Services---Police, Fire and Schools” at p. 2-60.

At the outset, the DEIR fails to disclose to the responsible and trustee agencies and to the general public that the City has been sued for its failure to comply with its own General Plan Safety Element Policies, Goals, Objectives, and Implementation measures, based upon the failure of the City to construct and have operational two (2) additional fire stations. In fact, the City is required by its General Plan and its ordinances to have a fire station within 1.5 miles of the proposed Project. However, the DEIR fails to disclose this information and fails to disclose and analyze the inconsistencies with the General Plan Safety Element and other regulatory requirements of the City. [A true and correct copy of the pending legal action is attached hereto and incorporated herein by reference; see “Attachment A:” *Merced Citizens for Responsible Planning v. City of Merced* (Merced County Superior Court Case No. 150872, Court of Appeals Civil Case No. F056076)]

In addition, the DEIR fails to disclose or analyze the failure of the City to comply with the mitigation measures set forth in the City General Plan Final Environmental Impact Report (FEIR) which address and mitigate the potentially significant effects of future growth and development on the ability of the City to provide adequate fire protection services to new developments, such as the proposed project. In fact, the City General Plan and other documents referred to in the above-referenced legal action expressly identify a fire station to be constructed and operated within the distance identified and required by the City from the proposed Wal-Mart Regional Distribution Center.

There is no disclosure or analysis of the mitigation measures of the City General Plan FEIR, adopted and certified in 1997, as required by the California Environmental Quality Act (CEQA) [Public Resources Code section 21000 et seq.]. The fact that the City of Merced is a “charter city,” as distinguished from a “general law city,” is irrelevant to its duty to comply with CEQA and the mitigation measures approved and adopted by the City in its own General Plan EIR for fire protection services. Given the rapid growth in the City, which occurred between 2003 and 2006, the current City General Plan is invalid and outdated, based upon the fact that it is over twelve (12) years old. Moreover, the current cumulative deficiency in the fire protection services will be substantially exacerbated by the approval of the proposed project. In this context, it should be noted that the City General Plan does not provide for an exclusion from, or waiver of compliance with, the mandatory Safety Element Policies, Goals, Objectives, and Implementation measures. More important, the General Plan EIR does not provide for an exclusion from compliance with, or a waiver of compliance based upon, the proposed project’s inclusion of a sprinkler system.

Further, in the Water Supply Assessment (WSA) contained in Appendix F, the DEIR omits any analysis, discussion, quantified calculations, or other facts upon which the EIR Preparer made the determination that the two (2) 300,000 gallon tanks would contain sufficient capacity to mitigate the potential fire hazards caused by the proposed project. Similarly, in the Fire Protection section at p. 4.12-6 of the DEIR, there is no identification of the relevant section(s) of the California Fire Code to support the finding of adequate fire flow for the proposed project.

Also, there is only a passing reference to a “mutual aid agreement with the Atwater and County Fire Departments,” but there is no copy of this Agreement contained in the DEIR, nor is any relevant section quoted in the DEIR or the location of such Agreement disclosed. This information needs to be provided in the DEIR or Appendices.

Since the Mutual Aid Agreement is not contained in the DEIR and there is no disclosure or analysis of the inconsistencies with the General Plan Safety Element and other City regulatory policies and development standards, the DEIR is inadequate, due to the fact that it does not address how the proposed project will have adequate fire protection from one (1) on-site pumper truck. Likewise, there is no disclosure or analysis of how the proposed mitigation measures and/or conditions will be sufficient to respond to a large-scale fire at a warehouse with multiple chemicals, toxic substances, and hazardous substances stored in the proposed warehouse/distribution center, including domestic cleaning agents, drain cleaners, chlorine bleaches, and other common household chemicals and garden fertilizers that will be stored in the warehouse. The DEIR should disclose a complete list of all such chemicals and toxic and hazardous substances which will be stored on-site and how the fire protection system will deal with these items.

In addition to the foregoing comments and omissions, it should be noted that, although the proposed project will include sprinklers,

Finally, since the following issues have not been adequately addressed, the Response to Comments should address the following questions:

- A. Who will be responsible for providing the personnel to staff and operate whatever fire suppression equipment is intended to be utilized for the proposed project?
- B. Where will the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan?
- C. When will the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan?
- D. Does the City intend to amend its General Plan Safety Element for purposes of bringing the proposed project into consistency with the General Plan?
- E. Does the City intend to revise and amend its General Plan EIR for the proposed project purposes of CEQA compliance with the mitigation measures, conditions, and other implementation measures included in the GP EIR? [See, *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 in support of position that CEQA mitigation measures approved and adopted by the lead agency and constitute conditions running with the land under state law and must be enforced by the lead or other responsible agency, unless and until the EIR for the General Plan is revised or amended, irrespective of whether the lead agency is a “charter city.”]

## **5. Statement of Overriding Considerations**

These commentators request that the Findings and/or Statement of Overriding Considerations be included with the Final Draft EIR at least ten (10) days prior to the Planning Commission hearing on the proposed project. Further, these commentators expressly request that the Statement of Overriding Considerations include a spreadsheet or table including quantified economic values or other values for all benefits and detriments (costs/benefits) considered, weighed, and balanced by the lead agency in the Statement/Findings of Overriding Consideration and identifying the substantial evidence in support of both the findings of benefit and detriment considered by the lead agency in the Statement/Findings of Overriding Consideration.

Thank you for the opportunity to submit the foregoing comments to the City of Merced regarding this important proposed project

Very truly yours,

RICHARD L. HARRIMAN

cc: Sally Magnani Knox, Deputy Attorney General  
Clients

- 101-1 The commenter restates portions of the DEIR that analyzes impacts to agricultural resources. The commenter states the DEIR should not rely on the conclusions made in the Merced General Plan EIR because the General Plan is outdated and inadequate. The commenter identifies other municipalities that mitigate for loss of important farmland. The commenter states there are feasible mitigation measures available to reduce impacts related to conversion of agricultural land. Please refer to Master Response 5: Agricultural Resources, which addresses the issue related to conversion, or loss, of important farmland.
- 101-2 The commenter states the EIR should analyze economic losses to local and county-wide economies. Please refer to Response to Comment 12-14.
- 101-3 The commenter states analysis of cumulative impacts to agricultural resources is inadequate because of its limited scope. The commenter states implementation of the project would result in expansion (i.e., new construction) of Wal-Mart retail stores. The commenter states the EIR should analyze the direct, indirect, and secondary cumulative impacts to agricultural resources including “the existing, currently proposed project, and reasonably foreseeable future retail stores” and provide mitigation for the total cumulative impacts from conversion of agricultural lands.
- Related to mitigation measures for impacts to agricultural resources, please refer to Master Response 5: Agricultural Resources, which addresses the issue related to conversion of important farmland.
- Related to cumulative impacts, the DEIR fully and adequately analyzes cumulative impacts to agricultural resources that would result with implementation of the proposed project (see Section 6.1.2, “Cumulative and Growth-Inducing Impacts”). Specifically, the DEIR identifies projects in various stages of development (see Table 6-1, “Cumulative and Growth-Inducing Impacts”) and identifies the list approach with related past, present, and reasonably foreseeable future projects identified by the City of Merced was used for the cumulative analysis (see Section 6.1, “Cumulative and Growth-Inducing Impacts”). Regarding the proposed project’s potential to promote the development of new Wal-Mart retail centers, the project objectives identified in the DEIR (see Section 3.6, “Project Description”) do not suggest the purpose of the proposed project is to develop additional retail centers but to allow for efficient operation and adequate distribution of goods to serve markets throughout the Central Valley in California. Any future, new development of a Wal-Mart retail center would be required to undergo a project-level environmental analysis as required by CEQA. The DEIR prepared for the proposed project is not required to analyze the potential impacts that could result from an unknown future Wal-Mart project. As such, the DEIR cannot reasonably anticipate any potential future Wal-Mart retail center projects with any certainty. No further analysis is required. Please refer to Master Response 1: Growth Inducement and Expansion for further discussion related to the potential for the distribution centers to promote development of additional retail stores.
- 101-4 The commenter states the DEIR should analyze economic impacts to crop production caused by cumulative mobile source air emissions generated by the proposed project and potential future, new Wal-Mart retail centers. The commenter suggests a mitigation measure to offset the economic impact caused by conversion of agricultural land with implementation of the proposed project. The recommended measure, which suggests “off-site mitigation habitat to grow the fresh

produce which will not be stored at the proposed distribution center” is unclear and cannot be responded to with accuracy. Please refer to Response to Comment 12-14.

101-5

The commenter proposes a series of mitigation measures, many of which are similar to measures proposed in Chapter 4.2 of the DEIR. The commenter asserts that these measures would substantially reduce the significant and unavoidable cumulative adverse impacts to air quality.

The measures proposed by the commenter would be infeasible or duplicative of measures already proposed in the DEIR, as described further below. More importantly, even if the infeasible measures could be implemented for the proposed project, the significant cumulative impact to air quality would remain significant and unavoidable due to the large quantity of emissions that would occur and the nonattainment status of the project area. A significant cumulative impact exists, and the project would contribute substantially to that cumulative impact. Even with the commenter’s proposed mitigation measures in place, there is no available method or analysis to demonstrate that these measures would substantially lessen the project’s contribution to the cumulative impact.

The commenter proposes as mitigation:

- A. All electric power, heating, cooling, and water heating be provided by on-site photovoltaic technology. This measure is substantially similar to measures 4.2-2d on page 4.2-40 of the DEIR and 4.2-6d on page 4.2-49 of the DEIR. However, the commenter’s proposed mitigation measure would likely have secondary site-specific impacts due to the large area of solar panels required to supply the energy load being requested by the commenter (i.e., 100% on-site energy, regardless of the size of the site). (Please refer to response to comment 22-7 regarding some text changes that will be made to Mitigation measure 4.2-6d.)
- B. All on-site vehicles shall be electric powered vehicles. This measure is substantially similar to measure 4.2-2d on page 4.2-40 of the DEIR.
- C, D, E. All trucks serving the center and retail stores shall be alternative fueled vehicles and the on-site fueling station shall provide alternative fuels. This measure would be considered economically and technologically infeasible per Cal. Admin. Code, title 14, § 15364; cf. Pub. Res. Code, § 21061.1. (“Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”) However, measure 4.2-2c on page 4.2-40 of the DEIR (participation in EPA’s SmartWay program) would act as a feasible and effective alternative to the commenter’s proposed measure. (Please refer to response to comment 9-2 regarding some text changes that will be made to Mitigation measure 4.2-2c.)
- F. The Applicant shall enter into an agreement to provide training to local educational institutions for the purpose of training mechanics with experience in alternative fuels. This measure would not have proper nexus or proportionality to the impact in question (cumulative impacts to air quality). (See *Dolan v. City of Tigard*, 512 U.S. 687 (1994), *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)).
- G,H. The project shall provide alternative fuels for employees for purchase on-site and provide on-site electric charging stations for use by employees, visitors, and guests. The effectiveness of this measure cannot be determined and could vary substantially because it would rely on employees, visitors, and guests choosing to refuel their vehicles from

the energy sources provided by the applicant and the proportion of alternatively-fuel or electric vehicles driven by employees, visitors, and guests is not expected to be nominal.

- I. The project shall provide an electric-powered bus to provide transportation for employees. This measure is substantially similar to, but less detailed than, measure 4.2-2b which includes the requirement: “Operate free employee shuttle or vanpool system that serves employees according to their shift times and places of residence. Low-emissions shuttle or vanpool vehicles shall be used (e.g., hybrid, CGN, or electric). Provide a covered area for the on-site employee shuttle stop or vanpool parking lot and an open-air covered walkway connection to the employee entrance of the building to provide summertime shade and protection from rain.” See page 4.2-38 of the DEIR and the revised Air Quality section included in Section 4.4 of this FEIR.

In addition, as explained in the DEIR, Mitigation Measures 4.2-2a through 4.2-2e would reduce operational emissions of CAPs to a less-than-significant level. Therefore, no additional mitigation is required in the DEIR.

101-6 The commenter indicates that the mitigation measures recommended in the previous comment should also apply to reducing the project’s energy consumption. As noted in Response to Comment 101-5, most of the measures proposed by the commenter would be infeasible or duplicative of measures already proposed in the DEIR. Other mitigation would not be considered feasible.

101-7 The commenter states that the disclosure and analysis of Fire Protection Services is minimal and lists three locations in the DEIR. This is incorrect. Analysis of the impact of increased demand for fire protection facilities, systems, equipment and services is found at Impact 4.12-7, p. 4.12-20; further disclosure and analysis of fire protection issues is located at Section 5.4.11, p. 5-7,8 (No Project Alternative, Utilities and Public Services); Section 5.5.11, p. 5-15 (Redesigned Site Plan Alternative); Section 5.7.1, p. 5-27 (Alternative Site No. 1); Section 5.8.11, p. 5-32 (Alternative Site No. 2); Section 5.9.11, p. 5-36 (Alternative Site No. 3); p. 6-12 (Cumulative and Growth Inducing Impacts—Utilities and Public Services); p. 6-14 (Cumulative and Growth Inducing Impacts—Public Services, Police, Fire and Schools).

As the DEIR discusses on p. 4.12-20, Station 54 is the closest existing station (approximately 3.9 miles northwest of the project site).The Fire Department has indicated that it is capable of responding to emergencies at the proposed warehouse, with existing equipment, within the desired average response time of four (4) to six (6) minutes. The Fire Department has also indicated that this project does not create the need for an additional Fire Station. The DEIR also discusses the on-site fire suppression that is included in the project design, including building fire sprinkler systems, onsite fire hydrants, a 1,600 square foot fire pump house that would include primary and standby fire pumps serving the buildings fire sprinkler systems and fire hydrants, and two 300,000 gallon steel aboveground water storage tanks (not connected to the domestic water supply). These facilities would provide adequate water flow for fire suppression to meet California Fire Code requirements. The applicant would also be required to incorporate additional California Fire Code and City Fire Code requirements into the project design, including adequate onsite circulation, equipment access during emergency conditions, adequate firefighting water flow, hydrant spacing and other safety standards. The facility would be subject to annual inspections by the City of Merced Fire Department, which would include approving receptacles, vehicles, building devices, premises, storage spaces or any areas used to ensure facility operations meet all applicable California and City Fire Code requirements and standards. The City of Merced Fire Department has reviewed the proposed project and determined that it is

capable of serving the proposed project with existing equipment and also of meeting the Fire Department's average response time goal.

The City of Merced operates under "growth pays for growth" strategy, and new development is required to pay its fair share of the costs associated with an increased demand for fire protection facilities and services, as appropriate. The City has adopted a Public Facilities Impact Fees Ordinance (Merced Municipal Code Chapter 17.62), and such fees are established in accordance with that chapter on issuance of building permits for development (Section 17.62.040(A)). Based upon the existing fee levels, it is anticipated that the proposed project would contribute approximately \$4.2 million in Public Facilities Impact Fees (based on 2009 fee levels; see Response to Comment 16-5), of which \$501 per 1,000 square feet, or approximately \$551,000, is collected for fire service facilities. The DEIR also discusses that fees associated with fire inspections and permits would be offset with the collection of established Permit Inspection Fees.

The commenter objects to the DEIR on the basis that it does not discuss or disclose the lawsuit filed by the Merced Citizens for Responsible Planning and Valley Advocates against the City of Merced (Case No. 150872), in which the commenter unsuccessfully argued that residential development within the City should be shut down until such time as fire stations were constructed and operating within 1.5 miles of the proposed development. This objection has no bearing on the DEIR for numerous reasons.

First, the filing of a lawsuit is not an environmental impact, let alone an environmental impact associated with the proposed project, and therefore disclosure or discussion of the lawsuit is not required by CEQA.

Second, the Merced County Superior Court found, on three separate occasions that the lawsuit has no merit. The Court granted judgment in favor of the City. The commenter was given three chances to allege a claim that the City was not following its General Plan, and each time, the Trial Court determined that what the commenter claimed in the lawsuit (and claims again here) has no legal basis. After losing in the Trial Court, the commenter filed an appeal of the judgment. That appeal is pending. A copy of the trial court's decision and the City's Reply to Petitioners' Untimely Opposition to City's Demurrer to Second Amended Petition for Writ of Mandamus is included in Appendix B of this FEIR.

More fundamentally, with regard to the commenter's claim of a conflict between this project and the General Plan's provisions on fire protection, the General Plan's statements regarding time and distance standards for fire stations are mere goals and objectives; they are not mandatory, and thus there is no requirement that a fire station be constructed closer to the project before its development could occur. General plans normally do not state specific mandates or prohibitions. Rather, they state "policies," and set forth "goals." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 378.) Because these policies reflect a range of competing interests, the public entity must be allowed to balance the general plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes.

Although the commenter suggests that the City's General Plan mandates that a fire station must be operating within 1.5 miles of development, and that approving this project would create a conflict with the General Plan that must be disclosed in the DEIR, nothing in the General Plan or the other documents submitted by the commenter supports this conclusion. The various documents submitted by the commenter, including the General Plan, reflect the discretionary nature of the City's provision of fire services to its residents and businesses. For example, Exhibit A, the 1982 Fire Chief's Report, described itself as a "policy guide" for managing fire



services in the community, setting forth “goals and objectives” and “targets” in order “to give the fire department an opportunity to direct the community toward a reasonable level of fire protection within the allocated local resources.” The report expressly recognized that “[a] certain level of losses from fire must be accepted as tolerable simply because of the limited resources of the community.”

Similarly, Exhibit B, the 1983 Merced Fire Department Master Plan, was simply a series of recommendations to establish a standard, not a mandatory, requirement in and of itself.

Exhibit C, the 1987-2002 Fire Department Facilities Study, discussed “average response distance” and “priorities,” and expressly recognized that “due to the complexities associated with projected growth and development and the major expenditures associated with [a fire facilities] program,” the time frames of providing facilities “be considered general in nature. . . .”

Similarly, Exhibit D, the 1990 Fire Department Service Level Report, described “recommendations” and “goals;” Exhibit E, the 1992 Fire Department Strategic Plan, discussed “objectives,” “strategy,” and “standard criteria;” and Exhibit F, the 1997 Fire Department Strategic Plan, spoke of “goals and objectives,” not mandates.

The General Plan’s policy related to fire protection services is Policy P-2.1 and is found in Goal Area P-2 of Section 5.4. This provision is labeled as simply a “policy” rather than a mandate. By its express terms it qualifies the need to provide fire services:

The City is committed to assuring that facilities, equipment and staffing levels of its fire and police service units meet the highest standard that can be accommodated within the resource constraints of the City.

Thus, the General Plan standard regarding fire protection facilities is specifically limited by the ability of the City (financially or otherwise) to actually provide such facilities. This is further demonstrated in Exhibit N to the Petition. This Exhibit is a staff administrative report recommending certain “priorities” for the development of fire stations in the City. The Report’s recommendations were ultimately adopted by the City Council by motion in January 2007. “Priorities” are not mandates; rather, they merely establish the order of preference for competing alternatives. The Report discusses the relocation of two fire stations and the construction of four new stations in a 20-year time frame, and provides that the fire stations “are to be constructed as growth occurs,” not prior to growth occurring. Moreover, by approving the Report’s recommendations, the City Council expressly determined that the City was currently unable to provide the requested fire stations due to financial constraints:

Existing balances and expected revenues in fire-related impact fee funds are not sufficient to build a new fire station in the coming three fiscal years. If a station is to be constructed in that time frame, it is likely that the Council would need to authorize transfers from other impact fee funds, provided that the other funds have money available.

Far from establishing a mandate, the City Council, in its legislative discretion, determined that (i) the City lacked sufficient funds to construct a new fire station within the City until 2010 at the earliest; and (ii) it would need to authorize a transfer of money from other funds to finance such construction prior to that time. Thus, the commenter’s claim that the City would be violating the General Plan if it approves this project is incorrect.

The City does have plans to build a fire station closer to the project location, near Coffee and Gerard. That location would be approximately 1 mile from the project site. The Public Facilities Impact Fees paid by the developer of the proposed project will help to fund that fire station.

However, as discussed above, there are no immediate plans to build this station; rather it will be built in accordance with direction from the City Council as the need arises due to further development and as the funds become available.

The commenter also suggests that the City has failed to comply with mitigation measures relating to fire protection contained in the EIR certified in 1997 for the City's General Plan. No mitigation measures relating to fire service or fire protection were adopted in connection with the certification of the EIR for the General Plan update.

101-8

The commenter objects that the DIER does not contain any facts or calculations as to the determination that two 300,000 gallon tanks would contain sufficient capacity to serve the fire protection system and mitigate potential fire hazards, or of the relevant California Fire Code sections. If approved, the project would be required to comply with the Fire-Flow Requirements contained in the California Fire Code, Appendix B. The sufficiency of the two 300,000 gallon tanks would be verified during the plan check review for the project. The commenter objects that there is no copy of the "mutual aid agreement with the Atwater and County Fire Departments" attached to the DEIR. This document is entitled the "California Disaster and Civil Defense Master Mutual Aid Agreement" is included in Appendix B.

The commenter states that because the DEIR does not contain the Mutual Aid Agreement, does not disclose inconsistencies with the General Plan Safety Element and other City regulatory policies and development standards, the "DEIR is inadequate due to the fact that it does not address how the proposed project will have adequate fire protection from one (1) onsite pumper truck." This comment is not clear. As discussed above, the Mutual Aid Agreement is available upon request, and the proposed project is not inconsistent with the General Plan Safety Element or with any City regulatory policies and development standards. The commenter has not identified any particular policy or standard which is inconsistent with the proposed project. As to the issue on one pumper truck onsite, the DEIR does not specify that the applicant will maintain an onsite pumper truck. As indicated previously, the City Fire Department has determined that it has the necessary existing equipment to provide fire suppression services.

Commenter also objects that the DEIR does not disclose or analyze "how the proposed mitigation measures and/or conditions will be sufficient to respond to a large-scale fire at a warehouse with multiple chemicals, toxic substances and hazardous substances stored in the proposed warehouse/distribution center..." and that there should be disclosure of the chemicals and other hazardous substances that will be stored onsite and how the fire protection system will address such items. The DEIR addresses hazards associated with use and storage of hazardous materials on the site. Please refer to Section 4.10 "Public Health and Hazards" which identifies the various regulations with which Wal-Mart must comply for storage and handling of the various hazardous materials on site (mostly consisting of household materials, such as bleach and cleaners, but also diesel and other fuels). The Fire Department is familiar with the types of merchandise and other materials that will be stored at the facility, and took those factors into account in determining that the Department was capable of responding to emergencies at the facility without the need for additional Fire Department equipment. Also, the applicant is required to submit a plan for storing and handling these types of substances, as well as an emergency response plan, at the time the building permit is applied for. Because it has been determined that any impact will be less than significant, no mitigation measures are proposed. With respect to the sizing of the water tanks, 300,000 gallons is assumed to be the correct size, based on the applicant's engineers' estimates, but if the project is approved, it would undergo plan check at the City, which would verify the tank size is consistent with local and State fire code, and may require a slight increase or decrease in the tank size. However, such an alteration in the size of the tanks would not alter any of the conclusions of the Draft EIR. No changes to the Draft EIR are necessary.

- 101-9 The commenter questions who will be responsible for providing the personnel to staff and operate whatever fire suppression equipment is intended to be utilized for the proposed project. It is unclear as to whether the commenter is referring to the City Fire Department or onsite fire protection systems for the project. The City Fire Department will be responsible for staffing and operating City equipment. The applicant will be required to submit an emergency response plan at the time the building permit is applied for. That plan will include details concerning trained personnel on site to handle fire response and suppression.
- 101-10 The commenter questions whether the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan and also when will the City be constructing the new fire station necessary to provide fire protection services for the proposed project set forth in the City General Plan. As stated above, there are future plans to build a new station in the vicinity of Coffee and Gerard. The proposed project does not trigger the need for the new fire station, and adequate fire services for the proposed project can be provided by Station 54. However, this project contributes to the overall need for additional fire service and will contribute approximately \$551,000 in fees for new and enhanced fire service facilities. As stated above, the timing of the construction of the new fire station is dependent on a number of issues, including funding, growth and need for service, and the priorities set by the City Council regarding fire service.
- 101-11 The commenter asks about the timing for the new fire station. Please refer to Response to Comment 101-10, which addresses this issue.
- 101-12 The commenter asks if the City intends to amend the General Plan EIR for consistency purposes. With regard to Comments “D” as set forth on page 6 of the commenter’s letter, as discussed above, there is no need for the City to amend its General Plan Safety Element as the proposed project is not inconsistent with the Safety Element. Furthermore, the City is not proposing to amend the General Plan EIR because no amendments are required. As explained above, the General Plan EIR did not contain mitigation measures relating to fire service, and therefore the commenter’s contention that the project is being exempted from previously adopted mitigation measures is not correct. No amendment of the General Plan EIR is needed.
- 101-13 The commenter asks if the City intends to amend the General Plan EIR for CEQA-consistency purposes. Please refer to Response to Comment 101-12, which addresses this issue.
- 101-14 The commenter requests that the Findings and/or Statement of Overriding Considerations be included with the final EIR at least ten (10) days prior to the Planning Commission hearing on the proposed project and requests that specific items be included in the Statement of Overriding Considerations. There is no legal requirement that these be prepared in advance of the hearing before the Planning Commission. The Findings and Statement of Overriding Considerations will be prepared in accordance with CEQA and will be prepared for presentation to the City Council, as required by law.

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