STATE OF CALIFORNIA

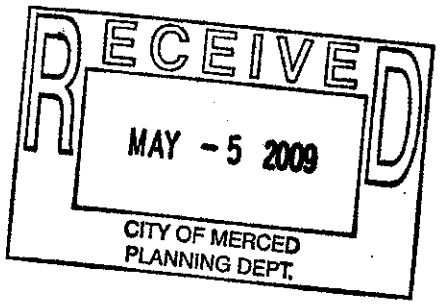
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

April 29, 2009



A

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

Subject: Wal-Mart Distribution Center
SCH#: 2006071029

Dear Kim Espinosa:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on April 27, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

> "A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2006071029
Project Title Wal-Mart Distribution Center
Lead Agency Merced, City of

Type EIR Draft EIR

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

Lead Agency Contact

Name Kim Espinosa
Agency City of Merced
Phone (206) 385-6858 **Fax**
email
Address 678 W. 18th Street
City Merced **State** CA **Zip** 95340

Project Location

County Merced
City Merced
Region
Lat / Long
Cross Streets Childs Avenue/Kibby Road
Parcel No. 061-250-090 & 061-290-047
Township 7S **Range** 14E **Section** 34,35 **Base** MDB&M

Proximity to:

Highways SR 99
Airports
Railways Santa Fe, UPRR
Waterways
Schools Pioneer, Weaver, Golden
Land Use undeveloped/ Heavy Industrial District/ Industrial

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Sewer Capacity; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wildlife; Growth Inducing; Landuse; Cumulative Effects; Aesthetic/Visual; Biological Resources; Forest Land/Fire Hazard; Minerals; Schools/Universities; Wetland/Riparian

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 4; Cal Fire; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 10; Air Resources Board, Major Industrial Projects; Regional Water Quality Control Bd., Region 5 (Fresno); Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission

Date Received 02/25/2009 **Start of Review** 02/25/2009 **End of Review** 04/27/2009

Note: Blanks in data fields result from insufficient information provided by lead agency.

California Regional Water Quality Control Board
Central Valley Region
Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
http://www.waterboards.ca.gov/centralvalley

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

Clear 4.27.09 E

12 March 2009

2006071029

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

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE WAL-MART DISTRIBUTION CENTER, MERCED COUNTY

On 25 February 2009, we received your request to comment on the proposed project to construct a Wal-Mart distribution center in Merced County. The distribution center will be sited on a 325 acre site with 110 acres of impervious surfaces, and include a 1.1 million square-foot warehouse and ancillary structures.

Based on the project description, it appears the project proponent intends to conduct activities at the site described by the Standard Industrial Classification (SIC) Code of 4225 (General Warehousing and Storage). Operators of facilities with the SIC Code 4225 are required to obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ* (Industrial General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and a fee of $1,008 to the State Water Resources Control Board.

Prior to commencing construction activity at the site, the project proponent must obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Storm Water Discharges Associated With Construction Activity, Water Quality Order No. 99-08-DWQ* (Construction General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and the appropriate fee to the State Water Resources Control Board.

If facility operations include the storage of petroleum products in above-ground tanks, with a single tank capacity of greater than 660 gallons, or a cumulative capacity of greater than 1,320 gallons, the project proponent will be subject to State above-ground petroleum tank

regulations. The project proponent must file a storage statement with the State Water Resources Control Board, pay a facility fee, and prepare a federal Spill Prevention Control and Countermeasure Plan.

As mentioned in Section 4.6.2, the City of Merced is covered under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems, Water Quality Order No. 2003-0005-DWQ* (Municipal General Permit), as a member of the Merced Storm Water Group (MSWG).

The MSWG is required to comply with Attachment 4 of the Municipal General Permit, which requires that developments such as the Wal-Mart distribution center comply with Design Standards that include, among other things:

- Mitigation of peak storm water runoff discharge rates,
- Conservation of natural areas,
- Properly designed outdoor material storage areas, trash storage areas, loading/unloading dock areas, repair/maintenance bays, and vehicle/equipment wash areas; and
- Stenciling and signage of storm drain inlets.

The project proponent must ensure compliance with these requirements prior to commencing construction activity at the site. Mitigation Measure 4.6-2 discusses the use of detention basins to treat storm water runoff prior to discharge to nearby irrigation canals, but there is no discussion regarding source control of pollutants prior to discharge to the basins. The facility, when complete, will have potential storm water pollutants on site, which have not been identified or discussed in this section.

The Draft Environmental Impact Report indicates portions of the project site are located within the 100-year flood zone. However, there is no discussion of mitigation measures to account for the impact of inundation of flood waters on the facility. When flood waters come into contact with potential pollutants on the site, there is the potential for the pollutants to discharge with receding flood waters.

There is no discussion of the ultimate disposition of wastewater or process water generated on the site. The project description states that a wash bay will be included in the truck maintenance building. Wastewater generated from the wash bay must be treated and/or disposed of properly under separate waste discharge requirements, fully contained on site, discharged to the sanitary sewer, or removed from the site and disposed of at a properly permitted site. If wastewater or process water is contained on site, there should be a discussion of mitigation measures to prevent contamination from inundation with flood waters.

The Final Environmental Impact Report should discuss facility operations and identify any activities that could potentially generate process water, wastewater, or other non-storm water

discharges, or the storage of such waters. If facility operations include the discharge of wastewater or process water other than to the sanitary sewer, the project proponent must submit a Report of Waste Discharge 180 days prior to commencing discharges at the site.

Thank you for the opportunity to comment as a Responsible Agency on this Draft Environmental Impact Report under the California Environmental Quality Act.

If you have any questions, please contact Bridget Supple at (559) 445-5919 or by email at bsupple@waterboards.ca.gov.

W. DALE HARVEY
Senior WRC Engineer
RCE No. 55628

cc: State Clearinghouse, Sacramento

DEPARTMENT OF CONSERVATION

DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES

466 N. FIFTH STREET • COALINGA, CALIFORNIA 93210

PHONE 559 / 935-2941 • **FAX** 559 / 935-5154 • **WEBSITE** conservation.ca.gov

1

April 20, 2009

Kim Espinosa
City Of Merced
678 West 18th Street
Merced, CA 95340

Steve Rough & Steve Reichmuth
Merced County Department of Public Works
Professional Services Division
345 West 7th Street
Merced, CA 95340-6041

RE: Proposed Wal-Mart Distribution Center
Assessor's Parcel 061-250-090, Childs Avenue/Kibby Road,
Sec 34, T7S, R14E MDB&M, State Clearing House # 2006071029

I have reviewed the above document and researched the location. There is an abandoned dry exploratory oil and gas well "Fancher" 54-34, located in the Section 34 T7S, R14E. The well location within the section is, from the northeast corner 2310' south, 2310' west. The well was drilled by Atlantic Richfield Company in 1953 and plugged and abandoned as a dry hole in 1953.

We plotted this well using your proposed site plan and it appears the well is located west of the proposed project. **It appears the well will be under the future Campus Parkway road. See attachment (copy of your Exhibit 3-1) with the well plotted. Most likely the remaining top of the well casing is cut off and buried about 5 feet below the ground surface and it is unlikely it will be visible from the surface**.

Please note that the well may not be located exactly as recorded and may be on a parcel in the general area. When the parcel(s) near this well are developed it is prudent to exactly locate this well to determine its position relative to any proposed structures. Sometimes a metal detector is necessary.

The well record can be viewed and downloaded from our website at:

http://owr.conservation.ca.gov/WellSearch/WellSearch.aspx (key the API # 04700022) or

directly at:

http://owr.conservation.ca.gov/Well/WellDetailPage.aspx?apinum=04700022

If the well is located during any construction process please notify this office. If you have any questions you can call at (559) 935-2941,or email me at tim.boardman@conservation.ca.gov

Thank you.

Timothy S. Boardman PG, CHG
District Deputy

CC "Fancher" 54-34 well file

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2006071029

Project Title: Wal-Mart Distribution Center
Lead Agency: City of Merced — **Contact Person:** Kim Espinosa
Mailing Address: 678 West 18th Street — **Phone:** (209) 385-6858
City: Merced — **Zip:** 95340 — **County:** Merced

Project Location: County: Merced — City/Nearest Community: Merced
Cross Streets: Childs Avenue/Kibby Road — Zip Code: 95340
Longitude/Latitude (degrees, minutes and seconds): ° ' " N / ° ' " W — **Total Acres:** 230
Assessor's Parcel No.: 061-250-090 and 061-290-047 — **Section:** 34 and 3 — **Twp.:** 7S — **Range:** 14E — **Base:** Mt Diablo
Within 2 Miles: State Hwy #: SR 99 — **Waterways:** N/A
Airports: N/A — **Railways:** Santa Fe, Union Pacific — **Schools:** Pioneer,Weaver,Golden

Document Type:

CEQA: ☐ NOP ☑ Draft EIR — NEPA: ☐ NOI — Other: ☐ Joint Document
☐ Early Cons ☐ Supplement/Subsequent EIR ☐ EA ☐ Final Document
☐ Neg Dec (Prior SCH No.) ☐ Draft EIS ☐ Other:
☐ Mit Neg Dec Other: ☐ FONSI

RECEIVED
FEB 24 2009
12:50
STATE CLEARINGHOUSE

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Rezone ☐ Annexation
☑ General Plan Amendment ☐ Master Plan ☐ Prezone ☐ Redevelopment
☐ General Plan Element ☐ Planned Unit Development ☐ Use Permit ☐ Coastal Permit
☐ Community Plan ☑ Site Plan ☐ Land Division (Subdivision, etc.) ☐ Other: ROW abandon

Development Type:

☐ Residential: Units _____ Acres _____
☐ Office: Sq.ft. _____ Acres _____ Employees _____
☐ Commercial: Sq.ft. _____ Acres _____ Employees _____
☑ Industrial: Sq.ft. 1.1 M Acres 230 Employees 1,200
☐ Educational:
☐ Recreational:
☐ Water Facilities: Type _____ MGD _____
☐ Transportation: Type
☐ Mining: Mineral
☐ Power: Type _____ MW
☐ Waste Treatment: Type _____ MGD
☐ Hazardous Waste: Type
☐ Other:

2/27

Project Issues Discussed in Document:

☑ Aesthetic/Visual ☐ Fiscal ☑ Recreation/Parks ☑ Vegetation
☑ Agricultural Land ☑ Flood Plain/Flooding ☑ Schools/Universities ☑ Water Quality
☑ Air Quality ☑ Forest Land/Fire Hazard ☐ Septic Systems ☑ Water Supply/Groundwater
☑ Archeological/Historical ☑ Geologic/Seismic ☑ Sewer Capacity ☑ Wetland/Riparian
☑ Biological Resources ☑ Minerals ☑ Soil Erosion/Compaction/Grading ☑ Growth Inducement
☐ Coastal Zone ☑ Noise ☑ Solid Waste ☑ Land Use
☑ Drainage/Absorption ☑ Population/Housing Balance ☑ Toxic/Hazardous ☑ Cumulative Effects
☐ Economic/Jobs ☑ Public Services/Facilities ☑ Traffic/Circulation ☐ Other:

Present Land Use/Zoning/General Plan Designation:
Undeveloped/Heavy Industrial District/Industrial

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

State Clearinghouse Contact: (916) 445-0613 SL

State Review Began: 2-25- 2009

SCH COMPLIANCE 4-27- 2009

per lead.

Please note State Clearinghouse Number (SCH#) on all Comments

SCH#: 2006071029

Please forward late comments directly to the Lead Agency

AQMD/APCD 18

(Resources: 2/28)

Project Sent to the following State Agencies

- X Resources
- ___ Boating & Waterways
- ___ Coastal Comm
- ___ Colorado Rvr Bd
- X Conservation 4
- X Fish & Game # ___
- ___ Delta Protection Comm
- X Cal Fire
- ___ Historic Preservation
- X Parks & Rec
- ___ Central Valley Flood Prot.
- ___ Bay Cons & Dev Comm
- X DWR
- ___ OES (Emergency Svcs)

Bus Transp Hous

- ___ Aeronautics
- X CHP
- X Caltrans # 10
- ___ Trans Planning
- ___ Housing & Com Dev
- ___ Food & Agriculture
- ___ Health Services

State/Consumer Svcs

- ___ General Services

Cal EPA

- ___ ARB – Airport Projects
- ___ ARB – Transportation Projects
- X ARB – Major Industrial Projects
- ___ Integrated Waste Mgmt Bd
- ___ SWRCB: Clean Wtr Prog
- ___ SWRCB: Wtr Quality
- ___ SWRCB: Wtr Rights
- X Reg. WQCB # 5F
- X Toxic Sub Ctrl-CTC

Yth/Adlt Corrections

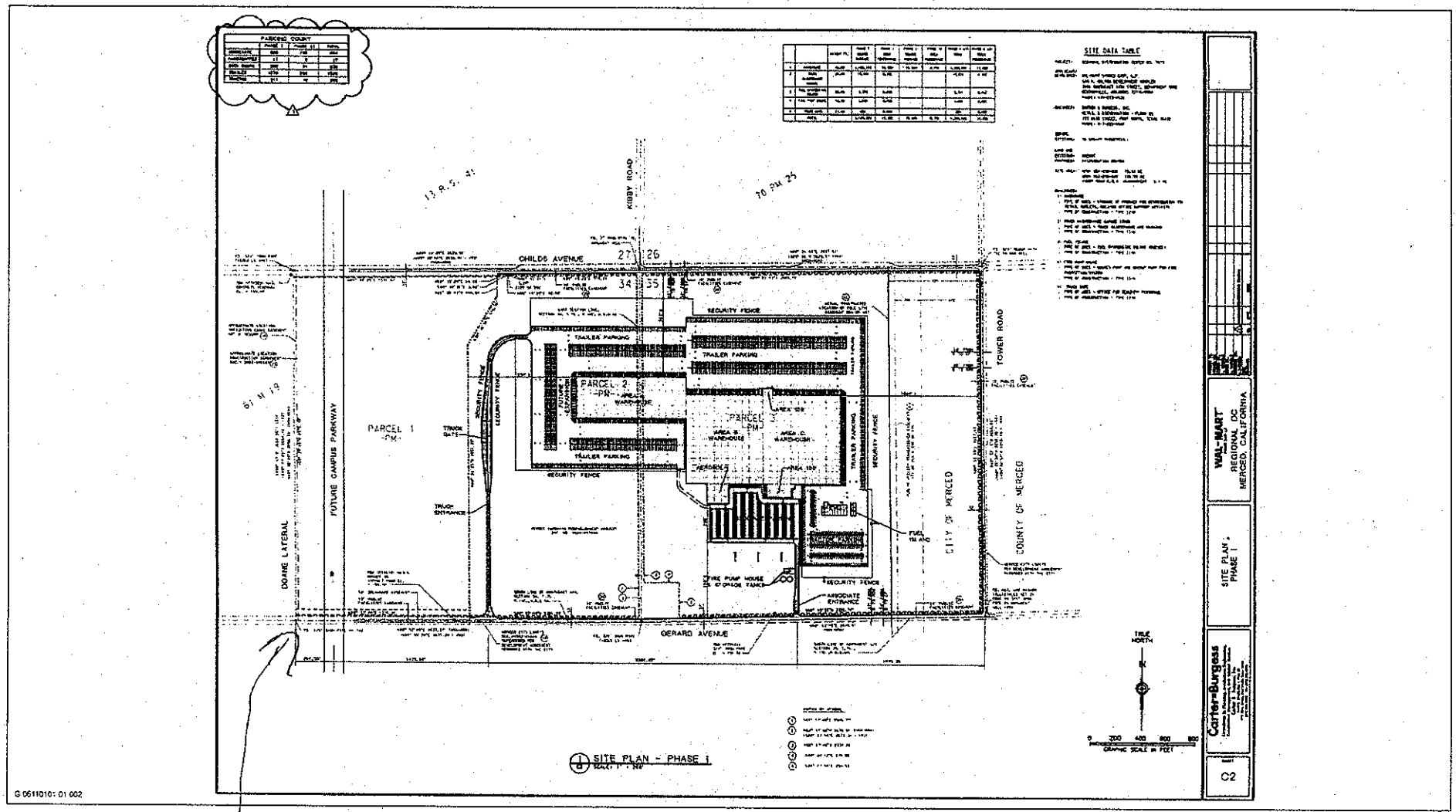
- ___ Corrections

Independent Comm

- ___ Energy Commission
- X NAHC
- X Public Utilities Comm
- ___ State Lands Comm
- ___ Tahoe Rgl Plan Agency

___ ___
Conservancy

___ Other: ___



Proposed Project Site Plan

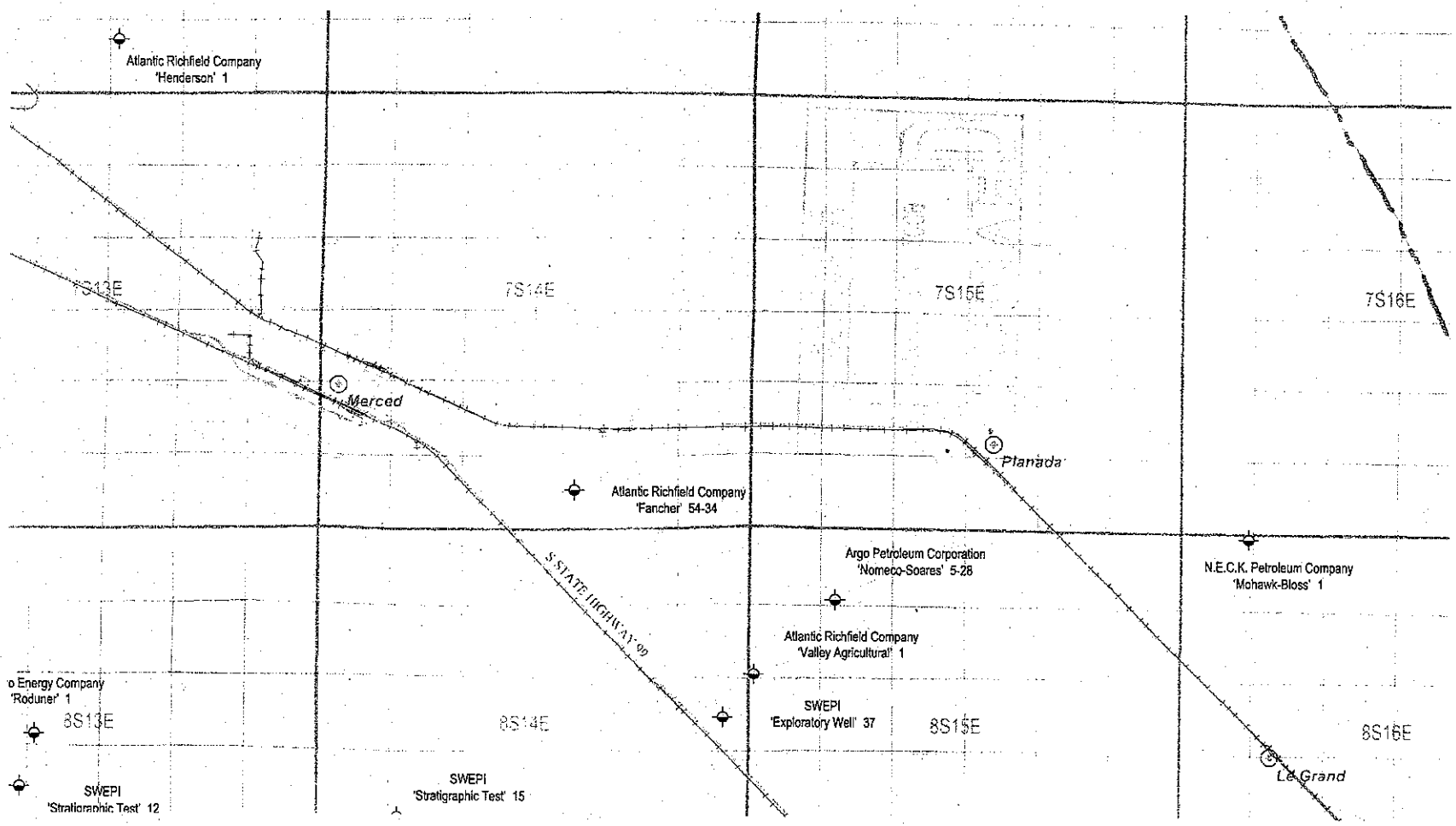
Exhibit 3-1

Atlantic Richfield Co

"Fancher" 54-34 Sec 34 T7S R14E

API # 047-00022

Field / Operator	Sec	Twn	Rge	Well#	API#	Well Type	Well Status	Location	Casing detail
Merced County									
Atlantic Richfield Co.									
	34	7S	14E	"Fancher" 54-34	047-00022	DH	ABANDONED	Fr NE cor 2310 S 2310 W	20" cem 14'; 12-3/4" cem 524'. TD 4110'. Plugged w/cem 940'-835', 559'-463' & 10'-0'.


Atlantic Richfield Company
'Henderson' 1
7S13E
7S14E
7S15E
7S16E
Merced
Planada
Atlantic Richfield Company
'Fancher' 54-34
Argo Petroleum Corporation
'Nomeco-Soares' 5-28
N.E.C.K. Petroleum Company
'Mohawk-Bloss' 1
S STATE HIGHWAY 99
Atlantic Richfield Company
'Valley Agricultural' 1
o Energy Company
'Roduner' 1
8S13E
8S14E
SWEPI
'Exploratory Well' 37
8S15E
8S16E
SWEPI
'Stratigraphic Test' 12
SWEPI
'Stratigraphic Test' 15
La Grand

Online WellRecord Query for State of California, Department of Conservation, Division of Oil, Gas, and Geoth

DOGGR Home Page | Online Production/Injection | H

Back

Well Details

Well Details

API: 04700022 Well Status: Plugged Dis

Operator: Atlantic Richfield Co. Operator Code: A4505 Operator

Lease: Fancher Well Number: 54-34

Field: Any field Field Code: 000 Area: Any

Section: 34 Township: 7S Range: 14E BaseMeridian: MD Latitude: 37.2815

Spud Date: 8/30/1953 Abandonment Date: 9/8/1953 Longitude: -120.42

Well Records: (Click File Name to view the document.)

File Type	File Name	File Size	File Created On	File Modified On
	04700022_DATA_02-21-2008.pdf	436.77 KB	03/26/08 10:18 AM	02/22/08 08:45 AM
	04700022_1953-09-06_DIL_2_3.tif	596.29 KB	11/30/07 04:22 PM	01/16/08 12:39 PM

Last edited on January 15, 2009

FORM 159 (9-48)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

REPORT OF WELL ABANDONMENT

Coalinga, California, November 23, 1953

Confidential

Mr L L Sirus, Agent
Richfield Oil Corporation
1250 - 16th Street
Merced, California

Dear Sir

Your report of abandonment of Well No. [illegible],
Sec. [illegible], T. 7 S., R. 14 E., [illegible] B. & M., [illegible] oil field,
[illegible] Merced County, dated October 19, 1953, has been examined in conjunction with records filed in this office.

A review of the reports and records shows that the requirements of this Division, which are based on all information filed with it, have been fulfilled.

only
11-27-53
clf

GW:sef
cc: Company, L. A.
Company, Bakersfield

R. D. BUSH
State Oil and Gas Supervisor

By E. Murray Carson
Deputy Supervisor

82601 7-53 6700 SPO

COMPLETION REPORT OF NEW (NEW, DEEPENING, ETC.) WELL NO. Fancher 54-34

FIELD Merced (Area) County LOC. 2310' due South and 2310' due West from the Northeast Corner of Section 34 SEC. 34 T. 7 S. R. 14 E. M.D.

ELEV. OF GROUND 183' ALL MEAS. FROM Kelly Bushing WHICH IS 9 FT ABOVE GROUND

COMMENCED DRILLING August 30, 1953 COMPLETED DRILLING September 6, 1953 DRILLING TOOLS ☒ ROTARY ☐ CABLE

ORIG. T.D. 4030' PLUG 910' — 835' REDRILL PLUG

DEEPENING — 559' 463' 24' PLUG 14' JUNK

COMMENCED PRODUCING Abandoned ☐ FLOWING ☐ PUMPING ☐ GAS LIFT

PRODUCTION DATA

DATE	CLEAN OIL BBLS. PER DAY	GRAVITY CLEAN OIL	PER CENT WATER INCL. EMULSION	GAS M.C.F. PER DAY	TUBING PRESSURE	CASING PRESSURE
INITIAL PRODUCTION	HOLE ABANDONED AS OF SEPTEMBER 8, 1953					
PROD. AFTER ___ DAYS						

CASING RECORD

SIZE OF CASING A.P.I.	TOP OF CASING	DEPTH OF SHOE	WEIGHT OF CASING	GRADE OF CASING	NEW OR USED	SEAMLESS OR LAPWELD	SACKS CEMENT	DEPTH OF CEMENTING IF THROUGH PERFORATIONS
20"	14'	18'	65# - conductor pipe.					
12-3/4"	14'	524'	43.77#	Grade "B"	New	Line Pipe	500	
		(Welded steel plate on 12-3/4" casing at the surface.)						

CEMENTING OR OTHER SHUT OFF RECORD

SIZE OF CASING	DEPTH LANDED	DEPTH CEMENTED	HOLE SIZE	NO. SACKS USED	KIND OF CEMENT	RESULT OF TEST
12-3/4"	524'	524'	17½"	500	Permanente construction	500# on casing. O.K.

PERFORATION RECORD

SIZE OF CASING	FROM	TO	SIZE OF PERFORATIONS	NUMBER OF ROWS	DISTANCE BETWEEN CENTERS	METHOD

PRESENT CONDITION OF WELL AS OF:

DATE October 29, 1953

ATTACHED FORM

RICHFIELD OIL CORPORATION

BY J. P. Shaw
District Development Engineer

FORM 5410

(DRILLED BY: Clyde Hall Drilling Co.)

Commenced drilling operations at 9:00 a.m., August 30, 1953, drilling a 10-5/8" hole 0-524'. Ran Schlumberger electric log and recorded from 527', drilled depth 524'.

0 524 Surface sand and clay

Opened 10-5/8" hole to 17½" 0-524'.

August 31, 1953:
12-3/4" Casing Cemented at 524': Ran and cemented 510' net, 11 joints, of 12-3/4" 43.77#, Grade "B" line pipe as casing at 524', K.B., with 500 sacks of Permanente construction cement mixed with 15 sacks of gel and treated with 2% calcium chloride. Mixing time 20 minutes. Displaced with 422 cubic feet of mud in 4 minutes. Cement in place at 12:30 p.m. Final pressure 500#. Used one bottom and two top wooden plugs. Good cement returns. By Oil Well Cementing Company, one power truck used.

Landed casing. Installed b.o.p. equipment. Tested C.S.O. with 500# pressure for 30 minutes, O.K. Tested 4½" drill pipe rams with 500# for 30 minutes, O.K. Drilled out plugs and shoe of 12-3/4" casing.

Drilled 11-3/4" hole 524-1890'. Reamed 11-3/4" hole to 10-5/8" at 1890' and drilled 10-5/8" hole 1890-2500'. Ran Schlumberger electric log and recorded from 2497', drilled depth 2500'. Drilled 10-5/8" hole 2500-4108'. Cored 8½" hole 4108-4110', the Total Depth, which was reached on September 6, 1953.

524	1285	Sand and clay
1285	4108	Sand and shale
4108	4110	Core #1 - Recovered 1½" 1½' Amphibolite, dark grey green, coarse crystalline, with abundant quartz, amphiboles and pyroxenes with rare pyrrhotite crystals very hard, massive with rare near vertical thin 1/16" quartz veins, no cut, stain, odor or fluorescence.

Ran Schlumberger electric log and recorded from 4108', drilled depth 4110'.

September 7, 1953:
Plugged 940-835': With 4½" open-end drill pipe hanging at 940', pumped in 100 sacks of Permanente construction cement treated with 2% calcium chloride. Displaced to equalization. Cement in place at 4:20 p.m. Stood cemented 4 hours and located top of cement plug at 835' and tested plug with 4000#, O.K. Witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.

Plugged 559-463': With 4½" open-end drill pipe hanging at 559', pumped in 75 sacks of Permanente construction cement treated with 2% calcium chloride. Displaced to equalization. Cement in place at 10:00 p.m. By Oil Well Cementing Company.

Stood cemented a total of 4¼ hours. Located top of cement plug at 463'. Witnessed by Richfield Oil Corporation representative for Division of Oil and Gas. Removed b.o.p. equipment. Placed 10' cement plug in top of 12-3/4" casing. Welded steel plate on stub of 12-3/4" casing. Contractor's crew and equipment released at 6:30 a.m., September 8, 1953. HOLE ABANDONED AS OF SEPTEMBER 8, 1953.

FORM 111 (1-49)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

REPORT ON PROPOSED OPERATIONS

No. P 553-261

Coalinga Calif. September 10 19 53

MR. L C Jirsa

1250 - 16th Street Merced Calif.

Confidential

Agent for RICHFIELD OIL CORPORATION

DEAR SIR:

Your proposal to abandon Well No. "Fancher" 54-34,

Section 34, T. 7 S., R. 14E., M.D. B. & M., ——— Field, Merced County,

dated Sept. 7 19 53, received Sept. 9 19 53, has been examined in conjunction with records filed in this office.

Present conditions as shown by the records and the proposal are as follows:

THE NOTICE STATES:

"The present condition of the well is as follows:

1. Total depth. 4110'
2. Complete casing record.
   4' - 20" 65# conductor set at 18', K.B.
   500' - 12-3/4" 43.56#, Grade "B" casing cemented at 524', K.B.
   This well was drilled and cored to a Total Depth of 4110'. The electric log was run. There was no evidence of commercial oil or gas."

PROPOSAL:

"The proposed work is as follows: (Conforming telephone conversation Corwin - Shea)

1. Place 100' cement plug above 950'. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for the Division of Oil and Gas.
2. Place 60' bridge plug across shoe of surface casing. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
3. Leave all unplugged portions of hole filled with heavy mud.
4. Place 10' cement plug at surface. Location of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
5. Weld steel plate across stub of surface casing, tear out all surface lines and equipment and [illegible]."

DECISION:

THE PROPOSAL IS APPROVED.

Blanket Bond
ERMA:ef
cc: Company, L.A.
Company, Bakersfield

R. D. BUSH
State Oil and Gas Supervisor

By A. Murray Carr Deputy

FORM 108. 37613 2-52 20M © SPO

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

Notice of Intention to Abandon Well

This notice must be given at least five days before work is to begin; one copy only

Bakersfield, Calif. September 7, 19 53

DIVISION OF OIL AND GAS

Coalinga, Calif.

In compliance with Secs. 3228, 3229, 3230, 3231 and 3232, Ch. 93, Stat. 1939, notice is hereby given that it is our intention to abandon well No. Fancher 54-34

Sec. 34, T. 7 S., R. 14 E., M. D. B. & M. Merced Area Field,

Merced County, commencing work on the 7th day of September, 19 53.

The present condition of the well is as follows:

1. Total depth. 4110'

2. Complete casing record. 4' - 20" 65# conductor set at 18', K.B.
500' - 12-3/4" 43.56#, Grade "B" casing cemented at 524', K.B.

This well was drilled and cored to a Total Depth of 4110'. The electric log was run. There was no evidence of commercial oil or gas.

3. Last produced. _____ (Date) _____ (Net oil) _____ (Gravity) _____ (Cut)

The proposed work is as follows: (Confirming telephone conversation Corwin - Shea)

1. Place 100' cement plug above 950'. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for the Division of Oil and Gas.
2. Place 60' bridge plug across shoe of surface casing. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
3. Leave all unplugged portions of hole filled with heavy mud.
4. Place 10' cement plug at surface. Location of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
5. Weld steel plate across stub of surface casing, tear out all surface lines and equipment and ABANDON HOLE AND LOCATION.

RICHFIELD OIL CORPORATION
(Name of Operator)

By [signature] District Development Engineer

ADDRESS ONE COPY OF NOTICE TO DIVISION OF OIL AND GAS IN DISTRICT WHERE WELL IS LOCATED

FORM 111 (1-49)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

REPORT ON PROPOSED OPERATIONS

No. P 553-221

Coalinga Calif. August 14 1952

MR. [illegible] Hosa

1250 - 16th Street Merced Calif.

Confidential

Agent for [illegible] CORPORATION

DEAR SIR:

Your proposal to drill Well No. "Sanchez" 54-34, Section 34, T. 7 S, R. 14 E, M.D.B. & M., ------ Field, Merced County, dated August 12 1952, received August 13 1952, has been examined in conjunction with records filed in this office.

Present conditions as shown by the records and the proposal are as follows:

THE NOTICE STATES:

"Legal description of lease ____________

Location of well: 2310 feet due South and 2310 feet due West from the Northeast corner of section 34

Elevation of ground above sea level 133 feet (topo) datum.

All depth measurements taken from top of kelly bushing which is 9 feet above ground."

PROPOSAL:

[illegible]

Size of Casing Inches A.P.I.	Weight	Grade and Type	Top	Bottom	Cementing Depths
20"	65#	Conductor	13'	18'Z	
12-3/4"	19.36#	Grade "B"	13'	300'	300'

Intended zone or zones of completion: ____________

Please designate as CONFIDENTIAL [illegible].

It is understood that if changes in this plan become necessary we are to notify you before running casing."

DECISION:

THE PROPOSAL IS APPROVED PROVIDED THAT:

1. At least 500' of 12-3/4" surface casing shall be cemented in the hole with sufficient cement to fill back of this casing from the shoe to the ground surface.
2. Mud fluid of sufficient weight and proper consistency to prevent blow-outs shall be used in drilling, and the column of mud fluid shall be maintained to the surface at all times, particularly while pulling the drill pipe.
3. Adequate blow-out prevention equipment shall be provided and kept ready for operation at all times.
4. Water suitable for irrigation shall be protected from contamination.
5. This division shall be notified before landing or cementing any casing below the 12-3/4" surface casing, and additional requirements will be outlined at that time.

Blanket Bond
CMC:ef
cc: Company, L.A.
Company, Bakersfield

R. D. BUSH
State Oil and Gas Supervisor

By G. G. Peirce [CHC] Deputy

FORM 105

STATE OF CALIFORNIA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

Notice of Intention to Drill New Well

This notice and surety bond must be filed before drilling begins

047-00022

Bakersfield, Calif. August 12, 1953

7

DIVISION OF OIL AND GAS

In compliance with Section 3203, Division III, Article 4, Public Resources Code, notice is hereby given that it is our intention to commence the work of drilling well No. Fancher 54-34, Sec. 34, T. 7 S., R. 24 E., M.D. B. & M., Merced Area Field, Merced County.

Legal description of lease

(Attach map or plat to scale)

Location of Well: 2310 feet due South (Direction) ~~property~~ along ~~section~~ line and 2310 feet due West (Direction) ~~property~~ from the Northeast corner of section 34.

Elevation of ground above sea level 183 feet (topo) datum.

All depth measurements taken from top of Kelly Bushing which is 9 feet above ground.
(Derrick Floor, Rotary Table or Kelly Bushing)

PROPOSED CASING PROGRAM

SIZE OF CASING INCHES A.P.I.	WEIGHT	GRADE AND TYPE	TOP	BOTTOM	CEMENTING DEPTHS
20"	65#	Conductor	13'	18'±	
12-3/4"	49.56#	Grade "D"	13'	300'	300'

Intended zone or zones of completion:

Please designate as CONFIDENTIAL PROSPECT WELL.

It is understood that if changes in this plan become necessary we are to notify you before running casing.

Address P.O. Box 147, Bakersfield, Calif. RICHFIELD OIL CORPORATION
(Name of Operator)

Telephone Number 5-5951 By District Development Engineer

SEND ONE COPY OF NOTICE TO DIVISION OFFICE IN DISTRICT WHERE WELL IS LOCATED

2

DEPARTMENT OF TRANSPORTATION
P.O. BOX 2048 STOCKTON, CA 95201
(1976 E. CHARTER WAY/1976 E. DR. MARTIN LUTHER KING JR. BLVD. 95205)
TTY: California Relay Service (800) 735-2929
PHONE (209) 941-1921
FAX (209) 948-7194

Flex your power!
Be energy efficient!

March 26, 2009

10-MER-99-PM 14.8
Initial Study/Negative Declaration
Wal-Mart Distribution Center DEIR
SCH #206071029

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

Dear Ms. Espinosa:

The California Department of Transportation (Department) appreciates the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the proposed Wal-Mart Distribution Center located in the southeast portion of the City of Merced in Merced County. The Department has the following comments:

The proposed project consists of a warehouse and distribution center and support facilities, located on 230 acres in the city of Merced. The proposal includes approximately 1.1 million sf of warehouse, office support facilities, a cafeteria, a fire pump house, and aerosol storage (all located within the warehouse building), as well as a truck maintenance garage, a truck fueling station, and parking facilities.

The DEIR Traffic Impact Study (TIS) is inadequate and should be revised to address the following areas:

1) **The provided Traffix analysis (Appendix A, Merced Wal-Mart Distribution Center) was prepared using an unreasonable peak hour factor (PHF). Applying a PHF = 1.0 is contrary to recommended practice for HCM intersection analysis, and will result in underestimating impacts to intersection LOS and queue lengths. Please revised the Traffix analysis and submit the electronic files to the Department for review.**

2) **The proposed project trip generation indicates 45 inbound trips and 283 outbound trips during PM peak hour as shown in Table 16, page 34. (Merced Wal-Mart Distribution Center TIS) This rate appears at odds with the level of expected employees by shift as shown in Table 3-2 page 3-14. (Merced**

Wal-Mart Distribution Center DEIR) For instance, Tuesday-Friday 5:30 am-4:00 pm shift has 359 employees which equates to 359 outbound trips, and Tuesday-Friday 4:00 pm-2: 30 am shift has 255 employees equating to 255 inbound trips during PM peak hour. These trips (expressed as vehicles) do not include expected trips from other shifts, which have a designated 6-hour workday. Additionally, the TIS for the Merced Distribution Center prepared by KD Anderson dated June 29, 2005 provides a proposed trip generation of 205 inbound trips and 405 outbound trips during PM peak hour. Please provide clarification in regard to the inconsistent trip generation assumptions and rates.

3) **The TIS contains uncompleted signal warrant analysis at all unsignalized intersections (only warrant 3, peak hour is analyzed). A traffic signal is warranted if it satisfies all eight warrants as shown in Figure 4C-101 (CA) MUTCD. Please revise the signal warrant analysis .**

4) **The proposed project anticipates improvements to the intersection of SR 140/Tower Rd to accommodate STAA trucks. Please provide electronic (AutoCAD) files of truck turning templates.**

5) **According to the existing lane configuration at the SR 99/Mission Ave. Interchange, there is no dedicated left-turn lane at the SR 99 SB off-ramp traveling westbound to Mission Ave. However, the provided truck turning template shows STAA trucks making left-turn from westbound Mission Ave onto SR 99 southbound on-ramp. Need to verify and submit the electronic (AutoCAD) file of STAA truck turning templates at SR 99 SB ramps and Mission Ave, and SR 99 NB ramps and Mission Ave.**

6) **Approved residential/commercial projects will contribute a significant traffic volume at the interchange of SR 99/SR 140; however the TIS does not include it into the analysis. Please include data for these approved projects and submit an operational analysis at this interchange .**

If you have any questions, please contact John Gedney at (209) 942-6092 (email: or me at (209) 941-1921. We look forward to continuing to work with you in a cooperative manner.

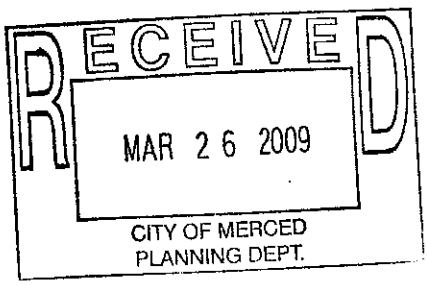
Sincerely,

TOM DUMAS, Chief
Office of Metropolitan Planning

STATE OF CALIFORNIA
FACSIMILE COVER
10-2A-0049

TO: **Ms. Kim Espinosa** **Principal Planner**		FROM: **John Gedney** **Caltrans – D10, Metropolitan Planning** **DEPARTMENT OF TRANSPORTATION** **1976 EAST CHARTER WAY** **STOCKTON, CA 95205**	
UNIT/COMPANY: **City of Merced** **Planning Division**		**DATE: 3-26-09**	**TOTAL PAGES (Including Cover Page): 3**
		FAX # **(209) 942-7194**	**ATSS FAX** **N/A**
DISTRICT/CITY: **Merced**		**PHONE #** **(209) 942-6092**	**ATSS** **N/A**
PHONE # **(209) 385-6858**	**FAX #** **(209) 725-8775**	**ORIGINAL DISPOSITION:**	

RE: Wal-Mart Distribution Center DEIR



Thank you,

- John -

Linda S. Adams
Secretary for Environmental Protection

California Regional Water Quality Control Board
Central Valley Region
Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
http://www.waterboards.ca.gov/centralvalley

Arnold Schwarzenegger
Governor

3

12 March 2009

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

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE WAL-MART DISTRIBUTION CENTER, MERCED COUNTY

On 25 February 2009, we received your request to comment on the proposed project to construct a Wal-Mart distribution center in Merced County. The distribution center will be sited on a 325 acre site with 110 acres of impervious surfaces, and include a 1.1 million square-foot warehouse and ancillary structures.

Based on the project description, it appears the project proponent intends to conduct activities at the site described by the Standard Industrial Classification (SIC) Code of 4225 (General Warehousing and Storage). Operators of facilities with the SIC Code 4225 are required to obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ* (Industrial General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and a fee of $1,008 to the State Water Resources Control Board.

Prior to commencing construction activity at the site, the project proponent must obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Storm Water Discharges Associated With Construction Activity, Water Quality Order No. 99-08-DWQ* (Construction General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and the appropriate fee to the State Water Resources Control Board.

If facility operations include the storage of petroleum products in above-ground tanks, with a single tank capacity of greater than 660 gallons, or a cumulative capacity of greater than 1,320 gallons, the project proponent will be subject to State above-ground petroleum tank

regulations. The project proponent must file a storage statement with the State Water Resources Control Board, pay a facility fee, and prepare a federal Spill Prevention Control and Countermeasure Plan.

As mentioned in Section 4.6.2, the City of Merced is covered under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems, Water Quality Order No. 2003-0005-DWQ* (Municipal General Permit), as a member of the Merced Storm Water Group (MSWG).

The MSWG is required to comply with Attachment 4 of the Municipal General Permit, which requires that developments such as the Wal-Mart distribution center comply with Design Standards that include, among other things:

- Mitigation of peak storm water runoff discharge rates,
- Conservation of natural areas,
- Properly designed outdoor material storage areas, trash storage areas, loading/unloading dock areas, repair/maintenance bays, and vehicle/equipment wash areas; and
- Stenciling and signage of storm drain inlets.

The project proponent must ensure compliance with these requirements prior to commencing construction activity at the site. Mitigation Measure 4.6-2 discusses the use of detention basins to treat storm water runoff prior to discharge to nearby irrigation canals, but there is no discussion regarding source control of pollutants prior to discharge to the basins. The facility, when complete, will have potential storm water pollutants on site, which have not been identified or discussed in this section.

The Draft Environmental Impact Report indicates portions of the project site are located within the 100-year flood zone. However, there is no discussion of mitigation measures to account for the impact of inundation of flood waters on the facility. When flood waters come into contact with potential pollutants on the site, there is the potential for the pollutants to discharge with receding flood waters.

There is no discussion of the ultimate disposition of wastewater or process water generated on the site. The project description states that a wash bay will be included in the truck maintenance building. Wastewater generated from the wash bay must be treated and/or disposed of properly under separate waste discharge requirements, fully contained on site, discharged to the sanitary sewer, or removed from the site and disposed of at a properly permitted site. If wastewater or process water is contained on site, there should be a discussion of mitigation measures to prevent contamination from inundation with flood waters.

The Final Environmental Impact Report should discuss facility operations and identify any activities that could potentially generate process water, wastewater, or other non-storm water

discharges, or the storage of such waters. If facility operations include the discharge of wastewater or process water other than to the sanitary sewer, the project proponent must submit a Report of Waste Discharge 180 days prior to commencing discharges at the site.

Thank you for the opportunity to comment as a Responsible Agency on this Draft Environmental Impact Report under the California Environmental Quality Act.

If you have any questions, please contact Bridget Supple at (559) 445-5919 or by email at bsupple@waterboards.ca.gov.

W. DALE HARVEY
Senior WRC Engineer
RCE No. 55628

cc: State Clearinghouse, Sacramento

the Chamber
The Greater Merced Chamber of Commerce

11 March, 2009

The Honorable Ellie Wooten, Mayor
City of Merced
678 W 18th Street
Merced, CA 95340

Dear Mayor Wooten:

I am writing in regard to the Draft EIR process for the Walmart Distribution Center.

I read with concern about the attempts of some Mercedians to delay the comment process for the Draft EIR. The 60 days allocated for comment on the Walmart Draft EIR is fair and generous.

In an effort to determine what other entities provide for equivalent comment periods I found that the City of Santa Barbara provides a 45-day comment period for "Plan Santa Barbara EIR." In 1989 the City of Modesto provided a 49-day comment period for a water treatment EIR. In a CEQA document I found online, Article 7 provides for "at least 30-days" of EIR comment.

In short 60 days for a comment process is far more generous than many I found. To extend it further only slows down and obfuscates the process.

Additionally, the State of California and the City of Merced are currently severely impacted by the current financial crisis. Reuters reported that California lost 79,300 jobs in January, the most of any state in the U.S. California unemployment rates are running 10.1% compared to a national rate of 7.6%.

But Merced's unemployment was reported to be 15.5% in January, up from 13.3% in November. This was reported in the Merced Sun-Star. The rate of current unemployment is double that of the national average. Double!

Needless to say, Merced needs lots of good paying jobs to stem the flow of economic blood from our community. We need the jobs now; we do not have time to wait. Walmart will bring a lot of excellent jobs with benefits and stability. Furthermore, Walmart will serve as a magnet to attract other good companies.

Please do not allow this process to be delayed any further. Let us get on with the important task of providing jobs for our citizens. It will increase tax revenues, lower crime, and contribute to the reversal of Merced's economic misfortunes. I am

Very truly yours,

Bruce W. Logue, Chairman
The Greater Merced Chamber of Commerce

Lippe Gaffney Wagner LLP www.lgwlawyers.com

SAN FRANCISCO • 329 Bryant St., Ste. 3D, San Francisco, CA 94107 • T 415.777.5600 • F 415.777.9809
SACRAMENTO • 9333 Sparks Way, Sacramento, CA 95827 • T 916.361.3887 • F 916.361.3897

Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Jennifer L. Naegele
John H. Curran
Celeste C. Langille
Kelly A. Franger

April 27, 2009

Submitted by email to: espinosak@cityofmerced.org

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, State Clearinghouse Number 2006071029

Dear Ms. Espinosa:

This office represents the Merced Alliance for Responsible Growth ("Alliance") with respect to the City of Merced's consideration of the proposed Wal-Mart Regional Distribution Center (the "Project") and the Draft Environmental Impact Report ("DEIR") prepared for the Project. As described in more detail below, the Alliance objects to approval of the Distribution Center on grounds the DEIR does not comply with the requirements of the California Environmental Quality Act ("CEQA").

1. THE DEIR FAILS TO DISCUSS A TRUE "NO PROJECT" ALTERNATIVE.

CEQA requires that an EIR discuss a reasonable range of project alternatives and that one of these alternatives must be a "no-project" alternative. Since at least 1981, the rule has been that the "no-project" alternative must represent existing pre-project conditions.[1]

The no-project alternative described in this DEIR makes a mockery of this fundamental requirement of CEQA. In an amazing display of chutzpah, the DEIR assumes that if Wal-Mart does not build the proposed Project, then someone else will build a virtually identical project, with virtually identical environmental effects.

---

[1] *County of Inyo v. City of L.A.* (1981) 124 Cal. App. 3d 1, 9 ("As we have said, '[an] accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.' As a corollary to this requirement, the project must be compared with its pre-project conditions in order, inter alia, to provide a uniform baseline for the measurement of its impact and to 'assess the advantage of terminating the proposal.' [Citation.] This is called a 'no-project' alternative and is required by law. [Citations.]")

CEQA Guideline section 15126.6, subdivision (e), provides guidance for the discussion of the "no-project" alternative in an EIR. This Guideline purports to establish a rule that in some factual situations it may be appropriate for the "no-project" alternative to consist of predictions of future development under existing land use plans rather than existing conditions. A recent Court of Appeal decision notes that an environmental treatise takes the position that "The Guidelines have repudiated 'the proposition that the analysis of the 'no project' alternative in an EIR 'must describe maintenance of the existing environment as a basis for comparison of the suggested alternatives to the status quo.'" (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 715 (*Woodward Park*).) However, the *Woodward Park* decision neither endorsed nor based its holding on this view. In fact, the Court in *Woodward Park* held: "In circumstances like these, the no-project alternative should discuss both the existing physical conditions and likely future conditions under the existing zoning and plan designations." (*Id.* at p. 714.) Moreover, neither a treatise nor the Guidelines can make law that is contrary to CEQA. Thus, until is it disapproved, the rule stated in *County of Inyo v. City of L.A.*, *supra*, remains the law.

But most important, even if Guideline section 15126.6, subdivision (e), did establish a rule allowing the "no-project" alternative to consist of predictions of future development under existing land use plans rather than existing conditions, the factual prerequisites for doing so that are specified in the Guideline are not present here. The key provision applicable to this Project is subparagraph (B) of paragraph (3) of subdivision (e), which provides:

> If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

Thus, for this Project the Guideline requires that the "no-project" discussion "compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved." This DEIR utterly fails to do so.

The Guideline also provides that where "disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this 'no project' consequence should be discussed." But this does not authorize the approach taken in this DEIR, for two reasons.

First, if the City disapproves this Project, it is not "predictable" that anyone would propose or the City would approve a nearly exact replica of Wal-Mart's proposal. Instead, this possibility is entirely speculative. Indeed, the opposite possibility is more predictable: i.e., that if the City does not want this Project, no prospective developer is likely to assume the City will approve the same project if submitted by a different applicant.

Second, even if future City approval of a replica of this Project were "predictable," this would not provide grounds to dispense with a "no-project" alternative based on "the property remaining in its existing state." It would merely require the DEIR to also "discuss" the effects of the predictable future action in addition to "the property remaining in its existing state." Here, the no-project alternative in the DEIR contains no discussion of "the property remaining in its existing state" whatsoever.

In sum, the DEIR's discussion of the impacts of the "no-project" alternative is entirely useless because it is the same as the proposed Project.

2. THE DEIR IS INFORMATIONALLY DEFICIENT.

a. Hydrology Impacts

As explained in the letter dated April 24, 2009 from hydrologist Dennis Jackson (attached hereto as Exhibit 1 and incorporated by reference), the DEIR is informationally deficient with respect to storm water runoff impacts.

b. Traffic Impacts

As explained in the letter dated April 24, 2009 from traffic engineer hydrologist Dan Smith (attached hereto as Exhibit 2 and incorporated by reference), the DEIR is informationally deficient with respect to traffic impacts.

c. Land Use Impacts

As explained in the letter dated April 24, 2009 from economist Dr. Phillip King (attached hereto as Exhibit 3 and incorporated by reference), the DEIR is informationally deficient with respect to land use and urban decay impacts.

Dr. King describes the immediate, local and direct effects of this Project on the surrounding residential neighborhoods, including increased rates of foreclosure, abandoned homes, increases in crime, etc.

The DEIR also fails to assess the Project's potential to cause regional urban decay impacts by enabling the development of new Wal-Mart stores in the region (both regular stores and Supercenters) and the conversion of existing regular stores to Supercenters, that this distribution

center will service. As a result, the DEIR fails to assess impacts on the "affected environment." The DEIR achieves this failure by studiously not providing any information about Wal-Mart's plans to expand retail operations in this region.

For example, the Project description is narrow, stating: "The underlying purpose of the project is storage and distribution of nongrocery goods to Wal-Mart retail stores located throughout the region." The growth-inducing impact section is singularly evasive, stating: "Any growth-inducing effect the proposed regional distribution center may have relative to new Wal-Mart retail stores in the area or beyond is difficult to accurately determine. The proposed Project can be viewed as a means to simply improve the service to existing retail outlets, given the fact that proximity to a distribution warehouse in and of itself and in the absence of consumer demand is not likely to warrant construction of a new retail facility."

As explained by Dr. King, this Project will devastate the existing residential neighborhoods in the vicinity of the Project. It also threatens the viability of plans to build out the undeveloped portions of the residential zones in the immediate vicinity. Thus, the Project will frustrate the goals of the City's General Plan, yet the DEIR fails to recognize this as a significant impact.

d. Visual Impacts

As explained in the letter dated April 27, 2009 from Harry Benke of Visual Impact Analysis LLC (attached hereto as Exhibit 4 and incorporated by reference), the DEIR is informationally deficient with respect to visual impacts.

While the DEIR admits that cumulative visual impacts are significant, it does not quantify or document the magnitude of the impact. *See Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ["The EIR must contain facts and analysis, not just the bare conclusions of a public agency. ... The conclusion that one of the unavoidable adverse impacts of the project will be the "[increased] demand upon water available from the Santiago County Water District" is only stating the obvious. *What is needed is some information about how adverse the adverse impact will be*" (emphasis added).]

e. Air Quality Impacts

(1) Greenhouse Gases (GHG) and Climate Change Impacts

As explained in the letter dated April 27, 2009 from Dr. Klaas Kramer and his colleagues (attached hereto as Exhibit 5 and incorporated by reference), the DEIR is informationally deficient with respect to the magnitude of this Project's cumulatively considerable contribution to greenhouse gas emissions.

(2) Impacts on Ozone Precursors: Reactive Organic Gases ("ROG") and Nitrogen Oxides ("NOX")

The DEIR is also informationally deficient with respect to the Project's ozone precursor and diesel PM imapcts on air quality.

The San Joaquin Valley Air Basin (SJVAB) is classified as an "extreme non-attainment" area for ozone, for which ROG and NOX pollutants are precursors. The DEIR finds that as long as mitigation measures identified in the DEIR keep increases in these pollutant emissions below a threshold of significance ("TOS") of 10 tons per year (TPY), the "project-level" (i.e., "individual" or "incremental") impacts are not "significant." (DEIR p. 4.2-34.) The DEIR also uses this same TOS to conclude that such impacts are not cumulatively significant. (DEIR, p. 6-4.)

The DEIR borrows this TOS from the San Joaquin Valley Air Pollution Control District ("air district"). The DEIR's use of the air district's TOS is erroneous as a matter of law because the DEIR applies the TOS uncritically, without any factual explanation as to why the 10 TPY standard represents an appropriate TOS for judging the significance of project-level ozone pollution impacts.

The DEIR's use of the air district's TOS to determine that cumulative ozone precursor emission impacts are less than significant is legally erroneous for the same reasons. Thus, the DEIR's assessment of cumulative ozone impacts is inconsistent with CEQA's definition of cumulative impacts because it assumes that if its incremental impacts are not significant its cumulative impacts are not either. But it is well settled that even incremental minor changes can be cumulatively significant.

Moreover, it is also well-settled that where a project will exacerbate existing significant impacts, the project's cumulative impacts must be recognized as significant. That is the case here and the DEIR should concede the point.

(3) Toxic Air Contaminants - Diesel PM Impacts

The DEIR states that the baseline condition from existing (at least in the year 2000) Diesel PM impacts is 390 excess cancer cases per million people in the air basin. (DEIR, p. 4.2-10 ["Diesel PM poses the greatest health risk among these ten TACs mentioned. Based on receptor modeling techniques, ARB estimated the Diesel PM health risk in 2000 to be 390 excess cancer cases per million people in the SJVAB."].)

The DEIR estimates this Project will add Diesel PM health risks of 7.3 excess cancer cases per million people in the basin among people living within one mile of the Project; 2.4 excess cancer cases per million people in the basin among workers working within one mile of the Project; 0.18 excess cancer cases per million people in the basin among children attending schools within one mile of the Project; and 1.31excess cancer cases per million people in the basin among workers working in schools within one mile of the Project.

The DEIR concludes these project-level Diesel PM impacts are not "significant" because,

as it did with ROG and NOX, they are below a TOS (10 additional cancer cases per 1 million population) borrowed from the air district. This is erroneous as a matter of law for the same reasons discussed above regarding ozone precursors, i.e., the DEIR applies the air district's TOS uncritically, without any factual explanation as to why the threshold of 10 additional cancer cases represents an appropriate TOS for judging significance.

Indeed, the DEIR does not even provide a "project plus baseline" health risk assessment, in violation of CEQA Guideline 15125, subdivision (a). But adding the project-induced health risk increase (7.3) to the baseline health risk (390) yields a total cumulative Diesel PM health risk of 397.3 excess cancer cases per million people in the basin among people living within one mile of the Project.

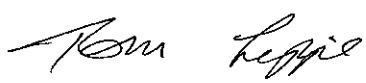
Why isn't this a significant cumulative impact? Instead of providing a true assessment of cumulative impacts, the DEIR, as it did with ROG and NOX, relies on the fact that the individual Diesel PM impacts of the Project are below a TOS borrowed from the air district. See DEIR, p. 6-5. This is erroneous as a matter of law for the same reason discussed above in relation to ROG and NOX, i.e., that where a project will exacerbate existing significant impacts, the project's cumulative impacts must be recognized as significant.

f. Growth-Inducing Impacts

See discussion of urban decay impacts in section 2.c, *ante*.

Thank you for your attention to this matter.

Very truly yours,



Thomas N. Lippe

List of Exhibits

1. Letter from Mr. Dennis Jackson dated April 24, 2009 and curriculum vitae for Mr. Jackson.

2. Letter from Mr. Dan Smith dated April 24, 2009 and curriculum vitae for Mr. Smith.

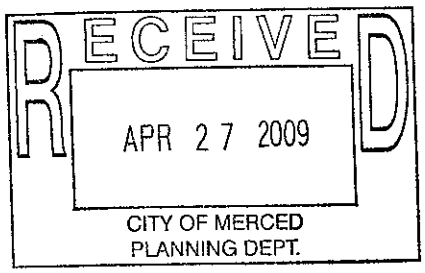
3. Letter from Dr. Phillip King dated April 27, 2009 and curriculum vitae for Dr. King.

4. Letter dated April 27, 2009 from Harry Benke of Visual Impact Analysis LLC and curriculum vitae for Mr. Behnke

5. Letter dated April 27, 2009 from Dr. Klaas Kramer and colleagues and curriculum vitae for Dr. Kramer, Dr. Michel Gelobter and Dr. Dan Matross.

C:\Data\WalMart Merced\c001 comment letter FINAL.wpd

EXHIBIT 1



Dennis Jackson - Hydrologist

P.O. Box 7664
Santa Cruz, CA 95061-7664
(831) 295-4413
djackson@cruzio.com

April 24, 2009

Tom Lippe
Lippe Gaffney Wagner LLP
9333 Sparks Way
Sacramento, CA 95827

re: Merced Wal-Mart Distribution Center DEIR

Dear Mr. Lippe:

You asked me to review how the Merced Wal-Mart Distribution Center DEIR deals with stormwater runoff quantity and quality issues. My *curriculum vita* is attached.

The details of the drawings in the DEIR are unreadable. So, on Thursday April 23, I stopped by the City of Merced's Planning and Permitting Division to see if they had higher resolution drawings available. The Planning staff was unable to find drawings with adequate resolution to read the details. They did print a one of the drawings from a PDF file on a large sheet of paper but the details were no clearer than the electronic version of the same drawing.

Project Description

The DEIR gives the following project description.

> *The proposed project includes development of a Wal-Mart Stores East LP regional distribution center (approximately 1.1 million square feet) and associated facilities on 230 acres in the southeast area of the City of Merced and would primarily store and distribute non-grocery goods to Wal-Mart retail stores located throughout the region. No retail commercial is proposed as part of the project. The proposed regional distribution center would operate 24-hours per day and would employ approximately 1,200 employees (1,050 employees to work at the facility and an additional 150 employees as drivers).*

EIR Areas of Controversy

Section 1.7 of the DEIR lists the *areas of controversy/issues to be resolved.* The DEIR identified the following areas of concern for Hydrology and Water Quality.

Hydrology and Water Quality

- Concern about water quality because of the fuel storage and truck wash.

- ▸ Concern over stormwater system failing and pollution running into the nearby neighborhoods.
- ▸ Concern over underground storage tanks and affect on water quality in the event of leakage.

None of these issues are directly addressed in the DEIR. The DEIR has failed to address these areas of concern and is therefore incomplete.

The DEIR contains no substantive discussion of the risks to water quality associated with fuel storage or the truck wash. There is no description of how the waste water from the truck wash will be disposed of. There is no description of what measures will be taken to contain and clean up fuel spills. Truck fuel and motor oil will be stored in underground tanks. Fuel for the backup fire pump and generator will be stored above ground. The DEIR does not discuss what will be done to ensure leaks from either the aboveground or underground tanks.

The following tanks are proposed as part of the project.

Underground Tanks

- new oil tank, 6,000 gallons
- waste oil tank, 2,500 gallons
- diesel fuel tank, 20,000 gallons
- diesel fuel tank, 20,000 gallons

Above Ground Tanks

- diesel fuel, 500 gallons, warehouse emergency generator
- diesel fuel, 500 gallons, standby fire pump
- fire water tank, 300,000 gallons
- fire water tank, 300,000 gallons

The DEIR contains no substantive discussion of the underground storage tanks and the risk they pose to the City of Merced water well 10-R2 which is located on the southern edge of the project. Page 4.10-6 of the DEIR notes that underground storage tanks (USTs) are regulated under the Unified Program created by Senate Bill 1082 (1993). The Merced County Department of Environmental Health implements the Unified Program at the local level. However, it is well known that even USTs that were installed according to state standards have failed.

The DEIR does not mention the close proximity of a municipal water well to the proposed location of the underground storage tanks. The DEIR does not mention that municipal well is down-gradient from the USTs. In addition, the DEIR does not mention that the presence of corrosive soils on the project site has the potential to increase the risk of failure of the underground tanks. The geotechnical report (ENGEO 2006) states that:

> As indicated in the Cerco laboratory letter (Appendix B), because of the resistivity measurements on samples obtained at the site, metal that is designed to contact site soils should be protected against corrosion. Specific design recommendations for corrosion protection for buried metals should be provided by a corrosion consultant.

The City of Merced water well 10-R is located on the southern border of the project. Supposedly, it can pump 3,000 gpm. This well was installed in 2005 to replace the well lost to the underground TCE plume at the GE facility about 2,500 feet north of the project. Underground tank installations are regulated by the state. However, there is the potential for underground tank failure, especially since the soils are corrosive. Failure of one or more of these underground tanks would discharge petroleum products relatively close to a pumping municipal water supply well. Appendix F of the DEIR states that the general

direction of the groundwater in the Merced Subbasin is the southwest. Well 10-R is located to the southwest of the truck maintenance garage and fuel island. The characteristics of well 10-R were not discussed in the DEIR. In general, the City wells are supposed to tap a deep aquifer and not the surface water, but there is always a possibility that contaminated surface water could find its way into the well. Assessing the risk to the water quality in well 10-R requires knowing the characteristics of well 10-R and the characteristics of the subsurface materials around well 10-R are important. The DEIR did not discuss the close proximity of the underground tanks that will be up-gradient to a City water well.

By neglecting the presence of corrosive soils on the project site and the proximity of a municipal water supply well down-gradient from the proposed underground storage tanks the DEIR has failed to provide full disclosure of potential environmental risks.

The DEIR also does not address the concern about the potential for the failure of the stormwater system to fail and release pollution into nearby neighborhoods. The DEIR does not appear to apply the information in the geotechnical report to the design of the stormwater detention ponds. The geotechnical report states that the soils have shrink/swell potential that must be accounted for in the building design but does not mention this problem with regards to the design of the detention ponds. Construction techniques that do not account for the shrink/swell characteristics of the soil could lead to a failure of the detention pond berm or collapse of the sidewalls of the excavation. Failure of the pond berm could release the stored water and at least a portion of the captured sediment that is expected to be contaminated. This issue will be discussed in more detail below.

Lack of Information in the DEIR

Neither the DEIR nor the *Preliminary Site Drainage Analysis* (Carter-Burgess, 2007) present the technical details of the hydrologic calculations used to design the stormwater detention ponds. The hydrologic information presented in the DEIR and the *Preliminary Site Drainage Analysis* is not presented in a coherent fashion. Failure to clearly present the technical details used to formulate the design of the stormwater detention ponds makes it very difficult to assess if realistic estimates of the storm runoff volumes were estimated or if the ponds were adequately sized.

The 24-hour rainfall totals for the various storm events (e.g. 2-year 24-hour storm etc.) are not listed in the DEIR or the Preliminary Site Drainage Analysis. The estimated total rainfall volumes associated with each of the analyzed storm events (e.g. 2-year event etc.) for the pre-project and project conditions are not given in the DEIR or in the main text of the Preliminary Site Drainage Analysis, however, they are given in a table that appears on a drawing sheets C4.24 and C4.25.

The total detention pond volume (62.73 acre-feet) is only given on a table printed on two of the construction drawings (C4.24 and C4.25) along with the pre and post project storm volumes for the 10, 25, 50 and 100 year 24-hour events. They estimate the post-project 100-year storm volume to be 39.7 acre-feet. But no details of the calculations were given.

The development of the approximately 235 acre site would create approximately 110 acres of impervious surface area. The developed portion of the property is in the central area of the project property. The eastern portion of the property contains a power-line right-of-way and is not developed. The western portion of the property is not being developed and the southern portion of the property between the truck entrance and employee entrance is not being developed. It is not clear if the ground surface in these "undeveloped" areas will be graded or in some other way altered by the project. If these "undeveloped" areas are altered it is reasonable to expect that the infiltration rate of these areas will decrease leading to

greater post-project stormwater runoff. It is not clear if this was accounted for when estimating stormwater runoff from the project.

There is no narrative that explains how the stormwater detention system will operate. There is no discussion on how stormwater from the undeveloped portions of the project property will be handled. The drawings available in the DEIR are so small that the many details on the drawings are unreadable. It appears from the drawings that the developed portion of the property is to be completely surrounded by a series of six detention ponds that are connected by pipes. It appears from the drawings that the berms of the detention ponds form a continuous barrier that essentially creates an "island" during a 100-year flood event. Stormwater runoff generated inside the bermed developed area is directed into the detention ponds. It appears from the drawing that runoff generated along the truck entrance will be directed into the detention basins.

It appears from the drawings available in the DEIR that stormwater generated outside of the developed area is expected to pool in the southeast corner of the project and possibly be directed into the detention basins. It is not clear whether the stormwater inlets along the truck entrance are above the level of the 100-year flood. If the stormwater inlets along the truck entrance are lower than the 100-year flood level then water from the 100-year flood will flow into the stormwater inlet and fill the detention ponds. Presumably, once the detention ponds have been filled by water from the 100-year storm entering the storm drain inlets along the truck entrance water will start flowing out of the storm drain inlets inside the developed area. How will water from the 100-year flood be excluded from the detention ponds? If 100-year flood water freely enters the detention ponds how will they be pumped dry in 108 hours?

The maximum depth (10 feet) and the surface area (about 10.5 acres) of the detention ponds are not provided in the DEIR but are only given in the *Groundwater Recharge Discussion* memo (ENGEO 2007). The elevation differences between the stormwater inlets and the discharge points at the bottom of the detention ponds are not given in either the DEIR or the *Preliminary Site Drainage Analysis* (Carter-Burgess 2007). Let us call this elevation difference the *maximum functional pond depth.* Adding more water than the maximum functional pond depth will cause water to flow backwards out of the lowest inlet. The maximum water depth in the detention ponds for the various design storms (e.g. 100-year storm) is not given. This is important because when the depth of the water in the detention ponds exceeds the maximum functional pond depth the water in the ponds will start flowing out the stormwater inlets. The DEIR has not demonstrated that the detention pond can receive all the stormwater from all of the design storms analyzed without water ponding at the inlets or having water flow backwards from the ponds back through the lowest inlets.

The DEIR provides no discussion of the water velocities expected in the detention ponds under different conditions. Water velocities must be low enough to allow very fine sediment to settle out. This is important for water quality impacts because many of the expected contaminants attach to particles of very fine sediment.

The DEIR does not provide enough information regarding the design and construction of the detention basins to evaluate whether the ponds are adequately sized, whether the ponds can receive stormwater from the large storms, whether the ponds can adequately capture sediment and contaminants from the site and what impacts would occur if the pond berm failed.

Inconsistent Information in the DEIR

The DEIR states that the stormwater detention facilities can accommodate a 50-year 24-hour event in some place and in others claims that the 100-year 24-hour event can be handled. On page 2-33 of the DEIR they state that one foot of freeboard above the water level from the 50-year 24-hour storm has been incorporated into the conceptual design.

The DEIR, on page 2-33, states that there are two detention ponds, one draining the north portion and one the south portion of the project. The drawings in the Preliminary Site Drainage Analysis (Carter-Burgess 2007) show six detention ponds linked together by pipes.

Detention Basin Design

The information in the geotechnical report (Engeo, 2004 and 2006) was not apparently used to guide the design of the permanent stormwater detention basins. Conversely, the design of the permanent stormwater detention ponds does not seem to have been communicated to the geotechnical engineers.

The final geotechnical report (Engeo 2006) states that:

> Expansive Soils
>
> Near-surface soils at the site exhibit a moderate to high potential for expansion. Expansive soils shrink and swell as a result of moisture changes which can cause heaving and cracking of slabs-on-grade, pavements, and structures founded on shallow foundations. To mitigate expansive soils, the designs for building foundations and concrete slabs-on-grade should take into consideration the potential for differential movement of the soil with moisture changes. Mitigation measures during grading are provided in this report, including moisture conditioning of the site soils to obtain a high moisture contents to reduce the potential for future shrinkage and swelling.
>
> Settlement/Fill Consolidation
>
> Since the existing site is relatively flat and anticipated to be near proposed pad grades, it is expected that cutting and filling will be minor. In general, long-term settlement is not anticipated to be a major concern for this project provided that proper fill subgrade preparation, moisture conditioning and recompaction are performed during mass grading.

The design of the permanent detention ponds calls for excavating a five foot deep trench (DEIR page 2-33). The total pond depth is given as 10 feet in the *Groundwater Recharge Discussion* memo (Engeo 2007). According to the DEIR, the detentions pond bottoms were to be 5 feet below grade to avoid high groundwater. The height of the detention pond berms appears to be five feet or greater.

The design recommendations in the geotechnical report (Engeo 2006) are for slab floors and retaining walls and do not mention the excavation of a five foot deep trench topped by a five foot (or higher) berm. If the expansive nature of the project site soils is not taken into account the detention pond berm has the potential to fail.

The sidewalls of the excavation must be engineered so that they do not collapse as a result of lateral spreading or the shrink/swell action of the expansive project soils. The berm must be constructed in a manner that accounts for the properties of the expansive project soils. In addition, the outside face of the berms has the potential to be in contact with water from a 100-year flood. The DEIR states that during a 100-year flood event the project property would be covered by one to three feet of flood water. The DEIR has not considered if floodwater moving around the outside of the detention ponds has the potential to erode the berms of detention ponds.

If the outside berm fails the consequences would depend on the level of floodwater on the outside of the berm. If the floodwaters outside the berm are higher than the water level inside the ponds the external floodwater will flow into the ponds. However, the external floodwater will eventually recede and so the water from the detention pond would flow out of the ponds and join the receding floodwaters. Some of the contaminates, stored in the detention pond, would be expected to be carried out of the ponds.

If an inside berm fails personnel outside of the warehouse could be exposed to rapidly moving water if the water level in the detention ponds was higher than the finished grade around the warehouse.

The preliminary geotechnical report (Engeo 2004) noted that a 1917 topographic map suggested that there are two filled-in stream channels on the property, one in the northern portion of the site and one in the southeast corner of the site. The stream channels have been filled at some time in the past and no longer exist at the project site. The final geotechnical report (Engeo 2006) states that test pits found no field evidence of filled-in channels. Of course, the subsurface of the entire property was not examined so there is a potential that the extensive excavation for the detention ponds may encounter sands and gravels from the filled-in stream channels. The preliminary geotechnical noted the potential for liquefaction at the locations of the filled-in stream channels (Engeo 2004). Page 4.5-5 of the DEIR states that: "The fill that was placed in the historic stream channels noted above may represent a potential for settlement or consolidation that could adversely affect building foundations".

The DEIR has not discussed the potential for off-site impacts if the excavation of the detention ponds intersected the filled-in stream channels. Since the detention ponds are unlined water would freely percolate into any sand and gravel deposits associated with the filled-in streams. The old stream deposits could provide a pathway for potentially significant volumes of water to be transported off-site and on to adjacent property.

The City of Merced has agreed to waive their requirement that the detention ponds can be drained within 48-hours. At the 2,200 gpm maximum discharge rate allowed by MID it would take 72 hours to drain the ponds after a 10-year storm and 108 hours to drain the ponds after a 100-year event. In addition, the MID will have the ability to completely turn off the discharge from the project's detention ponds which could extend the drainage time well passed the 108 hours agreed to by the City. The DEIR does not discuss if there is any impact associated with allowing the ponds to drain in 108 hours instead of 48 hours or the impacts if the MID shuts off the discharge from the project detention ponds. Extending the time it takes to drain the ponds increases the possibility that a subsequent large storm will occur before the ponds are drained. If a large storm occurs before the ponds are drained will the stormwater detention system fail?

The MID will only accept stormwater discharge from the project at a rate of 2,200 gpm. This low discharge rate increases the time to drain the ponds to 108 hours for a 100-year storm. The City of Merced would prefer to see the ponds drain in 48 hours.

Alteration of Flow Patterns

The disposal of stormwater from the project has not been adequately discussed in the DEIR. The DEIR has not adequately addressed two of the standard CEQA Environmental Check List questions:

> VIII. HYDROLOGY AND WATER QUALITY. Would the project:
>
> (d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase

> the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
>
> (e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

The proposed project would significantly alter the existing stormwater drainage pattern. Project stormwater would be discharged into a different MID Canal. Language in the DEIR suggests that project stormwater would contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems.

The Preliminary Site Drainage Analysis (Carter-Burgess 2007) states that:

> Storm water runoff from the site currently ponds in a low lying area near the southwest corner of the site and eventually spills over to a roadside ditch running to the west along the north side of Gerard Avenue.

The DEIR proposes two alternatives for disposing of the stormwater collected to the detention ponds. The DEIR states that the preferred alternative would be to pump the water from the detention ponds out of the northeast corner and route it to the MID Fairfield Canal. None of the pre-project storm water flowed to the northeast.

The second choice would be to pump the water from the detention ponds out of the southwest corner and route it into the MID Farmdale Lateral. The DEIR says that, "In the event the Fairfield Canal could not be utilized, the alternative canal to receive the flow would be the Farmdale Lateral (Exhibit 4.6-4)". The DEIR does not explain when this decision would be made, who would make the decision or why the decision is even necessary. Having two alternative methods of disposing of project stormwater makes the project description ambiguous and makes it difficult to evaluate the environmental impacts of the project.

The DEIR does not discuss where either the Fairfield Canal or the Farmdale Lateral discharge and the DEIR does not discuss if there is any potential for off-site impacts associated with adding floodwater to either of the MID canals.

The Merced Irrigation District (MID) wants to limit the discharge from the project detention ponds to its canals to 2,200 gpm (4.90 cfs) which is substantially less than the estimated pre-project 2-year 24-hour discharge of 8,960 gpm (20 cfs). In addition, page 2-36 of the DEIR states that:

> If MID determined that downstream conditions warranted the discharge from the proposed project site be discontinued, then MID would have the ability to shut the pumps down to discontinue the discharge.

The requirement to reduce the stormwater discharge from the project to less than 25% of the pre-project 2-year discharge coupled with allowing MID to shut off the project stormwater discharge suggests that there is a problem from downstream (off-site) flooding that would be exacerbated by adding project stormwater to the Fairfield Canal (and possibly to the Farmdale Lateral) that the DEIR has not discussed.

Routing project stormwater to the Fairfield Canal, even at a rate less than the pre-project 2-year discharge, is a direct project impact since no pre-project stormwater flowed to the northeast. In addition, routing project stormwater to the Fairfield Canal appears to be a significant cumulative impact since the MID wants to restrict the discharge rate from the project detention ponds to less than 25% of the pre-project 2-year storm runoff.

The DEIR does not discuss the environmental impact of sending stormwater from the project site in a completely new direction. The DEIR must discuss the downstream consequences of routing stormwater from the project into the Fairfield Canal.

Flood Issues

The DEIR has not fully addressed Impact 4.6-5: Proposed Project Structures within the 100-year Flood Zone Could Impede or Redirect Flood Flows.

The berms of the detention ponds form a continuous barrier so that during a 100-year storm the developed portion of the project property becomes an island. The DEIR has not addressed how the "island" formed by the project detention ponds would impede or redirect flood flows. Will the presence of the "island" cause 100-year flood water to accelerate in the vicinity of the project? Will the 100-year flood water have sufficient velocity to erode the outside face of the detention pond berms?

As discussed above, the design of the detention pond trench and berm apparently does not account for the expansive soils on the project site. This design oversight could lead to the failure of the detention pond berms. If a berm that separates the detention pond from the developed area (inside berm) fails it may be possible for water from the detention pond to flow into the developed area. If both the inner and outer berms fail during a large storm event flood waters surrounding the project could enter the developed area.

The maximum water depth in the ponds is given as 10 feet in the *Groundwater Recharge Discussion* memo (ENGEO 2007). The bottom of the ponds will be five feet below the ground surface. So the maximum water surface is about 5 feet above ground surface. This suggests that water gushing out of a failed inside berm would enter the developed area at high velocity and pose a threat of injury or death to anyone near the berm failure.

The project stormwater detention ponds collect stormwater through a gravity collection system. When the water in the detention ponds is at the same elevation as the lowest stormwater inlet the ponds are effectively full and can not take any additional stormwater. The space in the ponds above the water depth when the ponds are effectively full can not store any stormwater.

The DEIR and the other documents available on-line do not give the maximum water surface elevation (or water depth) in the detention ponds for each of the design storms (e.g. 10-year 24-hour storm). The DEIR does not reveal the elevation of the lowest stormwater inlet. Therefore, the DEIR does not clearly demonstrate that the detention ponds can receive stormwater from the project during the 50-year or the 100-year 24-hour storm event.

Water Quality

Water Quality impacts from the project will come from short-term construction activities and long-term operation of the distribution center. The DEIR describes the short-term impacts from construction as follows.

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

The DEIR says that the applicant will follow all the required rules and regulations and develop a Storm Water Pollution Prevention Plan (SWPPP). The DEIR speaks of general standard erosion control measures. However, the effectiveness of an erosion control plan is in the details of the plan and the diligence with which it is implemented. A realistic construction erosion control plan needs to be prepared and made part of the EIR. The construction erosion control plan needs to be developed in conjunction with the grading plan for the site. Together, the construction erosion control plan and the grading plan will clearly show the area of the project property that will be disturbed and the direction that stormwater runoff will flow. Knowing the precise area of ground that will be disturbed is critical to accurately estimating the volume of storm runoff that will be generated after the project is complete. Disturbance of the ground surface during construction tends to compact the soil an increases runoff from an area. Knowing the direction of stormwater movement will help determine the area that drains to the stormwater detention ponds.

Impact 4.6-2: Long-Term Degradation of Surface Water Quality from Project-Related Contaminants

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

The DEIR Mitigation Measure 4.6-2 states that, "Design standards for water quality treatment **are being formulated** that would meet or exceed City of Merced Storm Drain Master Plan and Standard Design requirements" (Emphasis added). The DEIR goes on to say that:

> The stormwater treatment system would reduce the increased amount of stormwater runoff and associated erosion created by the proposed project site. The runoff would be collected by overland flow and an underground storm sewer system into detention ponds to control the quantity of runoff exiting the site. The quality of runoff would be controlled by sedimentation ponds, biological treatment of the water by vegetation, infiltration of the water into the ground and a skimmer plate to skim floatable objects from the water surface. Implementation of these mitigation measures would reduce impacts to a ***less-than-significant*** level.

The detention ponds will be grass lined. The grass will help slow the water velocities to promote settling of fine sediment. The grass lining the detention pond is not likely to provide "biological treatment of the water". The detention ponds will be unlined so water will be able to soak into the ground. In general the clay in the soils will tend to trap contaminates, however, if the bottom of the detention pond intersects the filled-in stream channels water from the pond may flow through sand and gravel which do not bind contaminates. The contaminate laden groundwater flowing through old stream deposits may be carried off-site. The DEIR has not discussed this impact.

The detention ponds are the key element in ensuring that the quality of the stormwater discharging into the MID Canal meets the Basin Plan standards. The DEIR provides no discussion of the water velocities expected in the detention ponds under different conditions. Water velocities must be low enough to allow very fine sediment to settle out. This is important because many of the expect contaminants attach to particles of very fine sediment. The DEIR should demonstrate that the very fine sediment delivered by the inlet closed to the discharge wet well will have adequate time to settle out.

Weekly sweeping of paved area with a modern vacuum assisted street sweeper should be included as a mitigation to reduce the amount of contaminated fine sediment entering the detention basin. Removing contaminated fine sediment before it reaches water is the best way to preserve water quality. Older street sweeping equipment was ineffective in picking up fine sediment that carries contaminates such as petroleum products and heavy metals.

Summary:

- The Hydrology and Water Quality section of the DEIR is deficient since it does not give sufficient detail assess the impacts.
- The input values and the output from the TR-55 model run to estimated stormwater volume are not presented so the accuracy of the calculations can not be checked.
- The site's geologic and geomorphic characteristics include two risk factors that the DEIR does not include in its evaluation of potential Project impacts. These risk factors are (1) two old stream channels that are now filled with soil that is less dense and more permeable to water than the surrounding land. (2) The soil on the site has a high "shrink-swell potential", meaning that it expands and contracts when exposed to wet and dry conditions. These characteristics of the site exacerbate several risks that the EIR does not assess.
- Drinking Water Quality Impacts. The City of Merced has a municipal drinking water well on the western border of the Project, and the Project includes both underground and above-ground storage tanks that will hold over 40,000 gallons of diesel fuel and over 6,000 gallons of motor oil. But the DEIR fails to assess, or provide enough information to allow the public to assess, the risk of the Project contaminating this water source if these tanks fail.
- Runoff Water Quality Impacts. The DEIR does not assess, or provide enough information to allow the public to assess, the risk of the Project contaminating downstream water quality if these tanks fail.
- Detention Pond and Berm Failure - Flooding Impacts. The DEIR does not assess, or provide enough information to allow the public to assess, the risk of the berms that surround the runoff detention ponds failing and releasing large volumes of water into the surrounding neighborhood. The design specifications for the detention pond system are not sufficiently detailed to allow an evaluation of this risk. Similarly, the intensity of design storms and the details of the runoff calculations are not given in the DEIR, preventing a complete examination of these issues. Apparently, neither the presence of the old stream channels nor the expansive soils were considered in design of detention ponds. (The filled-in stream channels may contain sand deposits which may experience liquefaction during earthquakes which could cause collapse of the overlying berm.)
- Fine sediment tends to accumulate on pavement over time. Fine sediment can be from wind blown sources or arrive on truck tires. Is there a monitoring program to determine if and when the accumulated fine sediment needs to be removed from the detention pond bottoms? If accumulated fine sediment is removed from the pond bottoms where will the potentially hazardous material be disposed of?
- The Project will alter the natural drainage pattern on the site by collecting, concentrating and discharging all runoff into one of two possible outlets: Fairfield Canal to the northeast or the Farmdale Lateral to the Southwest. The EIR does not describe the environmental setting

downstream of the project, nor does it provide any assessment of the potential impact of the increased peak flows on either channel or surrounding land downstream. The Merced Irrigation District limits stormwater discharge from project to less than 25% of pre-project 2-year discharge, suggesting that there are existing off-site cumulative impacts from routing stormwater into MID's Fairfield Canal that the EIR has not disclosed.

- The MID will only accept stormwater discharge from the project at a rate of 2,200 gpm. This low discharge rate increases the time to drain the ponds to 108 hours for a 100-year storm. The City of Merced would prefer to see the ponds drain in 48 hours. Extending the time it takes to drain the ponds increases the possibility that a subsequent large storm will occur before the ponds are drained.
- The Project's surrounding detention pond berms will form an "island" in times of surface water flooding that will apparently form a complete barrier to 100-year flood water. The effect of a 110 acre "island" on the movement of 100-year flood water has not been discussed. The DEIR fails to ask or answer the question whether the presence of this "island" will cause 100-year flood water to accelerate near the project and if so will erosion of the surrounding land or roads result.

Revisions to the Hydrology and Water Quality Section

The Hydrology and Water Quality Section of the DEIR should be completely revised. The revised Hydrology sections should clearly present the following information at a minimum.

- Clear narrative describing all aspects of the drainage plan
- Conceptual grading plan
- Conceptual construction erosion control plan.
- Accurate map of disturbed and undisturbed areas
- Detailed TR-55 analysis of pre-project and post-project conditions for 2-year, 10-year, 25-year, 50-year and 100-year 24-hor events.
- Estimate of volume Post-project of runoff volume from the developed area routed to detention pond
- Estimate of volume Post-project of runoff volume from the undeveloped area routed to detention pond
- Estimate of volume of runoff from undeveloped area that does not enter the detention ponds
- List of rainfall intensities used and source
- Inflow hydrograph into the detention ponds
- Water velocities in the detention pond
- Estimate of what size particles will pass through the pond
- Estimate of the sediment trap efficiency of the ponds
- Maximum water surface in detention pond for each storm event modeled
- Elevation of pond bottom
- Elevation of stormwater inlets
- Design of the detention pond incorporating the findings of the geotechnical reports

Sincerely,

Dennis Jackson
Hydrologist

References

Carter-Burgess, 2007, Preliminary Site Drainage Analysis.

City of Merced, 2002, City of Merced Storm Drain Master Plan.

City of Merced, 2006, Water Supply Assessment, Proposed Wal-Mart Regional Distribution Center.

EDAW, February 2009, Draft Environmental Impact Report Proposed Wal-Mart Regional Distribution Center State Clearinghouse Number 2006071029

ENGEO, 2004, Geotechnical Feasibility Report, Merced Distribution Center, APN 061-025-018, 061-025-035, 061-029- 001, and 061-029-027.

ENGEO, 2006, Final Geotechnical Exploration Report (FGR2), Proposed Industrial Warehouse Distribution Center, Merced, CA.

ENGEO, 2007, Groundwater Recharge Discussion, Wal-Mart Distribution Center, Merced, California.

DENNIS JACKSON

HYDROLOGIST

Fluvial geomorphology

Sediment transport

River and watershed assessment and restoration

EXPERIENCE

Dennis Jackson is a consulting hydrologist. Mr. Jackson has over 15 years of experience in river and watershed restoration, mitigation planning, policy evaluation, and project implementation. Mr. Jackson has studied watersheds along the north coast of California and in the eastern Sierra Nevada.

Mr. Jackson has completed all the phases of successful stream and watershed restoration projects. His experience includes: obtaining restoration grant funding, design of restoration projects, obtaining permits, facilitating advisory committee meetings, and completion of project implementation and monitoring.

He taught an upper division class entitled Physical Hydrology and River Hydrology at California State University, Monterey Bay. These courses focused on runoff generating processes, streamflow measurement and detecting watershed change through an analysis of discharge records.

Mr. Jackson served on the City of Santa *Cruz's Watershed Management Technical Advisory Task Force*. The Task Force's charge is to guide the preparation of a watershed management plan for the 3,380 acres owned by the City.

EMPLOYMENT HISTORY

- Since 1995, Mr. Jackson has been a consulting hydrologist focusing on river monitoring and watershed dynamics. In addition to data collection and analysis he has also reviewed numerous CEQA documents on a wide range of projects included timberland conversion, timber harvest plans, fiber optic installations, and water rights applications.
- In 2003 and 2004 Mr. Jackson subcontracted with Environmental Science Associates (ESA) to perform a hydrologic analysis of the Pescadero-Butano Creek watershed, focusing on the USGS stream gauging record and a study of the changes in stream bed elevation at various locations in the watershed.
- In 2003 Mr. Jackson worked a subcontractor with Environmental Science Associates (ESA) to monitor the streamflow on Ferrari, Molino, Liddell, and San Vicente Creeks on the Coast Dairies property for the Trust for Public Land (TPL). TPL acquired the Coast Dairies property in the 1990's. TPL wanted to ensure that the all the agricultural surface water diversions on the Coast Dairies properties are in compliance with all environmental laws. Monitoring the streamflow help the State Water Resources Control Board determine bypass flows that would protect salmonids.
- In 2001-2003 Mr. Jackson subcontracted with Environmental Science Associates (ESA) to assist in evaluating the hydrology, geomorphology, and biology of the Pescadero Marsh, for the California Department of Parks and Recreation (DPR). In particular, the purpose was to repeat several surveys conducted by other parties for DPR in the 1980s, in order to ascertain

changes that have occurred in the Marsh since several restoration projects were undertaken in the 1990s. The overall goal of this report is to make recommendations for future management of the State Preserve.

- In 2002 Mr. Jackson subcontracted with Environmental Science Associates (ESA) to perform a hydrologic assessment of the Coast Dairies property to assist the Trust for Public Land development management guidelines prior to turning the land over to the State Parks system. The objectives of this hydrologic assessment are to determine: the characteristics of each of the six streams that cross the Coast Dairies property; the general condition of each stream and its watershed; the sensitivity of the watershed to disturbance; and hydrologic indicators for suitability for salmonids. Mr. Jackson established nine stream gauging stations, measured stream flow and interpreted the data. Mr. Jackson also extended an erosion hazard model developed for the neighboring San Lorenzo Valley to the Coast Dairies property.
- Mr. Jackson was an instructor for a week-long workshop in April 2002 to familiarize Department of Transportation (CalTrans) personnel about streams and the Department of Fish and Game's Streambed Alteration Agreement process. Mr. Jackson lectured about fluvial geomorphology in the classroom and in the field.
- During the spring semesters of 2006 and 2000, Mr. Jackson taught the upper division Physical Hydrology course at California State University, Monterey Bay. The courses focused on runoff generating processes, streamflow measurement and detecting watershed change through an analysis of discharge records.
- Mr. Jackson managed a 319(h) grant for the Sotoyome Resource Conservation District in 1995.
- From 1989 -1994, he was the Hydrologist/Director for the Mendocino County Water Agency where he studied the effects of in-stream gravel extraction on the rivers of Mendocino County. He also completed several stream restoration projects from concept to completion.
- From 1986 through 1989, he studied the studied the effect of upwind obstructions on the distribution of snow in the Mammoth Creek watershed for the Mammoth County Water District.
- From 1983 through 1986, he was a hydrologic technician with the U.S. Forest Service, in charge of a network of well, stream and spring monitoring stations.

PROJECT EXPERIENCE

- As Hydrologist/Director of the Mendocino County Water Agency, Mr. Jackson was responsible for advising the Mendocino County Board of Supervisors on all aspects of water policy. Mr. Jackson also commented on the hydrologic aspects of projects undergoing CEQA review by the County Planning Department.

  Mr. Jackson conducted a comprehensive study of the hydrology and fluvial geomorphology of the Russian River. Mr. Jackson was able to obtain 319(h) grants from the State Water Resources Control Board to prepare *Gravel Management Plans* for the Russian and Garcia Rivers.

  His study of in-stream gravel extraction revealed the importance of the shape of the riverbed and how it influences fish habitat. Mr. Jackson has applied his knowledge of river processes and hydrology to develop the basis for several stream restoration projects. His study of the natural

shape of gravel bars helped him to successfully design the channel restoration required after a bentonite spill on the Garcia River near Point Arena. He also used his knowledge of gravel bar form to design successful stream restoration projects on Willits and Baechtel Creeks near Willits, CA.

As a private consultant, Mr. Jackson has completed numerous hydrologic studies and evaluated watershed functions. Some of these projects include:

- Suisun Creek Assessment: From 2001 through 2006 Mr. Jackson has monitored two channel reaches in the Suisun Creek watershed. He has also assessed the impact of Lake Curry on the flood regime of Suisun Creek. In 2007 he analyzed temperature records from 16 stations to determine the effect of releases from Lake Curry on summer water temperatures in Suisun Creek.
- Russian River Projects: From 1999 through 2004, Mr. Jackson has monitored several channel reaches in the Russian River. He has also done hydrologic assessments of the Copeland Creek and Maacama Creek watersheds in support of watershed assessments.
- Coast Dairies Hydrologic Assessment: In 2002 to 2003, Mr. Jackson performed a hydrologic assessment of the Coast Dairies property near Davenport, Ca to assist the preparation of a land management plan for Trust for Public Land.
- Mitteldorf Watershed Assessment: In 2002, Mr. Jackson participated with staff and students of CSUMB to perform a watershed assessment of the Mitteldorf Preserve owned by the Big Sur Land Trust.
- Pescadero Watershed Assessment: Mr. Jackson performed a hydrologic assessment of the Pescadero Creek watershed as part of an overall watershed assessment in 2003.
- Restoration Assessment for the Pescadero Natural Reserve: As a subcontractor, Mr. Jackson prepared a hydrologic assessment of the Pescadero Marsh preserved owned by State Parks Department in 2002-2003.
- Co-author of *Creating a Watershed Atlas and Monitoring Program: Watershed Stewardship Workbook.* The purpose of the book is to guide watershed groups to assess their watershed and help them design a monitoring program based on their assessment. The program is specifically aimed at the tributary watersheds of the Russian River.
- Garcia River Monitoring and Enhancement Plan: Mr. Jackson participated in preparing the Garcia River Enhancement Plan. In 1991, he laid out a series of cross sections on the Garcia River and estuary to monitor changes in the channel bed. Mr. Jackson has re-surveyed the cross section network each year since 1991. Mr. Jackson performed an extensive analysis of the USGS stream gaging records for the Garcia River. His analysis showed that a sediment wave moved past the USGS gaging station between 1969 and 1983. He also assisted in installing and maintaining a stage-recording device at the former USGS gaging station.
- Garcia River Gravel Management Plan: Increasing pressure for the gravel extraction industry created a need to prepare a gravel management plan for the Garcia River. Mr. Jackson was able to obtain a grant from the State Water Resources Control Board to prepare the gravel management plan. Mr. Jackson negotiated a contract with the USGS to collect total load sediment data on the Garcia River. As part of this effort, Mr. Jackson installed river stage recorders at two additional

locations on the Garcia. He also took stream flow measurements and constructed rating tables for the sites with stage recorders.

- Russian River Enhancement Plan: The Coastal Conservancy funded an extensive investigation of the entire mainstem of the Russian River. Mr. Jackson directed the Mendocino County portion of the study. Mr. Jackson facilitated the advisory committee meetings, collected field data, coordinated with the contractor preparing the enhancement plan and was the Mendocino County contact with the Coastal Conservancy.

- Russian River Gravel Management Plan: Mr. Jackson was hired by the Mendocino County Water Agency to study in-stream gravel extraction in the Russian River. The Russian River is severely incised resulting in unstable banks, loss of ground water storage and damage to public works such as bridges and pipelines. Mr. Jackson established a network of monitoring cross sections in 1989. He also conducted an extensive analysis of the USGS gaging station records on the Russian River. His analysis showed that the bed was incising prior to the construction of Coyote Dam. Mr. Jackson was able to obtain a grant from the State Water Resources Control Board to prepare a gravel management plan. The grant funding allowed Mr. Jackson to continue monitoring the cross section network and to retain the USGS to collect total load sediment data for the Russian River.

- Russian River Restoration Program: Mr. Jackson is currently participating in a multi-year effort to restore the riparian wetlands of the Russian River system in conjunction with local agencies and landowners. His work has included a regionalization of flood frequency data for the Russian River tributaries and developing a method to estimate channel dimensions based on watershed area. He is also providing technical assistance to an extensive volunteer monitoring program with watershed residents and landowners in creek and watershed restoration in the tributary basins. He is the co-author of a handbook for volunteer stream monitors prepared for the Sotoyome Resource Conservation District in Santa Rosa, CA. The handbook guides volunteers in obtaining a watershed perspective. The larger perspective is essential in designing a meaningful monitoring program.

- Russian River Watershed – A Voluntary Cooperative Approach for Attaining Water Quality Objectives: The Sotoyome Resource Conservation District had 319(h) grant to fund several water quality improvement. Mr. Jackson was the grant's Project Director. The grant included landowner/volunteer water quality monitoring, development of bioassessment reference conditions, cooperative projects with two high schools and work with dairymen to reduce water pollution from animal waste.

- Redwood Valley Ground Water Study: Mr. Jackson negotiated approval for a cooperative study of the ground water resources of Redwood Valley. The Redwood Valley Water District was under a court ordered moratorium until additional water supplies could be found. Mr. Jackson convinced the Water District's Board of Directors that it would be beneficial to engage the USGS to take a thorough look at the ground water supplies within their District. Mr. Jackson collected data and worked closely with the USGS during the study.

- Review of Proof of Water Tests: The town of Mendocino is on a coastal headland. Water supply is a critical issue within the Mendocino City Community Services District (MCCSD). The state of California granted MCCSD the authority to manage ground water within the District's boundaries. The District requires all new wells to perform a proof-of-water test to demonstrate

that the new well will not impact existing wells. As the Hydrologist for MCWA, Mr. Jackson reviewed and commented on proof-of-water tests done for the MCCSD. Mr. Jackson also reviewed ground water studies for the Mendocino County Division of Environmental Health. He also reviewed and commented on the hydrologic aspects of projects before the Mendocino County Planning Department. The projects ranged from subdivisions to zoning changes and quarries.

- CEQA compliance: Mr. Jackson has extensive experience as a government project manager in the preparation and review of all aspects of EIRs.
- Public outreach and advisory committees: Mr. Jackson has directed projects involving regular meetings of project advisory committees and public workshops. These committees can be essential to the success of a large project, but are also often contentious and require considerable skill and experience to direct and gain any agreement among the members. Both the Garcia River and Russian River projects utilized committees, created and directed by Mr. Jackson.

EDUCATION

M.S. Physical science with an emphasis in hydrology
California State University, Chico

Graduate studies in hydrology
University of Arizona

B.A. Mathematics with honors
Humboldt State University

PROFESSIONAL WORKSHOPS

Stream Restoration & Classification

Course was taught by David Rosgen in South Lake Tahoe. The course covered a review of stream mechanics and an introduction to Rosgen's stream classification system. The also covered the design of stream restoration projects based on Rosgen's classification system and the principles of geomorphology. Several field trips to restoration projects in the Tahoe basin provided practical hands-on experience.

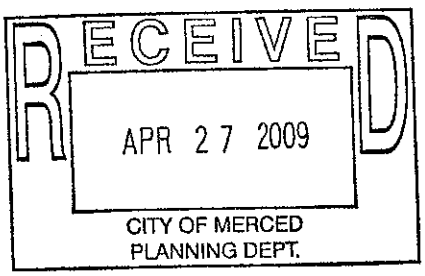
Sediment Data Collection Techniques

The U.S. Geological Survey in Vancouver, Washington gave the course. The course covered the theory of river mechanics and sediment transport; methods of collecting suspended sediment and bed load data; the design of sampling equipment; and field trips to sediment sampling stations on the Tousle River and the USGS sediment laboratory.

Alluvial Systems

The U.S. Geological Survey gave the course at their national training center in Boulder, Colorado. The course covered the role of fluvial processes in shaping the modern landscape with an emphasis on river morphology. The course combined lectures, discussion sessions, fieldwork and hands-on exercises.

EXHIBIT 2



SMITH ENGINEERING & MANAGEMENT

April 24, 2009

Mr. Tom Lippe
Lippe Gaffney Wagner LLP
329 Bryant St.; Suite 3D
San Francisco, CA 94107

Subject: Wal-Mart Regional Distribution Center Draft Environmental Impact Report, Merced, CA (SCH# 2006071029)

P09004

Dear Mr. Lippe:

Per your request, I have reviewed the Draft Environmental Impact Report (hereinafter "the DEIR") and supporting documentation for the proposed Wal-Mart Regional Distribution Center (hereinafter "the Project") in the City of Merced (hereinafter "the City"). The focus of my review is in regard to matters involving traffic and circulation. My qualifications to perform this review include registration as both a Civil and Traffic Engineer in California and 40 years professional consulting practice in these fields. I have both prepared and reviewed and commented on the traffic and circulation components of numerous environmental impact documents under the California Environmental Quality Act (hereinafter "CEQA"). My professional resume is attached. My comments follow.

The DEIR Traffic Study Fails To Disclose Project Impacts By Comparing a Projected Existing + Project Scenario to Existing Traffic Conditions

The DEIR Traffic Study is inadequate because it lacks an analysis of the 'Existing + Project' traffic scenario as the basis for measuring Project traffic impacts. CEQA Guidelines € 15125(a) states that the ordinary baseline for measuring project traffic impacts is the existing environment at the time the Notice of Preparation was issued or, in circumstances where there is no NOP, the environmental conditions that existed when environmental analysis commenced. No such analysis of the Project's impacts on this baseline is provided in the DEIR. Instead, the DEIR evaluates Project impacts versus a hypothetical near term future scenario (intended to be representative of Year 2010 conditions). This is an analysis of the Project's near term cumulative impacts; not its direct impacts.

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The Year 2010 Cumulative Analysis in the DEIR Masks the Project's Impacts By Assuming an Unrealistic Level of Concurrent Development

The DEIR examines the Project's impacts against a hypothetical near term future traffic baseline condition assumed to be representative of Year 2010. The principal distinction between existing traffic conditions and the hypothetical near term baseline that was analyzed is that the hypothetical baseline assumes that some 1853 residential housing units will be constructed and occupied in the immediate area of the Project by Year 2010 and will be generating traffic onto the area roadway system at normal residential trip rates, creating a total new traffic loading in excess of 16,500 new trips. The hypothetical scenario also assumes that non-residential uses in the immediate area that would generate in excess of 12,000 vehicle trips daily would be developed by 2010. The problem with this is that, in today's economic climate, very few of those units are likely to be completed, sold and occupied by Year 2010.

While those preparing the DEIR and Project advocates might argue that the hypothetical 2010 baseline, in essence a near-term cumulative scenario, constitutes more of a worst-case condition for measuring the Project's impacts, this assertion is not correct. The hypothetical 2010 baseline scenario is unlikely to become reality because of the chaos in the housing and retail markets; many of the approved developments are unlikely to be completed and/or occupied in the time frame originally contemplated. While traffic level of service (LOS) on the area roadway system in the Existing Condition is generally highly adequate, in the hypothetical and unrealistic 2010 scenario of the DEIR, traffic conditions at many locations in the area are forecast to already have deteriorated to unacceptable levels before Project traffic is added. If the Project had been evaluated against existing traffic baseline conditions or a realistic representation of likely 2010 conditions, it might have been shown to be the agent that causes traffic conditions to degrade from 'acceptable' to 'unacceptable' at some locations, hence having direct Project traffic impacts. By measuring its impacts against an unrealistically inflated hypothetical future baseline, the DEIR casts the Project in the more palatable light of making traffic contributions to *already deficient* locations rather than being the direct cause of them going deficient. Moreover, because the DEIR measures the Project's impacts against a hypothetical scenario where traffic conditions have already deteriorated to unacceptable levels of service, it creates a situation where Project traffic must exceed a higher threshold to be found significantly impactful than if acceptable LOS thresholds had not already been exceeded at the critical locations. If traffic is at an acceptable LOS, the Project merely has to cause LOS to degrade to an unacceptable condition (which could result from a very small increment of traffic. But if LOS is already unacceptable in the "baseline" condition, the Project must add at least 5 percent to the total traffic using a road segment or intersection to be found significantly impactful. In the actual DEIR analysis, 4 intersections in

the am peak and 5 intersections in the pm peak that operate at very acceptable LOS in the existing condition are found to be in excess of acceptable LOS in the 2010 Baseline No Project condition. The Project, which does add traffic to these intersections, escapes being found significantly impactful because its traffic contribution is less than 5 percent of the traffic in the overstated 2010 Baseline No Project scenario.

The inflated 2010 scenario the DEIR uses as a baseline to measure Project traffic impacts also creates the false impression that there will be many fair share payers toward area traffic mitigations, when in fact, because some developments will be deferred, these fair share funds may not emerge until long after the time traffic impacts are experienced.

The entire traffic analysis should be redone in light of a baseline that respects CEQA Guidelines € 15125(a) and the concurrent development reasonably likely considering the current development economy.

The DEIR Traffic Analysis Underestimates the Project's Trip Generation

The DEIR's estimate of the Project's trip generation is non-representative of the Project's full potential. According to Section 1.2 of the Appendix E Traffic Study, the trip generation is based on observations taken in the month of August at the Wal-Mart Regional Distribution Center in Apple Valley, CA. Sales of consumer shopping goods in some months are vastly higher than in August. The Institute of Transportation Engineers publication *Trip Generation,* an authoritative data source, indicates that activity at shopping centers in the peak month of the year is 39 percent higher than in August. Movement of goods into and out of the Wal-Mart distribution center would logically be higher by about the same proportion. Hence, the trip generation estimates, particularly the estimates of truck traffic, do not represent a peak or 'design level' or necessarily even an average trip generation for the Project.

Furthermore, there are other indications that the DEIR understates Project trip generation. For example, the DEIR estimates that the Project would generate 1756 auto trips each day. The Project description indicates the Center would have 1200 employees. It is reasonable to assume that each employee makes a trip to work and a trip home each day; in other words, that there are 2400 employee commute trips to and from the Project site each day. If it is assumed that all of the 1756 projected auto trips to and from the Project site daily are used for trips to and from work by the 1200 employees, that would imply that the employees travel to and from work at an average vehicle occupancy rate of 1.37 persons per car. This occupancy rate is highly implausible since average vehicle occupancy in similar areas is typically about 1.10. In addition, since many employee shifts apparently start and end in off-peak times, there is little incentive

for ride sharing and virtually no likelihood of transit usage for commuting. The occupancy rate is even more implausible when it is realized that some of the 1756 trips that are projected must be accounted for by trips other than the commute trips of employees. Logically, a portion of those 1756 daily trips must be used for other non-commute trips (such as ordinary business callers, people seeking employment and by employees departing and returning in mid-shift for lunch or personal business). Since some of the 1756 auto trips the DEIR estimates must logically be accounted for by non-commute trips, the actual vehicle occupancy among worker commute trips implicit in the DEIR trip generation would actually be even larger than the 1.37 persons per car occupancy rate noted above, that is already unrealistically high. Therefore, the DEIR's estimate of auto trip generation of the project must be significantly understated. If it is assumed that the employee's average vehicle occupancy on commute trips is a realistic 1.10 persons per vehicle and that there would be 100 non-commute auto trips to and from the site each day, the net auto trip generation for the Project would be 2282, 30 percent higher than the 1756 trips the DEIR estimates.

The entire traffic analysis should be redone, factoring the August distribution center data to account for the additional traffic resulting from monthly variations in retail demand (which would logically alter truck and auto traffic at the distribution center) and also adjusting the auto trip generation to reasonably account for total employee commute traffic and other non-commute traffic.

The DEIR Fails To Analyze Residential Traffic Impacts of the Project

Many of the streets that would carry project traffic are residential in character. The entirety of the DEIR traffic analysis is focused on congestion, delay and levels of traffic service (LOS). No attempt has been made to estimate, disclose and mitigate the Project's traffic impacts on residential quality of life along the affected streets. The City of Merced adopted Neighborhood Traffic Calming Guidelines in January 2008. The DEIR makes no effort to evaluate whether Project traffic conforms to or conflicts with the goals and policies of the adopted traffic calming guidelines. The DEIR is deficient in its failure to address those issues.

The DEIR's Analysis of Truck Traffic Appears Flawed

The basis of truck trip distribution seems inconsistent with the service area of the Project. The DEIR states on page 4.11-21 that "the direction of approach and departure for project trips of the proposed Wal-Mart Distribution Center were estimated bases on the regional distribution of residences in Merced County and around the study area". However, the distribution of the Center's truck traffic would logically be more greatly affected by other factors – the locations of the nearest other Wal-Mart Distribution Centers and the locations of the Wal-Mart

stores in the area the Merced Center is closest to. Since, according to DEIR page 3-4, the nearest other distribution centers are Porterville to the South and Red Bluff to the north, the pattern of outgoing truck shipments would be dictated by the locations of the Wal-Mart stores in an area extending about half-way to Porterville (in other words, extending about 65 miles south) and extending about half way to Red Bluff on the north (in other words, extending about 125 miles north), extending to the Pacific Coast on the west and an unspecified distance to the east. While there is some logic to the DEIR's assumption that most trucks would approach and depart the Project area via SR 99 or SR 152, there is no guarantee that project traffic and trucks approaching and departing the Project area via SR 99 to and from the north would use the Mission Interchange and Campus Parkway between SR 99 and the site. Even though the Project proposes to take all its access on the south side (from Gerard Avenue), there is no guarantee that traffic to and from the north on SR 99 will not transition from Gerard Avenue to E. Childs Avenue, taking the more direct route to/from 99 north via the E. Childs interchange. The DEIR should analyze the more realistic probability that traffic between the site and SR 99 will be split between Campus Parkway and E. Childs and assess impacts accordingly.

There Is No Apparent Connection Between the DEIR Traffic Study and the DEIR Air Quality Analysis

The traffic assumptions input to the URBEMIS air quality model are not documented anywhere in the traffic section of the DEIR or its Appendix (E). The DEIR must document a direct quantified relationship between the traffic analyses and the traffic estimates assumed in the air quality modeling.

Project Site Access Is Not Evaluated in the DEIR

Although Project access is limited to two points, both intersecting Gerard Avenue, the DEIR does not include any analysis of the Project's access intersections. Such an analysis should be provided.

Although the project description claims that the Project will provide a parking area for trucks that arrive at hours when the Project's receiving gates are closed and the traffic study, in Section 4.9 of Appendix E, hints at the truck parking problems in the area when trucks bringing inbound goods arrive when receiving gates are closed, the Project site plan in the DEIR shows no such parking area. The reality is that Wal-Mart has little control over the arrival times of trucks owned or contracted-for by shippers of goods from distant points of the country or overseas. Such trucks tend to frequently arrive when receiving gates are not open, and when that happens, truckers will normally park to wait in the area, often parking in inappropriate locations such as residential neighborhoods. The

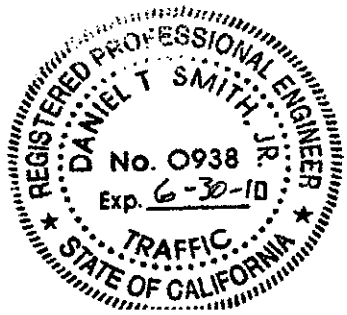
DEIR should explicitly identify an on-site parking area for off-hours arrivals or disclose the off-site truck parking condition as a potentially significant impact.

Conclusion

Based on all of the points noted in detail above, we are convinced the DEIR traffic analysis of the Project's significant impacts and mitigation needs is inadequate. The traffic analysis should be completely redone in light of all of the above comments and observations herein and the DEIR should be recirculated in draft status.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil)
California No. 938 (Traffic)
Nevada No. 7969 (Civil)
Washington No. 29337 (Civil)
Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Department of Transportation, 1979.

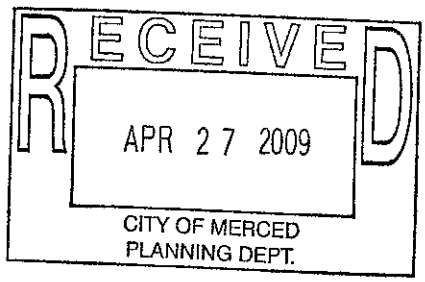
Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

EXHIBIT 3



April 27, 2009

Memo

To: Tom Lippe, Lippe Gaffney Wagner LLP

From: Philip King, Ph.D.

Re: Comments on DEIR for proposed Wal-Mart Distribution Center in Merced, CA

Attached: Curriculum Vita

I have examined the DEIR for the proposed Wal-Mart Distribution Center in Merced, CA and have several questions and comments.

1. The DEIR has virtually no discussion of Wal-Mart's future plans and how this distribution center fits into these plans. It seems reasonable to assume that Wal-Mart's plan to build a new distribution center also reflects its continuing expansion in California, in particular the north central valley. However there is no discussion of future stores or the role that this distribution center will play. Clearly, Wal-Mart is already servicing current retail operations in the area. Wal-Mart has already announced plans to build new retail stores in a number of locations which would be serviced by this center, for example in Tracy, Clovis, Sonora, etc., and a number of other stores have been discussed in the media. Yet this EIR only discusses the distribution center servicing existing stores.

a. As Wal-Mart expands, how will this affect the distribution center and the analysis contained in the EIR?

b. Are there any guarantees that traffic, air quality and other impacts will not be much more severe than discussed in the EIR due to Wal-Mart's continued expansion?

c. How can an EIR simply ignore future expansion? This is inadequate.

The full environmental impacts, traffic, air quality, noise, urban decay, etc., are all **directly** related to the volume of business that will be generated by this distribution center and the volume of business is directly related to the number of stores that this distribution center will service. Yet, the EIR is vague about these issues. It refers to full build-out, but when one examines the DEIR carefully, many of the estimates made are based on servicing the 49 existing stores. For example, in Table 4.3-7 on page 4.2-36, the DEIR states that:

"4. It is assumed that the average trip distance for all 322 outbound delivery truck trips would be equal to the average trip distance (in the San Joaquin Valley Air Basin) from the proposed distribution center to the 49 existing Wal-Mart stores that would be served by the Merced Distribution Center..." (Emphasis added.)

And it goes on to say that estimates:

"...are based on existing conditions data provided by Wal-Mart for the 49 existing stores that would be supplied by the Merced Distribution Center..."

This statement implies that the DEIR only considered current retail operations, but CEQA requires an analysis of "reasonably foreseeable" future retail operations if such information is relevant to potential environmental impacts, as it clearly is here.. This does not mean the exact locations of every future store, but at a very minimum it does mean the following:

a. An estimate of the number of retail stores (and total retail square footage) that this distribution center will service at full build-out;

b. A reasonably accurate estimate of the number of Supercenters that this distribution center is expected to service at full build-out.

c. A list of planned, proposed and anticipated new stores that would be serviced by this distribution center.

Urban Decay

2. I am concerned that the DEIR contains no analysis of potential urban decay impacts. There is a very brief discussion of potential retail impacts (see below) but no mention of the most salient fact here—that **this distribution center is very close to a residential development with hundreds of homes/finished home sites**. It is unusual to locate a large distribution center in such close proximity to a significant residential area. The EIR points out that the area is zoned for industry. However, not all industries are alike in their impacts. According to the EIR, there will be close to 800 truck trips per day (equivalent, on average to a truck either coming or going more often than once a minute) within a few hundred feet of existing residences. Moreover, these truck trips will not be limited to business hours, but will be 24 hours a day (as the EIR's analysis itself indicates in a traffic study of a similar center, not located in such close proximity to housing) implying truck trips every few minutes in the middle of the night with accompanying noise, pollution, etc..

3. Different industrial uses can have substantially different impacts on local residences, so one cannot dismiss the impacts on local neighbors merely because land deemed industrial was placed adjacent to land planned for residences.

4. In the economics profession there is a long and well established literature on the impacts of traffic, noise, air pollution and other industrial operations on local housing prices and on the potential for future development. As one would expect, all of these impacts have a negative impact on housing markets and prices. Even if the air, noise and other requirements for CEQA are met, an urban decay analysis should have been conducted to examine the cumulative effects of all of these actions on the fragile housing market adjacent to the proposed site.

5. Further, the Merced housing market is one of the worst in the State and the country, with a very high foreclosure rate. I visited the residential developments near the proposed site. There were an unusually high number of "For Sale" signs

as well as a number of homes that appeared abandoned—no signs of occupancy, lawns had not been mowed for months, etc. Unfortunately, these are the classic signs of a neighborhood where foreclosures are rampant.

6. It is clear from even a casual observation that these developments are struggling. Streets have been constructed, fire hydrants and sidewalks have been built and electrical/water hookups can be seen in front yards of vacant lots. This is not a healthy sign—clearly housing development was stopped dead in its tracks as the housing market turned down nationwide. It will be challenging to resurrect these projects and the addition of a distribution center with roughly 800 truck trips per day will make it extremely difficult. Consumers who wish to buy homes have many alternatives in today's over supply and they will not wish to locate in this area. Consequently, if the distribution center is built, housing prices will continue to fall in the area even after the rest of the market recovers. This, in my professional opinion, will eventually lead to urban decay and was not analyzed in the EIR. The hundreds of vacant lots in the area can easily become a center for crime and drug trade, especially as more houses are foreclosed on and become abandoned.

7. Lower housing prices also create a vicious circle for current tenants since it will be harder for them to refinance their houses or work with their lenders.

8. Even if the DEIR concludes that air, traffic, noise and other environmental impacts are less than significant in terms of CEQA standards, the cumulative urban decay impacts of these effects on a local housing market which is already fragile, could be significant. I have sufficient concerns here that I believe it should have been examined in the EIR.

Potential Urban Decay as a Result of Retail Expansion

9. The EIR briefly mentions the possibility that the distribution center could cause urban decay through the development of new retail centers, but it dismisses urban decay entirely while providing no evidence for this dismissal. The introduction to the DEIR makes it clear that there is some potential for urban decay:

"...it is possible that the project could support the operation of new Wal-Mart retail stores. Depending upon where retail stores are built, it is possible that such construction could contribute to urban decay in a nearby community." (DEIR, Introduction, p.3)

However, as pointed out above, the DEIR gives no estimates or analysis of the expansion of retail in the area and hence how can one adequately evaluate potential urban decay? Clearly a distribution center is an integral part of Wal-Mart's retail operations and hence an integral part of any potential urban decay impacts. At a minimum Wal-Mart should disclose how much new retail this distribution center will support.

10. It also is worth mentioning that California's central valley has been hit hard by the downturn in the housing market, drought, and corresponding downturn in

retail, at both a national and local level. Thousands of retail stores are closing nationwide. Given this background, it is even more imperative that a proper analysis of urban decay needs to be provided.

11. Further, since urban decay is generally a local impact, a complete and adequate analysis should disclose specific sites or plans for future stores, yet this DEIR does not even discuss future stores which are already in the public record. Without this information it is impossible to conclude that urban decay is not an issue or for the public to provide substantial evidence of potential urban decay—this is inconsistent with CEQA and good planning.

12. Although economic/fiscal impact is not part of the CEQA process, much has been made of the thousand or so jobs that Wal-Mart claims this project will create. I would like to point out that it is likely that most of these jobs will go to people who live outside Merced. While the EIR points out the jobs that could potentially be created, there is no mention of increased police/enforcement/maintenance costs of having 800+ trucks a day come through town. In particular, roughly half of these truckers will be independent truckers delivering supplies to the distribution center. Wal-Mart has much less control over these operators. If other distribution centers are any guideline, many of these trucks will park on the road while drivers (sometimes with families) sleep, wait for a time to off-load their goods, etc. In addition to creating potential hazards for Merced's residents, the abatement costs to local police and other City of Merced employees will be significant and should be factored into an analysis by the City, even if CEQA does not require such an analysis.

13. The DEIR appears to have little mitigation for many of the issues raised above. The preparers of the DEIR seem to dismiss many serious issues. If these issues are not serious, as the DEIR claims, then placing mitigation and penalties for noncompliance would not place a burden on Wal-Mart or the project. However, if these issues are indeed serious, such measures would help with compliance. I think it is foolish to build this distribution center so close to schools and residences, but should the project move forward, strict limits must be placed on such things as trucks parking on the side of the road and trucks idling for hours on end. Merely giving assurances that such things will not happen is insufficient and, frankly, dishonest. The City of Merced should demand enforceable guarantees with penalties which are enforceable—otherwise the City and its residents will bear the expense.

In short, it is my opinion that there is a substantial and significant possibility for urban decay to occur as a result of this project. First and foremost, the neighboring residential area is already vulnerable as discussed above. Second, I also have concerns about retail urban decay impacts that would result as a direct result of this project. Further, I am concerned that the DEIR fails to actually analyze the true build-out of the project once these retail stores are built. The failure of the DEIR to address all of these issues properly is a serious omission.

PHILIP G. KING

Economics Department, San Francisco State University

E-mail: pking@sbcglobal.net

Cell: (530)-867-3935

Education:

July, 87 **Ph.D. in ECONOMICS** **CORNELL UNIVERSITY**
Fields: Applied Microeconomics, Economic Development, International Economics
Dissertation: Bargaining between Multinational Corporations and Less Developed Countries over Mineral Concessions Contracts.

May, 78 **B. A. in PHILOSOPHY & ECONOMICS** **WASHINGTON UNIVERSITY**
Nominated to Omicron Delta Epsilon (Economics Honor Society.)

Work Experience:

1/06-present	**ASSOCIATE PROFESSOR**	**SAN FRANCISCO STATE UNIVERSITY**
9/02-12/05	**CHAIR, ECONOMICS DEPARTMENT**	**SAN FRANCISCO STATE UNIVERSITY**
9/93-present	**ASSOCIATE PROFESSOR**	**SAN FRANCISCO STATE UNIVERSITY**
9/87-9/93	**ASSISTANT PROFESSOR**	**SAN FRANCISCO STATE UNIVERSITY**
9/83-5/85	**ASSISTANT PROFESSOR, ECONOMICS**	**S.U.N.Y. at CORTLAND**

Policy Papers prepared for Government and Non-Profit Organizations:

Contributed Economics portion of Regional Sediment Master Plan for BEACON (Beach Erosion Authority for Clean Oceans and Nourishment—Santa Barbara and Ventura Counties), February 2009, with Noble Consultants.

ESTIMATING THE POTENTIAL ECONOMIC IMPACTS OF CLIMATE CHANGE ON SOUTHERN CALIFORNIA BEACHES, prepared for the California Energy Commission (Energy Commission) and the California Environmental Protection Agency (Cal/EPA), with Linwood Pendleton, Craig Mohn, D. G. Webster, Ryan K. Vaughn, and Peter Adams.

Economic Analysis of a Proposed Ordinance to Limit Grocery Sales at Superstores in Stockton, California (with Sharmila King), prepared for the City of Stockton. May 2007.

Contributed Economics Portion of: "The ARC GIS Coastal Sediment Analysis Tool: A GIS Support Tool for Regional Sediment Management Program: White Paper, Draft Technical Report for U.S. Army Corps of Engineers, by Ying Poon (Everest Consultants), Los Angeles District, April 2006.

Contributed Economics Portion of: "Coastal Sediment Analysis Tool (CSBAT) Beta Version--Sediment Management Decision Support Tool for Santa Barbara and Ventura Counties," Draft Technical Report for U.S. Army Corps of Engineers, by Ying Poon (Everest Consultants), Los Angeles District, June 2006.

"The Economic of Regional Sediment Management in Ventura and Santa Barbara Counties," prepared for the California State Resources Agency, Final draft (refereed) , Fall 2006, prepared for the Coastal Sediment Management Work group (CSMW).

"The Potential Loss in GNP and GSP from a failure to Maintain California's Beaches," with Douglas Symes, prepared for the California State Resources Agency, 2002, http://userwww.sfsu.edu/~pgking/pubpol.htm.

"The Economic and Fiscal Impact of Beach Recreation in San Clemente," presented as part of Hearings on Congressional Appropriations for California Coastal Projects, US House of Representatives, April 2002. Also completed similar projects for Cities of Carlsbad, Carpinteria, Encinitas, and Solana Beach.

San Francisco's Economic Growth 1995-2000: The Fiscal Health of the City and Implications for the Future," prepared for the San Francisco Committee on Jobs Summer 2001. This report was widely cited in the San Francisco press including front page articles by the *Chronicle* and *Examiner*.

"The Fiscal Impact of Beaches in California," prepared for the *Public Research Institute*, San Francisco State University, Fall 1999, available at http://online.sfsu.edu/~pgking/beaches.htm.

"An Economic Analysis of Coastal Resources on the Majuro Atoll," prepared for the *United Nations Development Program* Project MAS 95/001/D01/99 and the *Majuro Atoll Local Government*, September, 1997.

"The Economic Impact of California's Beaches," prepared for the *Public Research Institute*, San Francisco State University, Summer, 1997 (with Michael Potepan.)

"The Economic Impact of California's Ports and Harbors," prepared for the *Public Research Institute*, San Francisco State University, Spring, 1997 (with Ted Rust).

Books: *International Economics and International Economic Policy*, 5th Edition, McGraw-Hill, 2009.

International Economics and International Economic Policy, 4th Edition, McGraw-Hill, 2004.

International Economics and International Economic Policy, 3rd Edition, McGraw-Hill, 2000.

International Economics and International Economic Policy, 2nd Edition, McGraw-Hill, 1995.

International Economics and International Economic Policy, 1st Edition, McGraw-Hill, 1990.

Published Papers:

"Potential Loss in GNP and GSP from a Failure to Maintain California's Beaches", Fall 2004, with Douglas Symes, *Shore and Beach* (**Refereed**).

"Do Beaches Benefit Local Communities?: A Case Study of Two California Beach Towns," Fall 2002, *Proceedings of the Conference on California and the World Oceans.*

"The Economic Value of California's Beaches," Fall 1997, *Proceedings of the Conference on California and the World Oceans* (with Michael Potepan.)

"Negotiations over Mineral and Petroleum Contracts in Developing Countries: a new explanation," Winter 1987, *Journal of Economics and International Relations.*

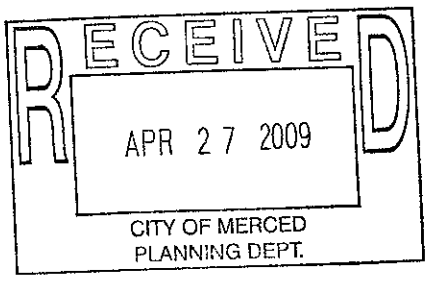
"A Political Theory of MNC-LDC Negotiations over Mineral Concessions Contracts," 1988, *International Interactions.*

Public Testimony:

Testified to Stockton City Council on a proposed Big Box Ordinance, May 2007

Testified and prepared report to the California Coastal Commission in San Diego on the economic loss due to a proposed seawall at Las Brisas, Solana Beach, California.

EXHIBIT 4



Visual Impact Analysis LLC

P.O.Box 1926
Novato, CA 94948

Tel: 415 897 5505
Fax: 415 897 3373

April 27, 2009

Tom Lippe
Lippe Gaffney Wagner LLP
329 Bryant St.; Suite 3D
San Francisco, CA 94107

RE: REVIEW OF VISUAL RESOURCES SECTION DRAFT EIR: PROPOSED WAL-MART REGIONAL DISTRIBUTION CENTER

Dear Mr. Lippe:

At your direction, a review of the visual resources analysis, contained in the Draft Environmental Impact Report: Proposed Wal-Mart Regional Distribution Center, was conducted to determine conformance with the environmental evaluation requirements of the "CEQA Guidelines." The review comprised information from the following materials from the Draft EIR:

1. Chapter 3. Project Description
2. Chapter 4.13. Visual Resources
3. Chapter 6. Cumulative and Growth-inducing Impacts

PROJECT DESCRIPTION

According to Section 15124, Project Description, of the CEQA Guidelines, "....description of the project ....should not supply extensive detail beyond that needed for evaluation and review of the environmental impact."

The Project Description does not appear to provide sufficient information to conduct an adequate visual analysis and to determine the level of environmental effects from the proposed development. Significant and visually important details and components have been omitted or are unclear. They include, but are not limited to, the following:

Site Lighting. Although the type (metal halide lamps), height (45 feet), and average lighting level (0.5 foot candle) of the lamps are provided, no further details are provided that could have implications upon visual effects such as the type of poles (e.g., metal which could reflect), extent of shielding for the lights, orientation and the amount of coverage. While the average lighting level is given (presumably over the entire 230-acre site), it is unclear if there would be lamps that are significantly brighter than others. The Project Description does indicate that the lighting "....has not been designed based on a uniformity ratio." There is also no mention of possible lighting around loading bays.

Number, Location and Operation of Lights. The potentially large number of lighting poles and lamps and the location of the lights are not provided for a site that is 230 acres, including 1.1 million square feet of warehousing distribution structures. These details could have a bearing upon resultant visual impacts. What would be the operating hours of the lighting for the 24-hour facility?

Structures. The color of the warehouse and distribution structures (siding and roof tops) should be clarified. The photosimulations (along with existing buildings to the north of the project site) indicate that the color is likely to be white. The color will have a bearing upon the reflectivity of the structures during both day and night conditions.

Paving. The type of paving has not been detailed. Lighter versus darker paving could affect the amount of light reflectance, particularly during evening/early morning operations.

Fencing. No description of the fencing has been provided. Characteristics such as the type (e.g., chain link; chain link with slats; fine chain link), height, and color could have a bearing upon potential visual impacts.

Landscaping. While the Project Description indicates that the City would require a landscaping plan, that would include tree planting, as a condition of approval, not even preliminary details have been provided in this chapter of the Draft EIR. If the Project Description is to serve as the basis for the analysis of potential impacts and identification of mitigation measures, at least some further information (e.g., type and possible height of trees, planting intervals) needs to be provided.

VISUAL RESOURCES

The Visual Resources section of the Draft EIR has a number of shortcomings, resulting from the lack of detail and clarity, to adequately and fully disclose the potential impacts resulting from implementation of the proposed project. The lack of disclosure precludes the identification of meaningful and relevant mitigation measures and the opportunity for the public to make comments about the potential visual effects of the project as required by CEQA.

Following are comments based upon the review of the visual resources analysis.

Extent of Sensitive Viewers and Their Location. The discussion of the existing viewshed and the number and location of potentially sensitive viewers that might be affected by the project and their location is very general. Residences around the project site are noted, but not their density or approximate number. The distance of the project site facilities from the residences is not provided. Without this information, it makes it difficult to discern where the greatest impact to the greatest number of sensitive viewers might be and where the greatest amount of visual impact (e.g., areas of high illumination) might occur within the site and, ultimately, determination of whether an impact is significant or not.

Photosimulations. Inexplicably, the locations used to prepare the photosimulations for the visual resources analysis were all taken from sites adjacent to the project site. As part of visual analysis, view locations are typically selected based upon factors such as view sensitivity, public access, and land uses in which a greater number of viewers with the greatest sensitivity and duration of views are present. There

is no indication that the higher density residential areas to the west of the project site were considered or "represented" as part of any of the key viewpoints.

The photosimulations themselves do not include any perimeter fencing, landscaping, or lighting that should have been included as features to further give the reviewer a better idea of the actual visual appearance of the project facilities. Furthermore, the images used as the basis for the subsequent preparation of the photosimulations appear to have been taken with a "wide angle" lens. Use of a wide-angle lens setting would result in emphasis upon foreground detail and make the size of more distant details (i.e., structures) appear to be more distant than they would normally appear to the human eye.

Although the facility would be operated for a 24-hour period and extensive lighting would be installed at the site, no evening/early morning photosimulations were prepared as part of the analysis (see further discussion below under Impact 4.13-3.

Impact 4.13-2 Substantial Degradation of the Visual Character or Quality of the Site and Surroundings. There is determination that a potentially significant impact would occur upon the existing visual character of the site and surroundings and that implementation of mitigation measure 4.13-2 would result in a less than significant impact.

The analysis of the impact is very general for what is intended as a project-level CEQA document. It does not discuss the specific visual changes to the project and correlate them with the various and possibly varying views affected within differing locations in proximity to the site. Mitigation measure 4.13-2 (which should not be treated as a true "mitigation measure" since it's a requirement already mandated by the City) is a summary of measures that may or may not adequately address these possibly differing visual effects from a given view location (e.g., lighting or proximity to activities such as loading dock, truck traffic as discussed in the impact analysis). A preliminary landscaping plan should have been included as part of the proposed project description so that a potential impacts could be disclosed. As indicated in the Project Description comments, above, there are other factors (e.g., fencing, location of lights, color of structures) that may have implications associated with effects upon visual resources and have not been considered as part of either the proposed project or mitigation measure 4.13-2. Therefore, implementation mitigation measure 4.13-2 may result in a significant impact.

Impact 4.13-3 Create Substantial Light or Glare That would Affect Nighttime Views. Previously discussed in the Project Description comments, above, insufficient detail has been included to conduct an adequate analysis of the potential effects of light and glare that would affect nighttime/early evening views. As stated in the Draft EIR (page 4.13-14), "....except as noted above [very general description of height and light type], the project applicant has not provided any specific information that addresses potential lighting issues...."[underlined for emphasis]. Although the document concludes that outdoor lighting would result in a potentially significant impact, it does not identify the specific impacts nor does it discuss them as they may affect viewers within proximity to the site. Such specificity would affect the type/detail of mitigation measures that would be recommended to address the potential visual effects.

Examples of possible impacts from lighting could include reflectance off structural surfaces (walls and roofing since the lights are higher than the maximum 40-foot height of the buildings) and paving, lighting through gaps in landscaping (landscaping plan nothwithstanding given the interval between planted trees), glare and lights from trucks entering and exiting the facilities, and light from loading bays. Furthermore, while the effects of "sky glow" (identified as a significant impact) is briefly mentioned in

the "Cumulative and Growth-inducing Effects" chapter of the Draft EIR, the possible impact (and possible mitigation) was not identified or discussed as part of the Visual Resources section.

The preparation and submittal of a lighting plan (mitigation measure 4.13-3) is, in effect, "putting the cart before the horse." Such a plan (conceptual or preliminary) should have been included as part of the proposed project description so that its features and effectiveness could be disclosed and reasonably evaluated. Without at least some general information about the number of lights, range of illumination, orientation, location, and surrounding landscaping, any specific effects upon sensitive viewers cannot be addressed and applicable mitigation measures identified. The conclusion that impact 4.13-3 can be reduced to a less than significant impact by mitigation measure 4.13-3 is conclusory and not supported by any evidence.

CUMULATIVE IMPACTS

The cumulative impacts discussion includes a list of projects within the area that will lead to significant and unavoidable impacts. Although a list of projects current and future projects has been included, there is no direct discussion of the proposed project and its specific addition to the cumulative impacts that would occur in the area. In addition, there is no mention of the future Campus Parkway and other roads within the area and the additional light and glare that would be added as part of cumulative effects. Furthermore, sky glow is specifically identified as a significant cumulative impact. With the 230-acre size of the site, no evaluation of what could be high amounts of added sky glow in an otherwise relatively dark area has been included nor have any mitigation measures been identified to reduce the amount of cumulative sky glow contributed by the proposed project.

Sincerely,

Digitally signed by Harry Benke
DN: cn=Harry Benke, o=Visual Impact Analysis LLC, ou, email=hbenke@visualimpactanalysis.com, c=US
Date: 2009.04.27 13:08:28 -07'00'

Harry Benke
Visual Impact Analysis LLC

EXHIBIT 4A

Visual Impact Analysis LLC

P.O.Box 1926
Novato, CA 94948

Tel: 415 897 5505
Fax: 415 897 3373

Qualifications/CV

Harry Benke
Partner, Visual Impact Analysis LLC

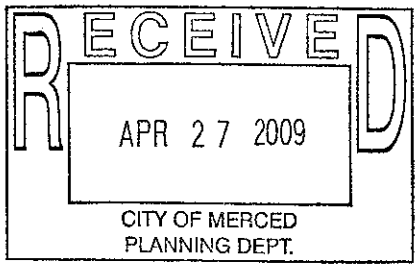
Instructor - Three-Dimensional Computer Modeling, Computer Arts Institute, San Francisco
Applied Mathematics - Drexel University, Philadelphia Pa.
Sculpture - California College of Arts and Crafts, Oakland, Ca

Harry Benke is the Project Director for the photosimulation services provided by VIA. Mr. Benke personally executes, or oversees the execution of, all photosimulations. He is available as necessary to attend public hearings, council meetings, and to provide consultation regarding VIA's techniques and conclusions.

Mr. Benke has extensive experience in the general issues of project development, and in the specific issues of visual impact. His years of computer programming experience, including consulting, and work as an instructor in 3-D computer modelling at the Computer Arts Institute of San Francisco combine with his twenty years of experience in commercial and residential development to make him uniquely qualified to understand, address, and accurately simulate, matters of visual impact significance.

Mr. Benke has participated in many EIR's, Environmental Assessments, Design Reviews, and Specific Plans regarding visual impacts. From consulting at the IMF on digital photography , security and networking, to helping develop the design of the Old Navy brand for the Gap, Inc., to producing environmental visual simulation for I.M. Pei , (Pei, Cobb, Freed Partners) and for George Lucas, Mr. Benke has a proven track record.

EXHIBIT 5



4/27/09
Tom Lippe
Lippe Gaffney Wagner LLP
329 Bryant Street, Suite 3D
San Francisco, CA 94107

Dear Mr. Lippe:

My team (including Dan Matross and Michel Gelobter – I have attached their CVs) has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Merced Wal-Mart Regional Distribution Center with respect to the impact analysis and mitigation measures for greenhouse gasses. Overall, there are remain four major areas of concern with respect to the DEIR's treatment of the global warming impacts of the proposed facility:

1. Comprehensiveness: did the DEIR adequately account for and quantify all sources of carbon emissions associated with this project?

2. Quantification: Are the mitigations quantifiable and, if so, how?

3. Offsets: Are the offsetting strategies contained in the DEIR valid?

4. Other Mitigations: What is the interaction between greenhouse gas mitigation and the mitigation of other air pollutants?

The remainder of this letter addresses each of these concerns.

1. Comprehensiveness: did the DEIR adequately account for and quantify all sources of carbon emissions associated with this project?

Tables 4.2-9 and 4.2-10 represent the present DEIR's summary of the emissions related to construction and operation of the distribution center. These tables are missing two major emissions components:

A significant fraction of the global warming impact of construction comes from the greenhouse gasses embedded in the construction materials themselves. The cement, metals, accessories of the warehouse itself take energy, and therefore greenhouse gasses, to make. The Energy Information Administration[1] estimates that the embedded energy in retail and warehouse building construction amounts to approximately 293 kilowatt-hours per square foot. Assuming US average emissions per kilowatt-hour, each square foot of a constructed warehouse would generate approximately 0.25 tons of CO2 per square foot of construction, in addition to the generation quantified in table 4.2-9.

[1] Energy Information Administration (October, 1998). "A Look at Commercial Buildings in 1995: Characteristics, Energy Consumption, and Energy Expenditures." Report for the Department of Energy.

1904 Franklin Street, Suite 600, Oakland, CA 94612
Phone: 510-439-5006; Fax: 775-249-6582

An overwhelming amount of the operating footprint of the distribution center is contributed by the greenhouse gasses embedded in the goods being distributed through the center.

Like construction materials, goods and services embed a significant amount of greenhouse gas emissions as well. The average durable good in the U.S. economy embeds between 500 and 600 grams of CO2-equivalent per dollar of retail cost.

The DEIR does not contain information on the estimated contribution of the Wal-Mart distribution center to regional retail sales. However Wal-Mart's 3,550 domestic stores generated $239.5 billion of the company's revenue during fiscal year 2008 (Wal-Mart 10-K filing[2]), or an average of almost $700 million/year in sales per store. The DEIR states that the distribution center will serve 49 stores. The greenhouse gasses embedded in inventory flowing through this facility may be upwards of 18 million metric tons of CO2 – over 1,500 times more than projected in table 4.2-10 from the operation of the facility.

As part of planning for the placement of new stores, Wal-Mart considers opportunities for growth in retail purchasing. The assessment of the global warming impacts of the distribution center can determine how much growth in demand for retail goods will be stimulated by the new facility and the stores it serves. That assessment can be used to determine how much of the total goods-related emissions is incremental to existing goods-related emissions.

One additional sources of emissions is omitted – hydro-fluoro carbon releases from air conditioning and other transportation cooling sources. These typicall contribute approximately 2% to transportation-related emissions[3]. HFC releases in cooling transportations are not included. These emissions have a small share in the total greenhouse gas emissions, to have a full picture of the greenhouse gas emissions related to transport, these emissions could be included.

Finally, it will be important in estimating emissions to use the latest models to ensure that fuel-related emissions include well-to-pump emissions as well. Best practices here would involve use of the GREET model for both truck and passenger transport.

2. Quantification: Are the mitigations quantifiable and, if so, how?

The DEIR claims that "the size of the associated GHG reduction [from mitigation measures] cannot be quantified at the time of writing this EIR." This is not correct. For each mitigation listed, we have suggested ways of calculating the net impacts on greenhouse gas emissions. Some of the proposed mitigations reference mitigations for reactive organic gasses (ROG) and nitrogen oxide (NOX) emissions. These are reviewed under section 4 below.

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[2] http://www.sec.gov/Archives/edgar/data/104169/000119312508071085/dex13.htm

[3] 'Greenhouse Gas Emissions from the US transportation sector 1990-2003' (:http://www.epa.gov/otaq/climate/420r06003.pdf).

- Mitigation Measure 4.2-6a references Mitigation Measures 4.2-1a and 4.2-1b.

  See discussion under section 4 below.

- Mitigation Measure 4.2-6b: *Ensure On-Site Yard Trucks are Maintained and Meet On-Road Truck Emissions Standards. The applicant shall ensure that all on-site "yard trucks" have ARB-approved on-road truck engines that meet onroad truck emissions standards and are maintained in proper working condition according to manufacturer specifications.*

  Greenhouse gas emissions from truck operations are almost wholly dependent on the fuel efficiency of operations. In turn, the role of maintenance in determining truck fuel efficiency is well understood. The DEIR can quantify this mitigation by comparing the fuel efficiency and GHG emissions in maintained vs. non-maintained truck fleets. The difference represents the potential magnitude of the mitigation.

- Mitigation Measure 4.2-6c: Implement Mitigation Measures 4.2-2a, 4.2-2b, 4.2-2c, and 4.2-2d.

  See discussion under section 4 below.

- Mitigation Measure 4.2-6d: Implement Effective Mitigation Measures. The DEIR proposes the following additional measures:

  - *Install solar panels in all available areas of the project site, including the roof of the warehouse building, the buffer areas surrounding the paved truck yards and employee parking lot, and covered parking areas, walkways and outdoor areas, to supply electricity for on-site use.*

    This impact is easily quantifiable. The DEIR should project how much utility-purchased electricity will be avoided by the proposed solar installations and calculate the GHG emissions embedded in that avoided electricity.

  - *Determine which local electricity provider, Pacific Gas and Electric Company or Merced Irrigation District, produces electricity with the lowest CO2-equivalent output emission rate (lb/MWh) and select this provider to meet remaining electricity demand of on-site operations.*

    These utilities today produce reports on the GHG-intensity of the electricity they sell. The DEIR should perform this comparison so as to quantify the scale of this potential mitigation.

In addition, PG&E sells "Climate Smart" energy to commercial customers. This energy is carbon-neutral thanks to a combination of renewable energy sources and high-quality carbon offsets. So Wal-Mart has the choice to buy carbon-neutral electricity, an impact that is easily quantified as a total avoidance of electricity-consumption-related emissions.

- *Retain the portion of the existing almond orchard located between the proposed truck gate and future Campus Parkway.*

  In order to quantify the effects of the proposed greenhouse gas mitigation measures related to the existing almond tree orchard, a stock-change approach can be used. A stock change approach assumes that any change in the carbon contained by the biomass of the orchard (the "stock") is an emission. To use this approach, an orchard-specific baseline must first be established. An orchard-specific baseline consists of an accounting of the current carbon stored within the biomass of the orchard, both above and below ground. In this context, a projection of carbon sequestration associated with future growth of the trees in orchard in absence of the proposed facility can also be considered part of the baseline because it represents the change in stock in absence of the facility. Net greenhouse gas emissions associated with partial harvest and potential mitigation from continued growth can then be determined from comparison from the orchard-specific baseline.

  Although the California Climate Action Registry (CCAR) has published neither the California Urban Forestry Greenhouse Gas Reporting Protocol nor any agricultural forestry protocols as of April 2009, the CCAR Forest Sector Protocol version 2.1 can be adapted to calculate an orchard-specific baseline. For the purposes here, the operational boundaries of the orchard are defined as those outlined in the EIR. Per the Forest Sector Protocol, the required carbon pools for the baseline include (page 16) 1) Tree biomass 2) Standing dead biomass and 3) Lying dead wood. Because this is a working orchard, it can be assumed pending a visual inspection that standing dead biomass and lying dead wood are negligible and quantification need only focus on tree biomass, both above and below ground. The CCAR Forest Sector Protocol calls for measurements of tree diameter at breast height (DBH) for a representative sample of trees. These results can be used with a set of allometric equations to determine an estimate of standing live biomass in the trees[4]. For purposes here, the allometric equations in the protocol for Tanoak (Class *Magnoliopsida* Order *Fagales*) are closest to those for the Almond tree (Class

[4] It should be noted that allometric equations are species specific. A more accurate sampling method would be to dry and weigh a harvested tree in its entirety and multiply by the number of trees in the orchard.

Magnoliopsida Order *Rosales*) by taxonomy and tree form. The protocol allows such substitutions. The uniformity of an orchard by nature allows for a relatively small sample plot to be used (10-20 trees) with acceptable precision.

Projected growth and sequestration can be determined by doing a cross-orchard survey of the impacted orchard or a similar one based on stand age. The DBH from young, middle-aged, and mature trees can be used to create a growth curve based on input into the allometric equations. In turn, this can be used to determine the amount of carbon a given tree would have sequestered over its life if it had not been harvested –OR—the potential mitigation of a given tree if it is allowed to remain. This scenario assumes that almond production results in net-zero greenhouse gas emissions because almonds are nearly completely consumed within a few years of production. If fertilizer is used, that represents a potential N_2O emission associated with almond production, which can be quantified based on a rough estimate of amount and type of fertilizer applied.

Overall mitigation can then be determined. Carbon associated with trees harvested can be treated as an emission if it is disposed of directly and that emission can be discounted, per the rates outlined in the CCAR Forest Sector Protocol, if it is used for furniture, cabinets etc. The equivalent number of trees needed to be planted in order to mitigate greenhouse gas emission associated with harvesting the almond orchard can be determined either from methods contained in the new draft general Forest Sector Protocol (v 3.0) from CCAR or less formal general calculations from the U.S. EPA for sequestration associated with planting a medium growth coniferous tree raised in a nursery, then planted an urban/suburban setting and modified by expected survival over 10 years.

- *The applicant shall inventory all emissions of GHGs associated with operation of the project according to the most recently established methodologies of the CCAR or ARB.*

  The DEIR is correct in stating that the effect of this mitigation cannot be estimated a priori. The impact of inventorying can however be quantified post facto and the DEIR should proposal a monitoring protocol.

- Implementation of Mitigation Measure 4.2-1c and Mitigation Measure 4.2-2e.

  See discussion under section 4 below.

3. Offsets: Are the offsetting strategies contained in the DEIR valid?

The DEIR refers to offsets as part of mitigation, but does so without specifying where offsets will be used and how they will be qualified and quantified. Offsets can indeed be part of an integrated mitigation strategy, but to be valid the DEIR should specify the standards that will guide their development and/or procurement.

A number of potential offsetting standards could apply and the DEIR should review those and propose one or more that will be used. This choice in turn will allow reviewers to evaluate whether the offset strategy is appropriate as mitigation.

The key criteria for offsets for this facility would be enumerated in the standards chosen for the DEIR, but would necessarily include:

- Additionality – the extent to which the offsets go beyond "business-as-usual" and represent an incremental investment in emissions reductions (UNFCCC, 2008[5])

- Offset purchases must be verified as real and assured to be permanent. All offsets must be calculated using scientifically rigorous methodologies, must be verified and validated by independent third parties, have clear ownership, be registered, and be tracked. The emission reductions must have a permanent impact and cannot simply be moving emissions elsewhere. In short, they must be real.

A number of national and international standards for offsets exist that meet these standards, including the California Climate Action Registry, the Voluntary Carbon Standard, The Gold Standard, and the Clean Development Mechanism. Additional criteria and standards are emerging as part of the process of implementing the California Global Warming Solutions Act as well.

4. Other Mitigations: What is the interaction between greenhouse gas mitigation and the mitigation of other air pollutants?

As mentioned above, the DEIR relies on mitigations being used for ROG and NOX to achieve some mitigation for greenhouse gasses. Specifically, the DEIR cites mitigations 4.2-1a-c, and 4.2-2 a-e as achieving some measure of mitigation for GHGs as well. For each of these, this section will address two additional questions:

i. Can the impact of these ROG and NOX mitigations on GHGs be quantified?

ii. Are the ROG and NOX mitigations likely to be mitigatory for GHGs?

a. Mitigation Measures 4.2-1a & 4.2-2a: Comply with SJVAPCD's Indirect Source Review Rule (Rule 9510).

[5] United Nations Framework Convention on Climate Change, "Tool for the demonstration and assessment of additionality" August 2008

This mitigation involves measures that include

- *" Exhaust emissions for construction equipment greater than 50 horsepower used or associated with the development project shall be reduced by 20% of the total NOX and by 45% of the total PM10 emissions from the statewide average as estimated by ARB.*

- *Methods employed by the applicant to reduce construction emissions to the degree noted above include using less polluting construction equipment, including the use of add-on controls, cleaner fuels, or newer lower emitting equipment"*

    i. Each of these measures can be quantified by measuring their relative impact on the use of fossil fuels like gasoline and diesel fuel in direct proportion to fuel efficiency gains or losses.. Measures that increase the fuel-efficiency of the relevant equipment will in fact be mitigatory of GHG emissions. Measures that decrease fuel-efficiency will not be mitigatory and will, in fact, aggravate GHG emissions.

    ii. Most of the measures that will be used under this mitigation are not likely to reduce GHG emissions. Present technology for reducing ROG, NOX and particulate fractions of emissions use techniques like engine gas regeneration (EGR) and particulate filters, each of which decreases vehicle and equipment fuel efficiency. These efficiency losses are well understood and can be quantified as part of the DEIR.

b. Mitigation Measure 4.2-1b: Implement Measures to Reduce Construction-Related Diesel Equipment Exhaust.

The table below answers the two key questions for each of the measures mentioned under 4.2-1b in the DEIR.

Mitigation components	Measurable?	Mitigatory?
Cease construction activity on forecasted Spare the Air Days.	Yes, as fuel unused on average number of Spare the Air Days per year	Definitely
Staging areas for heavy-duty construction equipment shall be located as far as possible from sensitive receptors. They shall be located on site and not be within 1,000 feet of the project boundary.	Not relevant as no emissions reductions are achieved	No

Mitigation components	Measurable?	Mitigatory?
Before construction contracts are issued, the project applicant shall perform a review of new technology in consultation with SJVAPCD, as it relates to heavy-duty diesel equipment, to determine what (if any) advances in emissions reductions are available for use and are economically feasible. Construction contract and bid specifications shall require contractors to utilize the available and economically feasible technology on a percentage of the equipment fleet, as determined by SJVAPCD.	Not as part of the EIR process, but during construction procurement	Depends on whether new technology saves fuel too.
When not in use, idling of on-site equipment shall be minimized. Under no conditions shall on-site equipment be left idling for more than 5 minutes.	Yes, as idling-related emissions avoided	Definitely
Prohibit the use of trucks with off-road engines to haul materials on-site. Use trucks with on-road engines instead	Yes, as the difference in fuel-efficiency between the 2 types of trucks	Depends on relative fuel-efficiency of different vehicles
Use alternate fuels and emission controls to further reduce NOX and PM10 exhaust emissions above the minimum requirements set forth in the ISR rule.	Yes, see section a immediately above	See section a. immediately above
Replace/substitute fossil-fueled (e.g., diesel) equipment with electrically driven equivalents (provided they are not run via a portable generator set).	Yes	Yes, because grid-derived electricity is more efficient than on-site fossil fuel based engines
Use ARB-certified alternative fueled engines in construction equipment. Alternative fueled equipment may be powered by compressed natural gas, liquid propane gas, electric motors, or other ARB-certified off-road technologies.	Yes	Definitely, these alternative fuels emit less GHGs
Provide commercial electric power to the project site in adequate capacity to avoid or minimize the use of portable electric generators and equipment.	Yes	Definitely (see 2 boxes above)
Limit the hours of operation of heavy duty diesel equipment and/or the amount of equipment in use at any one time.	Yes	No, the total use will not vary hence the GHG emissions will be the same.

c. Mitigation Measure 4.2-1c & 4.2-2e: Implement an Emissions Reduction Agreement with SJVAPCD to Reduce Construction Emissions of ROG and NOX & Implement an Emissions Reduction Agreement with SJVAPCD to Reduce Operational Emissions of ROG and NOX.

This mitigation involves measures that include

- *"an emission reduction program,whereby the Applicant funds projects in the SJVAB, such as replacement and destruction of old engines with new more efficient engines. The agreement requires the Applicant to identify and propose opportunities for the reduction of emissions to fully mitigate the project's construction emissions to less than significant, and includes opportunities for removal or retrofication of stationary, transportation, indirect, and/or mobile-source equipment... To the extent feasible, preference shall be given to off-site emission reduction projects that are located in or in close proximity to the City of Merced."*

These measures are functionally the equivalent of offset programs, whereby on-site emissions are reduced by funding projects offsite. To estimate the validity of such offsets, the DEIR should also address the concerns raised in section 3 above.

i. Each of these measures can be quantified by measuring their relative impact on the use of fossil fuels like gasoline and diesel fuel in direct proportion to fuel efficiency gains or losses from the equipment replacement. An additional dimension must also be addressed – the GHGs embedded in the equipment to be replaced. When an old engine is destroyed and a new one bought the net effect on GHG emissions is an immediate increase due to the emissions associated with making the engine. Only after a significant time in use does the relative efficiency (if there is any) overtake the impact of the production of a new engine.

ii. Most of the measures that will be used under this mitigation are not likely to reduce GHG emissions because the embedded emissions associated with new equipment likely outweigh the efficiency gains with respect to fossil fuel use in operations.

d. Mitigation Measure 4.2-2b, 4.2-2c, & 4.2-2d: Develop and Implement an Employee Trip Reduction Program to Reduce Operational Emissions; Implement Recommended Mitigation Measures to Reduce Operational Emissions; and Implement Additional Operational On-Site Emission Reduction Measures.

i. This mitigation can be quantified by estimating the total reduction in vehicle-miles-traveled (VMT) that each specific sub-measure will induce and multiplying that by the county's average GHG emissions per VMT.

ii. These measures are likely to be excellent mitigation of GHGs as they can significantly increase the county's fuel efficiency.

e. Mitigation Measure 4.2-2c, & 4.2-2d: Implement Recommended Mitigation Measures to Reduce Operational Emissions & Implement Additional Operational On-Site Emission Reduction Measures.

    i. Each of these measures can be quantified by measuring their relative impact on the use of fossil fuels like gasoline and diesel fuel.

    ii. In almost all cases for these measures they do not involve replacement of old equipment but good design of the physical plant, increased efficiency in the provision of employee services, and good choice in new equipment purchases. As a result they are likely to be effective at reducing GHG emissions.

Please do not hesitate to contact me with any further questions.

Sincerely,

Dr. Klaas Kramer

Resume Klaas Jan Kramer

Qualifications

Skilled scientist with more than 15 years experience in energy and environmental research. Qualified project leader as well as a good team player when carrying out research in interdisciplinary projects. Strong analytical skills. Consistently exhibits leadership while enhancing teamwork to achieve stated goals. Expert in using Life Cycle Assessment tools and Energy and Greenhouse gas emissions modeling.

Professional experience

Current: guest researcher/subcontractor at Lawrence Berkeley National Laboratory:

- Energy efficiency in industries, among others pulp and paper and dairy processing industry
- Cost-Supply curves
- International Experiences with Energy-Target Setting Programs in industry.
- Greenhouse gas emissions of Californian Residents (PIER-project).

Current: Consultant at KJKramer Consulting

Contribution to projects for ClimateCooler (Oakland):

- CO_2 reductions of 101 household activities and purchases.
- Carbon Footprint assessment of magazines/Climate neutral magazines
- Low carbon impact sleeping bags
- Director of Life Cycle Services

Senior Environmental Researcher, Agricultural Economic Research Institute (LEI), The Netherlands (May 2000 - June 2006).

Main task was to lead several different (inter)national projects and to do supportive research within other projects. Other activities were guiding students and organizing meetings and seminars.

Accomplishments.

- Acquired funding for projects within the co-innovation program "towards sustainable food production cycles" with a total of $600,000.
- Developed a monitoring system for the Dutch organic sector.
- Acquired funding for EU-concerted action "European Information System for Organic Markets (EISfOM).
- Annual sustainability reporting for the Dutch Horticultural sector.

Project manager, Environmental Quality Label (April 1999 - May 2000).

Developed and organized maintenance of environmental certification programs for agricultural and food products. Food packaging is always a part of these programs. Creating support for the Dutch Environmental Quality Label.

Accomplishments.

- Co-developed a monitoring system for the determination of the environmental effects of certification programs.
- Initiated a project to develop international certification programs for vegetables production.

Environmental researcher, Research Station for Glasshouse Floriculture and Vegetables (May 1998- May 2000).
Life Cycle Assessment of horticultural crop production systems, using the LCA-software tool Simapro. Energy analysis of glasshouse innovations.

Accomplishments.
- Development of a registration system for organic horticultural crop production.
- Initiated lifecycle thinking in research programs.

Scientific researcher, Center for Energy and Environmental Studies (IVEM), University of Groningen (September 1992-May 1998).
Research in the areas of energy use and greenhouse gas emission of households and food consumption. Environmental life cycle evaluation of Selective Catalytic Reduction technique.

Accomplishments.
- I finished my thesis "Food Matters. On reducing energy use and greenhouse gas emissions from household food consumption" in 2000.
- Development of a model to reduce the use of energy and greenhouse gas emission of food consumption.
- Development of a computer model to determine the potentials for household energy use reductions of households.
- Determined of the optimal life span of passenger cars from an environmental perspective.
- Acquisition for participation in the European Concerted Action for Lifecycle Assessments of Foods.

Education

1999-2003. Several successful training's like Food, innovation and marketing in 2002, Professional Client Relationship in 2003.

2000. Received PhD in Natural Sciences for thesis: Food Matters. On reducing energy use and greenhouse gas emissions from household food consumption.

1986-1992.
- Bachelor in Chemistry in 1988 at the Chemistry Faculty of the University of Groningen.
- Master in Energy and Environmental Science in 1992 at the Center for Energy and Environmental Sciences of the University of Groningen.
- 1980-1986. Secondary Modern School, graduated in 1986.

Languages

Dutch: native speaker.
English: good in writing, speaking and understanding.
German: good in writing, speaking and understanding.
French and Spanish: the first basics.

Relevant publications:

Thesis:
Kramer, K.J., 2000. Food Matters. On reducing energy use and greenhouse gas emissions from household food consumption.

Articles:
Kramer, K.J., H.C. Moll, S. Nonhebel, H.C. Wilting, 1999 Greenhouse gas emissions related to Dutch food consumption. Energy Policy, 27 (1999) 203-216.

Kramer, K.J., H.C. Moll, S. Nonhebel, 1999. Total Greenhouse Gas Emissions related to Dutch Crop Production System. Agriculture, Ecosystems and Environment, 72 (1999) 9-16.

Dutilh, C.E and Kramer K.J. Energy consumption in the food-chain, 2000. Comparing alternative options in food production and consumption.
Ambio Vol. XXIX No.2 pp 98-101

Benders, R.M.J., Wilting, H.C., Kramer K.J. and Moll, H.C., 2001. Description and application of the EAP computer program for calculating life-cycle energy use and greenhouse gas emissions of household consumption items. International Journal of Environment and Pollution, Vol. 15 (2), pp. 171-182.

Kramer, K.J, Masanet, E.R. and Worrell, E. Energy efficiency Opportunities in the U.S. Pulp and Paper Industry. Accepted for publication in Energy Engineering, 2009

Chapters:
Kramer, K.J, 2003. Life Cycle Assessment of horticultural products. In: Mattson, B (eds). Environmentally-friendly food processing. Woodword Press, 2003

Other, reports and contributions (selection of):

- Price, L., C. Galitsky and K.J. Kramer, 2008. International Experience with Key Program Elements of Industrial Energy Efficiency & GHG Emission Reduction Target-Setting Programs. Lawrence Berkeley National Laboratory
- Kramer, K.J., Hoste, R. and Van Dooren, H.J., 2006. Energy Use in the Pork Chain. AKK report (in Dutch)
- Kramer, K.J. and Sengers, H. 2006. Sustainability of Green Feedstock. LEI report.

- Zimmermann, K.L., K.J. Kramer, G. Klein Essink, K. Koelemeijer, M. Londo and J. Guinée, 2006. Chain project for the substitution of meat products with vegetable-based protein products n company canteens. LEI-report 5.06.07 (in Dutch)
- Kramer, K.J., Boone, K., Splinter, G., 2004. Sustainability has to mature. In: Silvis, H. (eds). Look at the future of agriculture, food and nature. LEI, Report PR.04.06; Den Haag (in Dutch).
- Splinter, G.M., K.J. Kramer, T.A. Vogelzang, A.D. Westerman, 2004. Tell it (... and be good)!; Corporate Social Responsibility in the glasshouse horticulture. LEI-report 2.04.06 (in Dutch).
- Wolfert, S., Kramer, K.J., Richter, T., Hempfling, G., Lux, S. and Recke, G. 2004 European Information System for Organic Markets (EISFOM QLK5-2002-02400): WP 2: "Data collection and processing systems (DCPS) for the conventional markets" and WP 3: "Data collection and processing systems for organic markets".
- Kramer, K.J. (eds), 2003. Sustainable vegetables chain. Agricultural Economic Research Institute (LEI), Den Haag, The Netherlands (in Dutch).
- Kramer, K.J., 2003. Sustainability in European vegetables and potatoes production chains. Agricultural Economic Research Institute (LEI), Den Haag, The Netherlands (in Dutch).
- Kramer, K.J. and M. Meeusen, 2003. Sustainability in the Agrofood sector. In. Halberg, N (eds). Life Cycle Assessment in the Agri-food sector. Proceedings from the 4th International Conference, October 6-8, 2003, Bygholm, Denmark. DIAS report, October 2004.

Furthermore, several other reports and presentations at scientific congresses. For example presentations about household energy use, food consumption and energy use and about sustainability in agricultural chains at for example:

- Symposium on Energy LCA in Food Systems. Agricultural Sustainability Institute, UC Davis, October 2007.
- The International Conference about Life Cycle Assessment in the Agri-food sector. Bygholm, Denmark, 2004.
- The International Con International Horticultural Congress: Sustainability of Horticultural Systems in the 21st Century. Toronto, Canada, 2003.
- IFOAM Organic World Congress, Victoria, Canada, 2003.
- Society for Environmental Toxicology and Chemistry (SETAC), LCA-work
- For the Environmental Quality Label giving presentations were part of my activities to inform citizens and companies, in order to create social support for the label.

Michel Gelobter

5803 Tehama Ave.
Richmond, CA 94804
Tel.: (510) 439-5006
e-mail:gelobter@gmail.com

Founder & CEO Cooler, Inc. For-profit social venture whose mission is to connect every purchase to a solution to global warming (see www.climatecooler.com for details). Cooler builds cutting edge global warming software that automates the calculation of carbon footprints and provides energy- & money-saving alternatives to businesses and consumers. Clients include eBay, Intuit, Citizens Bank. Present

President/CEO Redefining Progress, Oakland, California. Responsible for fundraising ($1.5-2.4 million/yr), communications, strategic program direction and alliances for the only U.S.-focused sustainability policy institute. In this capacity initiated, with CA Assembly the California Global Warming Solutions Act. Transformed organizational mission from pure research to strategic change and communications focus with extensive partnerships, targeted messaging, and product offerings to media, government, business and the public. RP's efforts include the Congressional Black Caucus study on climate change, the Genuine Progress Indicator and the Ecological Footprint. 2001- 2007

Professor Graduate Department of Public Administration, Rutgers University, Newark (1995-2000) Director and founder, Program on Environmental Policy, School of International and Public Affairs, Columbia University (1992-1995). At Columbia, responsible for starting and running a new program (Environmental Policy) serving both international and affairs and public administration students. At Rutgers, also Founder Director of the Community/University Consortium for Regional Environmental Justice (CUCREJ), a NJ/NY/PR consortium of community-based organizations and universities with an annual budget of $450,000. 1992-2001

Director of Environmental Quality/ Assistant Commissioner New York City Department of Environmental Protection. Responsible for coordinating and overseeing environmental policy, strategic capital planning ($1.5billion/yr), cost/benefit analysis, and health and risk assessment agency-wide; developing environmental management indices; initiating and launching new agency initiatives, including the City's alternative fuels programs, cumulative environmental assessment and renewal programs for heavily impacted communities, and private-public partnerships for environmental protection and pollution prevention. 1990-1992

Environment and Health Issues Director David Dinkins' New York City Mayoral Campaign. Coordinated media events to highlight Mr. Dinkins' positions; managed health and environment issues including AIDS, drugs abuse, prenatal care, solid waste, air pollution, and water conservation and pollution; wrote and/or edited his environment and health speeches, policy statements, press releases, position papers and debate briefing materials; briefed the candidate on environment and health issues. 1989

Congressional Black Caucus Fellow Energy and Commerce Committee, U.S. House of Representatives. Drafted legislation on lead in drinking water and on long-term environmental problems at the Department of Energy's nuclear weapons facilities; organized a global warming working group of high-level Capitol Hill and Executive Branch staff, leading environmental organizations, and industry trade organizations; helped develop guidelines for environmental energy planning to be adopted by the Secretary of Energy and Congressional leadership; investigated the safety and regulation of tanning booths; investigated the environmental compliance records of federal facilities in over 14 states in support of successful legislation closing loopholes for the Federal Government (particularly Departments of Defense and Energy) in the Resource Conservation and Recovery Act. 1988-89

Adjunct Assistant Professor/Instructor U.C. Berkeley (Energy and Resources Group & School of Public Health)/Columbia University, School of International and Public Affairs. Taught Masters and Ph.D. classes on environmental policy, science, and the sociology of the environmental movement and environmental concern, on health and exposure aspects of environmental hazards, and on public policy analysis geared towards distributional policies. 1988 to present

Assistant Producer Cable News Network Science News, Atlanta, Georgia. Produced segments for a daily science news show; wrote scripts; field produced segments on science education and zoology. 1986

Researcher Sustainable Development of the Biosphere Program, International Institute for Applied Systems Analysis (IIASA), Laxemburg, Austria. Developed strategies for using energy modeling in global warming and environmental policy development; performed in-depth comparison of all major long-term energy models; developed scenarios for use in policy exercises. 1985

EDUCATION.

Ph.D. Energy and Resources Group, U.C. Berkeley, 1993.

Master of Science Energy and Resources Group, U.C. Berkeley, May, 1986. Emphasis: environment and the poor in industrialized countries.

Bachelor of Science Conservation and Resource Studies, 1984, U.C. Berkeley.
Deep Springs College, Deep Springs, CA, 1978-1980.

Languages: Bilingual French/English, can speak and read Spanish and Portuguese, slight knowledge of German and Russian.

Honors/Fellowships.
2009, Green Revolution-ary, featured in the Chicago Museum of Science and Industry Exhibit
2009 SNEWS Power Player (outdoor and fitness industry leader)
2nd Annual Alliance for Sustainability Award, 2006
Art of Leadership Yearlong Fellowship, 2005.
College of Preachers, National Cathedral Preaching Intensive, 2005.
Communications Leadership Institute, 2004.
University of California President's Dissertation Year Fellowship, 1989-1990.
Congressional Black Caucus Foundation Fellowship, 1988-89.
National Audubon Society Graduate Student Research Award, 1988-89.
U.C. Berkeley Minority Research Mentorship, 1987-88.
National Science Foundation Fellowship, 1984-87.
American Association for the Advancement of Science (AAAS) Mass Media Fellowship, 1986.
California State Graduate Fellowship, 1984-85.
U.C. Berkeley Honors Scholarship, 1982-83.

Additional Experience.
Present Positions: **Alliance for Climate Protection ("We Campaign"),** Board of Advisors; **Natural Resources Defense Council,** Board Member; **Coalition for Environmentally Responsible Economies (CERES),** Board Member; **Center for Race, Poverty, and the Environment**, Board Member; **African-American Adoption Advisory Committee, Spence-Chapin Adoption Agency**, Member.

Past Appointments: **National Environmental Justice Advisory Council (NEJAC),** Founding Chair, Air and Water Subcommittee; **Clean Air Act Federal Advisory Committee**, U.S. EPA; **Redefining Progress,** Board Member; Member, Editorial Board, **Public Administration Review**; Environment Sub-Committee, **Rutgers University-wide Strategic Planning** ; **New Jersey/New York Hazardous Materials Worker Training Center Advisory Committee, Environmental and Occupational Health Sciences Institute**, Member and Chair of Labor Market Projections Subcommittee; **Expert Consultant**, Office of the Administrator, U.S. Environmental Protection Agency (EPA); **Faculty Advisory Board**, Columbia University Institute for African-American Studies; **Faculty Advisory Board**, Columbia University Institute for African-American Studies; **Harlem Empowerment Zone Application Team,** Director of environmental component; **National Advisory Committee on Environmental Policy and Technology (NACEPT), U.S. Environmental Protection Agency**, Superfund Reauthorization Committee; **New York City Environmental Control Board**, Commissioner; **National Religious Partnership for the Environment**, Policy Advisor; **Youth Lead Poisoning Prevention Program,** Founding Co-director; **Northeast Network for Economic and Environmental Justice,** Founding Board Member; **New York City Council on Environment**, Member; **U.S. Department of Energy**, Expert Panel on Weapons Facility Cleanup; **Facilitator**, Pan-Africanist Congress Senior Leadership Retreat on Electoral Strategy (Johannesburg, South Africa); **Advisory Board**, 25th Anniversary Study of the New York State Department of Environmental Conservation (Rockefeller Institute); **State Parks Advisory Council**, New York State Parks Dept.; **Environmental Justice Leaders Group,** advised EPA Administrator; **Advisory Committee and Panel Moderator,** First National People of Color Environmental Leadership Summit; **William C.C. Chen Tai-Chi,** Instructor; New **York Environmental Justice Alliance**, Founding Member; **Operation Crossroads Africa**, Project Leader (Haiti and Belize); **Sierra Club**, National Outings Leader; **Bishop Pack Station**, Mule Packer/Cowboy.

Selected Publications, Seminars, and Research.
Gelobter, Michel, et al. "The Impact of Global Warming on the African-American Community," Joint Center for Political and Economic Studies, 2008.

Lerza, Catherine, "Changing the Social Climate – in-depth interview with Michel Gelobter", Tides Foundation, 2006

Gelobter, Michel, et al. "The Soul of Environmentalism", Redefining Progress, 2005.

Gelobter, Michel, et al. "Global Warming and African-Americans," Redefining Progress, 2004.

Gelobter, Michel, "Economics" in The ECO Guide to Careers That Make a Difference, Island Press, 2005.

Gelobter, Michel, AIntegrating Scale and Social Justice in the Commons@ in Burger et al. Protecting the Commons: A Framework for Resource Management in the Americas. Washington, D.C.: Island Press (2000).

"Principles of Community-University Partnership", Calver Award Lecture of the Environmental Section, American Public Health Association, November, 1996, New York.

"Environmental Justice at the End of the Public Health Century", American Public Health Association Socialist Caucus/Physician=s Forum Special Sessions, New York City, 1996

Gelobter, Michel, 1996, "Key Urban Environmental Justice Problems," in Theology for Earth Community: A Field Guide, Edited by Dieter T. Hessel, New York: Orbis Books, 158-165

Daniel M. Matross, Ph.D.

1532 Carol Ave ▪ Burlingame, CA ▪ 94010 ▪ 1.617.529.8901
dmatross@gmail.com

Education

Harvard University — Cambridge, MA
Ph.D., Earth and Planetary Sciences — November 2006

- Thesis title: "Regional scale land-atmosphere carbon dioxide exchange: Data design and inversion within a receptor oriented modeling framework."

Stanford University — Palo Alto, CA

B.S., Chemistry — June 2000

Scientific Research and Management Experience

Scientific Director, *Cooler Inc.,* Oakland, CA 2008-present

- Led scientific programs for company creating tools for consumers and small businesses to understand their climate impact and reduce it.
- Supervised staff of four.
- Managed technical portions of engagements with eBay, Intuit, Citizen's Bank, and Backpacker magazine.
  - Delivered series of four 30-page white papers explaining and quantifying the climate impacts of eBay. Presented work to executives.
  - Developed all scientific components of the QuickBooks "Green" module, now in beta phase release.
- Guided branding and marketing firms in use of scientific results in major media campaigns.
- Translated academic research into company's core product offering.
- Located, negotiated, and procured $100K portfolio of high quality carbon offsets; established practices to enlarge portfolio with additional $500K worth of carbon offsets.

Atmospheric Scientist, *University of California Berkeley,* Berkeley, CA 2006-2008

- Managed individual research programs, including coordinating collaborating researchers, strategizing measurements, and conceptualizing new research.
- Studied biogenic emissions as precursors to air pollution, including particulates and ground-level ozone.
- Developed and wrote proposals.
- Collected, analyzed, and interpreted atmospheric measurements of greenhouse gases and air pollutants.
- Prepared manuscripts for primary scientific literature.
- Presented scientific results to technical and non-technical audiences ranging from 10 to 200 people.
- Advised California policy makers on atmospheric research needs.

Research Mentor, *Harvard University and University of California Berkeley* 2005-2008

- Mentored undergraduate and graduate students in research methodology and writing.

Research Assistant, *Harvard University,* Cambridge, MA, 2000-2006

- Collected atmospheric field data, analyzed results, and published in the primary scientific literature.

Teaching Fellow, "The Atmosphere" – Core Curriculum, *Harvard University*, 2002-2004
- Three terms assistant teaching basic weather and climate to a section of non-science students.

Freelance Science Writer, *Harvard University Gazette*, 2001

Research Intern, *NASA Goddard Spaceflight Center*, Greenbelt, MD, 1998

Undergraduate Research Fellow, *Scripps Institution of Oceanography*, La Jolla, CA, 1998

Field Campaign Experience

- CO_2 Budget and Rectification Airborne Campaign- North America, U.S. and Canada, Summer, 2003.
- CO_2 Budget and Rectification Airborne Campaign- Maine, Bangor, ME, Summer 2004.
- NASA Aura Validation Experiment Airborne Mission, Houston, TX, January 2004.
- Tropical Warm Pool International Cloud Experiment, Darwin, NT, Australia, February 2006.
- Biosphere Effects on Aerosols and Photochemistry Experiment, Blodgett Forest, CA, Summer 2007.

Grants and Fellowships

- Co-Investigator, NASA North American Carbon Program NNH05ZDA001N, "Integrated Analysis of Regional and Continental Carbon Budgets for CO_2 and CO in North America, Using Data from Remote Sensing, from Stations Measuring Concentrations and Fluxes, and Other Sources." Harvard University (2006), $215,000.
- Participant, NSF Biocomplexity Initiative ATM-0221850, "Continental, Landscape, and Ecosystem Scale Fluxes of Atmospheric Carbon Dioxide and Carbon Monoxide gases." Harvard University (2003), $1,610,000.
- Recipient, NASA Earth System Science Fellowship, "Carbon Dioxide Fluxes Across the Amazon Basin." Harvard University (2003), $72,000.
- Recipient, American Meteorological Society Government/Industry Graduate Fellowship, "Studies in Atmospheric Chemistry." Harvard University (2001), $21,000.

Recent Presentations

- Matross, D. M. and A.H. Goldstein. "Monitoring greenhouse gases for regional budgets" U.S. EPA/U.C. Berkeley Climate Change and Air Pollution Roundtable, May 2008.
- "Integrated multi-instrument assessment of gas and particle phase very reactive biogenic compounds in and above a forest canopy during the BEARPEX 2007 campaign." European Geophysical Union Annual Meeting, Vienna, Austria, April 2008.
- "Top down approaches to the North American Carbon Program: An overview." North American Carbon Program Investigators Meeting, Colorado Springs, CO 2007.

Publications

- **Matross, D. M.**, S. C. Wofsy, S. Miller, M. Longo, J. Eluskiewicz, and T. Nehrkorn (2009). Evolving constraints for optimal regional-scale CO_2 fluxes from atmospheric concentration data. *Manuscript in preparation.*

- Eluszkiewicz, J., T. Nehrkorn, S. C. Wofsy, **D. Matross**, C. Gerbig, J. C. Lin, S. Freitas, M. Longo, A. E. Andrews, W. Peters, and B. C. Daube (2009). Regional simulations of tower-based and airborne CO_2 measurements with the coupled Weather Research and Forecasting/Stochastic Time-Inverted Lagrangian Transport/Vegetation Photosynthesis and Respiration Models.. *J. Geophys. Res., in press.*
- Graven, H. D., B. B. Stephens, J. B. Miller, **D. M. Matross**, C. Gerbig, S. C. Wofsy, and R. F. Keeling (2009). Causes of observed summertime variability in tropospheric O_2/N_2 above North America. *J. Geophys. Res., in press.*
- Bouvier-Brown, N.C., A. H. Goldstein, D. R. Worton, **D. M. Matross**, J. Gilman, W. Kuster, D. Welsh-Bon, C. Warneke, J. deGouw, T. Cahill, and R. Holzinger (2008). Methyl chavicol: Characterization of its biogenic emission rate, abundance, and oxidation products in the atmosphere, *Atmos. Chem. Phys. Disc.*, 8, 19707-19741.
- Miller, S. M., **D. M. Matross**, A. E. Andrews, D. B. Millet, M. Longo, A. Hirsch, C. Gerbig, J. C. Lin, B. C. Daube, R. Hudman, P. L. S. Dias, V. Y. Chow and S. C. Wofsy (2008). Sources of carbon monoxide and formaldehyde in North America determined from high-resolution atmospheric data, *Atmos. Chem. Phys.*, 8, 7673-7696.
- Mahadevan P., S. C. Wofsy, **D. M. Matross**, X. Xiao, A. L. Dunn, J. C. Lin, C. Gerbig, J. W. Munger, V. Y. Chow, and E. Gottlieb (2008). A satellite-based biosphere parameterization for net ecosystem CO_2 exchange: Vegetation photosynthesis and respiration model (VPRM). *Global Biogeochemical Cycles*, 22, GB2005, doi:10.1029/2006GB002735.
- Park, S., R. Jimenez, B. C. Daube, L. Pfister, T. J. Conway, E. W. Gottlieb, V. Y. Chow, D. J. Curran, **D. M. Matross**, A. Bright, E. L. Atlas, T. P. Bui, R.-S. Gao, C. H. Twohy, and S. C. Wofsy (2007). The CO_2 tracer clock for the tropical tropopause layer and lower stratosphere. *Atmos. Chem. Phys., 7,* 3989-4000.
- Lin, J. C., C. Gerbig, S. C. Wofsy, V. Y. Chow, E. Gottlieb, B. C. Daube, and **D. M. Matross** (2007). Designing Lagrangian experiments to measure regional-scale trace gas fluxes. *J. Geophys. Res., 112 (D13),* D13312 doi:10.1029/2006JD008077.
- Emmons, L. K., G. G. Pfister, D. P. Edwards, J. C. Gille, G. Sachse, D. Blake, S. Wofsy, C. Gerbig, **D. Matross**, and P. Nedelec (2007). MOPITT validation exercises during Summer 2004 field campaigns over North America. *J. Geophys. Res. 112,* D12S02, doi:10.1029/2006JD007833.
- **Matross, D. M.**, A. Andrews. M. Pathmathevan, C. Gerbig, J. C. Lin, S.C. Wofsy, B. C. Daube, E. W. Gottlieb, V. Y. Chow, J. T. Lee, C. Zhao, P .S. Bakwin, J. W. Munger, and D. Y. Hollinger (2006). Estimating regional carbon exchange in New England and Quebec by combining atmospheric, ground-based and satellite data, *Tellus, 58B,* 344-358.
- Lin, J. C., C. Gerbig, S. C. Wofsy, B. C. Daube, **D. M. Matross**, V. Y. Chow, E. Gottlieb, A. E. Andrews, M. Pathmathevan, and J. W. Munger. (2006). What have we learned from intensive atmospheric sampling field programmes of CO_2? *Tellus, 58B,* 331-343.
- Washenfelder, R. A., G. C. Toon, J.-F. Blavier, Z. Yang, N. T. Allen, P. O. Wennberg, S. A. Vay, **D. M. Matross**, and B. C. Daube (2006). Carbon dioxide column abundances at the Wisconsin Tall Tower site. *J. Geophys. Res. 111,* D22305, doi: 10.1029/2006JD007154.
- Hurst, D. F., J. C., Lin, P. A. Romashkin, B. C. Daube, C. Gerbig, **D. M. Matross**, S. C. Wofsy, B. D. Hall, and J. W. Elkins (2006). Continuing global significance of emissions of Montreal Protocol-restricted halocarbons in the United States and Canada. *J. Geophys. Res., 111,* D15302, doi: 10.1029/2005JD006785.
- Martens, C. S., T. J. Shay, H. P. Mendlovitz, **D. M. Matross**, S. R. Saleska, S. C. Wofsy, W. S. Woodward, M. C. Menton, J. M. S. De Moura, P. M. Crill, O. L. L. De Moraes, and R. L. Lima (2004). Radon fluxes in tropical forest ecosystems of Brazilian Amazonia: night-time CO_2 net ecosystem exchange derived from radon and eddy covariance methods. *Global Change Biology, 10,* 618-629, 10.1111/j.1529-8817.2003.00764.x.
- Saleska, S. R., S. D. Miller, **D. M. Matross**, M. L. Goulden, S. C. Wofsy, H. R. da Rocha, P. B. Camargo, P. M. Crill, B. C. Daube, H. C. de Freitas, L. Hutyra, M. Keller, V. Kirchhoff, M. Menton, J. W. Munger, E. H. Pyle, A. H. Rice, and H. Silva (2003). Carbon in Amazon forests:

Unexpected seasonal fluxes and disturbance-induced losses. *Science, 302*, 1554-1557, doi: 10.1126/science.1091165.

Professional References

- **Michel Gelobter**
  CEO
  Cooler Inc.,
  1904 Franklin St., Sixth Floor
  Oakland, CA 94612
  Tel: 510-439-5006
  Email: michel@climatecooler.com

- **Steven C. Wofsy**
  Abbott Lawrence Rotch Professor of Atmospheric and Environmental Chemistry
  Division of Engineering and Applied Science/Department of Earth and Planetary Science
  Harvard University
  29 Oxford St.,
  Cambridge, MA 02138
  Tel: 617-495-4566
  Email: Steven_Wofsy@harvard.edu

- **Allen Goldstein**
  Professor of Biogeochemistry; Department Head
  University of California Berkeley
  Division of Ecosystem Sciences
  Department of Environmental Science, Policy, and Management
  330 Hilgard Hall
  Berkeley, CA 94720
  Tel: 510-643-2451
  Email: agoldstein@nature.berkeley.edu

- **Colette Heald**
  Assistant Professor
  Department of Atmospheric Sciences
  Colorado State University
  Fort Collins, CO 80523
  Tel: 970-491-8034
  Email: heald@atmos.colostate.edu

RESOURCE MANAGEMENT AGENCY
PLANNING DEPARTMENT
Jerald C. James, Director

• 2037 W. Cleveland Avenue
• Mail Stop G
• Madera, CA 93637
• (559) 675-7821
• FAX (559) 675-6573
• TDD (559) 675-8970
• mc_planning@madera-county.com

6

March 13, 2009

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

RE: Walmart Distribution Center DEIR
SCH#2006071029

Dear Ms. Espinoza:

Thank you for the opportunity to evaluate the Draft Environmental Impact Report for the Walmart Distribution Center that the City of Merced is proposing at the intersection of Gerard Avenue and Tower Road.

The County's main concern is the amount of traffic generated predominately along State Route's 99 and 152 through the County. While the project in and of itself would not significantly add to the traffic on these State Route's, they will add to the cumulative nature of these routes. We point to the evaluation of the Childs Avenue/SR 99 intersection evaluation as an indication that there will be problems. We would like to have seen a better evaluation of the impacts to the above interchanges, as well as potential impacts on a transportation/circulation level of all traffic through Madera County as a result of this project.

On Page 1-7, an area of concern mentioned regarding issues to be resolved mentioned traffic and fog, which is prevalent in the Valley particularly during the winter months. However, further evaluation of this as it relates to traffic circulation and safety does not appear to have been evaluated. Additionally, no mention of interface with railroad crossings is made.

In review of your proposed mitigation measures, we saw no reference to a monitoring program in the sense of who will do the monitoring, how that will be carried out, and acceptable time frames for completion or on-going monitoring.

If you have any questions, please feel free to contact me at (559) 675-7821, extension 251.

Sincerely,

Jerald C. James
Planning Director

cc: Robert Mansfield, REA, Planner III

7

Espinosa, Kim

From: Walker, Dawn on behalf of city, council

Sent: Monday, March 16, 2009 8:26 AM

To: city, council; Bill Spriggs (E-mail); Carlisle, John; Conway, Mike; Cortez, Joseph; Dawn Walker (E-mail); Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); John Bramble; John Carlisle (E-mail); Lor, Noah; Lor, Noah; Michele Gabriault-Acosta (E-mail 2); Michele Gabriault-Acosta (E-mail); Sanders, Jim; Spriggs, Bill

Cc: Davidson, Dana; Conway, Mike; Quintero, Frank; Espinosa, Kim; Schechter, Jeanne

Subject: FW: URGENT

From the website.

Dawn

Dawn Walker
Executive Secretary
City of Merced
678 West 18th Street
Merced, CA 95340
Phone: (209) 385-6834
Fax: (209) 385-1780

-----Original Message-----
From: Julius [mailto:julius@mercedcountychamber.com]
Sent: Saturday, March 14, 2009 3:23 PM
To: undisclosed-recipients
Subject: URGENT

Dear Members & Friends of The Merced County Chamber Of Commerce:

Opponents of the Wal-Mart distribution center have called on the city council to extend the public comment period on the Wal-Mart draft Environmental Impact Report (EIR) so that the document can be translated into Spanish and Hmong. Both the Merced Lao Family Community and the Merced County Hispanic Chamber of Commerce believe this causes an unnecessary delay and is too costly to taxpayers.

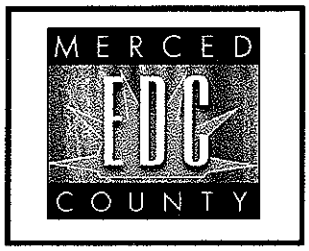
Both organizations have offered to work with the city to overcome any language barriers and provide translation services at upcoming public hearings.

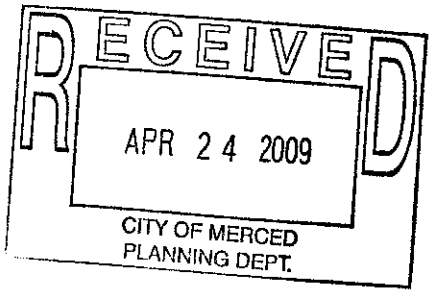
City staff agrees. However, the city council will consider the opposition's request Monday night. Please join the Merced County Chamber, the Greater Merced City Chamber, Hispanic Chamber and our Merced County Jobs Coalition teams Monday, March 16th at 6:30pm at City Hall (meeting starts @ 7pm) to oppose any further delay in what has already been a very lengthy process. We need jobs now! As always, please encourage your friends and family to join us Monday night.

You can obtain a copy of the Agenda @: http://www.cityofmerced.org/civica/filebank/blobdload.asp?BlobID=7162

Thank You

MCCOC





April 10, 2009

Ms. Kim Espinoza, Planning Manager
City of Merced planning Division
678 W. 18th Street
Merced, CA
95340

RE: Draft Environmental Impact Report (EIR) #06-01: 2006071029 for Walmart Distribution Center

Dear Ms. Espinoza,

On behalf of the Board of Directors of the Merced County Economic Development Corporation (MCEDCO) we are pleased to express our continued support for the above referenced project and urge the City of Merced to approve the EIR. MCEDCO first evaluated this project in 2002 in response to inquiries from the site selection consultants retained by the firm to identify appropriate industrial sites.

Although the EIR addresses a multitude of topics and environmental issues MCEDCO is primarily concerned with quickly facilitating new investment and employment generated by the project and sustainable economic development that will benefit the City and entire county of Merced. It is unfortunate that the EIR does not address specific economic development resources with particular emphasis on employment and new revenue in an area suffering continued and chronic high unemployment, poverty and declining revenues to fund essential public services.

The proposed site was and is designated for industrial and business development in the City's general plan. The existing surrounding land uses are compatible and similar to the proposed project. Distribution centers already operate in the area.

The purported loss of agricultural land is not a function of this project, but rather is a result of the realization of the City's own plans for this area as an employment center. The site is buffered from residential areas by the physical barrier of the Campus Parkway right of way and future commercial and business properties adjacent to the proposed Campus Parkway

The project was cited and is a major reason that funding was secured for the Mission Avenue interchange and subsequent improved highway access to UC Merced and for the residents of south and western Merced.

The proponent has publicly pledged to incorporate state of the art equipment and vehicles to reduce emissions. The building design and site plan incorporate many features to reduce adverse impacts.

In addition to direct employment for construction, new business investment induced by the logistics center and as many as 900 new positions are projected. These jobs will be offered wagers in excess of the average income of local residents and help increase the wealth and prosperity of our community. In addition, the economic multiplier effect will induce additional employment

470 West Main Street, Suite 7 * Merced * California * 95340
TEL: 209-723-3889 * FAX: 209-723-4450 * email: sgalbraith@mcedco.com

opportunities throughout the community as well as stimulate new commercial and retail business and consumer services. Property and sales tax revenue from these enterprises will also support local public services.

Thank you for the opportunity to support this critical economic development project. Please do not hesitate to contact this office if you have any questions or require elaboration.

Sincerely,

Scott Galbraith, CEcD
President/CEO

Copy MCEDCO Executive Committee

470 West Main Street, Suite 7 * Merced * California * 95340
TEL: 209-723-3889 * FAX: 209-723-4450 * email: sgalbraith@mcedco.com

Merced County
Farm Bureau

April 24, 2009

Kim Espinosa
City of Merced
Planning Department
678 W. 18th Street
Merced, CA 95340

Dear Ms. Espinosa:

Merced County Farm Bureau submits the following comments in regards to the Walmart Distribution Center Draft Environmental Impact Report:

- Ag Land Mitigation – Merced County Farm Bureau requests that the conversion of agricultural land be addressed in the EIR for the proposed Walmart Distribution Center. Merced County has included a 1:1 ag land conversion policy in the Santa Nella, Delhi and Hilmar Community Plans as well as other projects, including conversion of ag land to industrial or commercial development. Merced County Farm Bureau supports in their Land Use Policy a 4:1 mitigation ratio for the conversion of agricultural land.
- Air Quality Impacts and mitigation – In addressing the impacts on air quality the City of Merced needs to consider the impacts on existing businesses and operations which in our region is agriculture. Impacts on our air quality must be addressed and not put on the backs of agriculture and our support businesses. What guarantees are in place that Walmart will be using the latest energy efficient, technologically advanced trucks and require their contracted trucks to be held to the same truck standards recently passed for the San Joaquin Valley Air Basin?
- Road Impacts – Currently our local, state and federal highways are not adequately funded in regards to maintenance. Our County and City roads, especially, are in poor condition. Trucks coming to the facility will use other roads besides Highway 99 throughout our county. Those impacts need to be addressed and mitigated.
- Truck Parking - What rules are in place to control truck parking on rural roads near the proposed facility so as not to impact the movement of agricultural equipment on our rural roads, especially those roads directly east of the facility and along South Healy Road?
- Hydrology/Water/Storm Water Drainage –
    1. Currently East and South Merced County along Mariposa Creek/Duck Slough is an impacted waterway for the East San Joaquin Water Quality Coalition (ESJWQC). With gravity flow irrigation in that region we need to know that the storm water drainage would not be entering our irrigation system waterways. If they do they need to test the water leaving the retention basin and be held to the same standards that the ESJWQC is currently held to.
    2. Currently we are in our third year of drought. A comprehensive water plan for our city and region must be in place. The Walmart Distribution Center should not impact the underground aquifers and should be required to use the latest technology for recycling and reuse of water.
- With the size of the proposed warehouse solar power should be a requirement so as not to impact our already short supplied power grid.

Thank you for the opportunity to comment.

Sincerely,

Diana Westmoreland Pedrozo
Executive Director

(209) 723-3001 - FAX (209) 722-3814 - 646 South Highway 59 - P.O. Box 1232 - Merced, CA 95341
E-mail: mcfb@pacbell.net

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Espinosa, Kim

From: Walker, Dawn on behalf of city, manager
Sent: Monday, March 16, 2009 8:36 AM
To: Bramble, John
Cc: Davidson, Dana; Conway, Mike; Quintero, Frank; Schechter, Jeanne; Espinosa, Kim
Subject: FW: Wal-Mart Distribution Center to be Heard at Monday's City Council Meeting!

From the website.

Dawn

Dawn Walker
Executive Secretary
City of Merced
678 West 18th Street
Merced, CA 95340
Phone: (209) 385-6834
Fax: (209) 385-1780

-----Original Message-----
From: Merced Co. Hispanic Chamber of Commerce [mailto:info@mercedhcc.com]
Sent: Saturday, March 14, 2009 12:41 PM
To: 'A Lujan Recovery Prog'; 'AAA-E. Escobedo'; 'AAA-N. Abarca'; 'ACN Telecom'; 'Aguilar, Margarita'; 'Alvarez, Fabiola'; 'Amado, Jim'; 'American Legal Srvcs'; 'American Legion Post 83'; 'Andaurora Ranch'; 'Atwater Chamber of Commerce'; 'AVIS'; 'Ballico General Store'; 'Better Business Bureau of SJV'; 'Better Business Bureau of SJV-M.Garcia'; 'Bilingual Tax Svrcs'; 'BloodSource-JSuarez'; 'Bright Dart'; 'Bright Dart'; 'Brookfield Land'; 'California Home Care & Hospice-Denise Palsgaard'; 'Cal-Prime Realty & Mortgage'; 'Cal-Prime Realty & Mortgage'; 'Castle Family Health Center-A.Kieffer'; 'Castle Family Health Center-F.Cale'; 'Central Calif Legal Srvcs'; 'Challenger Learning Cntr'; 'Citibank-R.Cruz'; 'Citibank-R.Rodarte'; city, manager; Thomas, Russ; 'Clearwire Broadband'; 'County Bank-E.Amado'; 'County Bank-J.Ramirez'; 'Cricket Communications'; 'Cricket Communications-S.Hearn'; 'Crookham, Kathleen '; 'David Murtos Port of Subs'; 'DeAngelos Restaurant'; 'Documas International Srvcs'; 'Dole Packaged Foods'; 'Dr. Allen Rutledge'; 'Educational Employees CU'; 'Edward Jones Investment'; 'Ernie's Transmissions'; 'Excell Pest Solutions'; 'Farmers Insurance CU - M.Borba'; 'Farmers Insurance CU-S.Medeiros'; 'Farmers Insurance District Office'; 'Fernandez, Vernoica '; 'Fernando's Bistro'; 'Finance & Thrift'; 'Flores Insurance Agency'; 'Fluetsch & Busby Insurance'; 'Gerard Self Storage'; 'Girl Scouts Heart of Cental Cal.'; 'GO Medial Group'; 'Golden 1 CU'; 'Golden Valley Health Center-J.Ayala'; 'Golden Valley Health Center-M.Sullivan'; 'Golden Valley Health Center-P.Henry'; 'Gomes, Steve'; 'Gonzales, Jesse Jr.'; 'Gonzalez, Jesse Jr.'; 'Great Lakes Airlines'; 'Greater Merced Chamber'; 'Greater Merced Chamber'; 'Greater Merced Chamber'; 'Guild Mortgage Company'; 'H&W Family Drive-In'; 'Hanneman's Inside Source/MyMerced.Com'; 'Healing Hearts "One at a Time"'; 'Heitman, Robert & Julia'; 'Hinds Hospice'; 'Hoffmans Elect. Systs-J.Rivera'; 'Homan, Naomi '; 'Indepent Insurance Agents & Brokers'; 'Ingrahams Gifts & Trophies'; 'J. West Group'; 'Joseph Gallo Farms-D.Bradley'; 'Joseph Gallo Farms-G.Thompson'; 'Joseph Gallo Farms-M.Gallo'; 'JPM Developments'; 'KB Homes'; 'Krogh, Carla '; 'Law Office of Carlos Fuentes'; 'Leap-Carpenter-Kemps Insurance'; 'Livingston Community Network'; 'Livingston Medical Group'; 'M&M Events'; 'M.A. Web Solutions'; 'Magana Chiropractic Center '; 'Magana Income Tax'; 'Mantarro, Lisa '; 'Marco's Construction'; 'MCAG-J.Brown'; 'Merced City Portal'; 'Merced Co. Chamber'; 'Merced Co. Dept. Comm. Aviation & Economic Devel. '; 'Merced Co. Dept. of Workforce Investment-ABaker'; 'Merced Co. Dept. of Workforce Investment-AMendoza'; 'Merced Co. Dept. of Workforce Investment-RRedwine'; 'Merced Co. District Fair-DConway'; 'Merced Co. District Fair-General Office'; 'Merced Co. District Fair-Tersa'; 'Merced Co. Hispanic Chamber of Commerce'; 'Merced Co.

Office of Ed.-Lee Andersen'; 'Merced Co. Office of Ed-TLuna'; 'Merced College'; 'Merced COSTCO'; 'Merced County Arts Council'; 'Merced County Economic Dev.'; 'Merced County Transit-The Bus'; 'Merced Flea Market'; 'Merced Honda'; 'Merced Hyundai'; 'Merced Hyundai'; 'Merced Irrigation District'; 'Merced Mall-KAndrade'; 'Merced Schools Fed. CU-D.Sanders'; 'Merced Travel-A. Baucom'; 'Merced Travel-R. Guerrero'; 'Merced Union High District'; 'MERCO CU-M.Malone'; 'MERCO CU-S.Lopez'; 'Mercy Medical Center-L.Wegley'; 'Mercy Medical Center-R.McLaughlin'; 'Metro PCS, Inc.'; 'Metro PCS, Inc.'; 'Miguel Soto Farmer's Insurance Agency'; 'Mocse Credit Union'; 'Montoya, Ismael '; 'Morford, Virginia '; 'New York Life Insurance'; 'O'Banion, Jerry '; 'On Target Marketing/Image Masters'; 'On Target Marketing/Image Masters'; 'Pacific Cliffs Realty'; 'Parker, Robert '; 'Pazin, Mark '; 'Pedrozo, John '; 'Pete's Auto Body'; 'PG&E-Thomas Smith'; 'PGE'; 'Pimentel, Victor'; 'Playhouse Merced'; 'Playhouse Merced'; 'Projectors, Etc.'; Quintero, Frank; 'Radio Merced-A.Adams'; 'Radio Merced-J.Fuentes'; 'Ramirez & Sons Trucking'; 'Ramirez, Linda '; 'Ramirez, Vicky '; 'Rascal Creek Physical'; 'Razzari Auto Centers'; 'Razzari Auto Centers-TRazzari'; 'Roger Perez Insurance & Financial Srvcs'; 'Ruelas, Deanne '; 'San Joaquin Drug'; 'Service Master'; 'Simplicity of Heart Counseling'; 'Smith, Chrisitie '; 'State of Cal - EDD'; 'State of Cal - EDD-MDuenas'; 'State of Cal -EDD-BBittner'; 'Sunworks Power & Electric'; 'Swiggart, Conchita '; 'Tafoya, Chris '; 'Tioga Florist, Inc.'; 'Toni's Courtyard Cafe'; 'TranCounty Title-M.Byrd'; 'Transcounty Title-D.Kinney'; 'Travis Credit Union'; 'UC Merced-Larry Salinas'; 'Union Bank of Calif-Ramona Rodriguez'; 'Union Bank of Calif-Thomas Tsubota'; 'US Congressman Cardoza-L.Lopez'; 'US Congressman Cardoza-S.Dadds'; 'Valley Techlogic-ABeilanski'; 'Valley Techlogic-MHerrera'; 'Wal-Mart'; 'Wooten, Ellie '; 'Yard Masters'; 'Yosemite National Park'

Subject: Wal-Mart Distribution Center to be Heard at Monday's City Council Meeting!

URGENT - Wal-Mart Distribution Center to be Heard at Monday's City Council Meeting!

Dear Wal-Mart Supporters:

Opponents of the Wal-Mart distribution center have called on the city council to extend the public comment period on the Wal-Mart draft Environmental Impact Report (EIR) so that the document can be translated into Spanish and Hmong. Both the Merced Lao Family Community and the Merced County Hispanic Chamber of Commerce believe this causes an unnecessary delay and is too costly to taxpayers. Both organizations have offered to work with the city to overcome any language barriers and provide translation services at upcoming public hearings.

City staff agree. However, the city council will consider the opposition's request Monday night. Please join us Monday, March 16th at 7:00pm at City Hall to oppose any further delay in what has already been a very lengthy process. We need jobs now!

Thank you for encouraging your friends and family to join us Monday night.

City Council agenda - http://www.cityofmerced.org/civica/filebank/blobdload.asp?BlobID=7162

Merced County
Hispanic Chamber of Commerce
"Working for you and your community"

Office: 209-384-9537
Fax: 209-723-5051

Email: info@mercedhcc.com
Website: www.mercedhcc.com

MERCED COUNTY

DEPARTMENT OF PUBLIC WORKS
Administration Division

Paul A. Fillebrown
Director
Robert E. Smith
Special Programs Director

715 Martin Luther King Jr. Way
Merced, CA 95341
(209) 385-7602
(209) 385-7622 Fax
www.co.merced.ca.us

Equal Opportunity Employer

April 24, 2009

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

Dear Ms. Espinosa:

The County of Merced (County) has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Wal-Mart Distribution Center (Project) in Merced. The County offers the following comments on the DEIR with regards to transportation and traffic.

The County is in agreement with the assumptions and the methodology of the traffic study that was used to identify the proposed Project's impacts to the local transportation system. The County is concerned, however, that despite the fact that the traffic study shows that there will be an increase in truck traffic on Mission Avenue, west of State Route 99, there appears to be no analysis of the impacts of this increased traffic to the segment of Mission Avenue between State Route 99 and State Route 59.

This segment of Mission Avenue will be critical to serve the proposed Project as it will prove to be a popular route for truck traffic needing to ultimately travel on State Route 152 accessing Pacheco Pass and Interstate 5. It should also be considered in the traffic study and DEIR that it is not possible to travel northbound on State Route 99 from eastbound State Route 152. This traffic must use State Route 59 and likely Mission Avenue to access the Project.

Mission Avenue is designated as a Major Collector on the Merced County General Plan. The 2007 Regional Transportation Plan (RTP) adopted by the Merced County Association of Governments describes Mission Avenue as a "...future arterial, which will serve heavy inter-regional movements connecting these (Hwy 59 to Hwy 99) highways." In essence, the 2007 RTP shows Mission Avenue as the southern component of the arterial/expressway loop around the City of Merced.

Mission Avenue is therefore an important roadway for both the success of this Project and the future transportation needs of the City and County of Merced. Its current narrow width and poor structural section makes it likely to be significantly impacted by even moderate increases in truck traffic.

The DEIR should include measures to mitigate any increases in truck traffic caused by this Project to Mission Avenue, its intersections, and particularly the intersection of Mission Avenue and State Route 59.

Thank you very much for the opportunity to provide these comments. Please feel free to contact me should you have any questions concerning this comment letter.

Sincerely,

Robert E. Smith
Director of Special Programs
Merced County

cc: Demitrios Tatum, County Executive Officer
Jesse Brown, Executive Director, Merced County Association of Governments
James N. Fincher, County Counsel
Paul A. Fillebrown, Public Works Director
Robert A. Lewis, Development Services Director
Katie Albertson, Director of Governmental Affairs

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April 27, 2009

Kim Espinosa,
City of Merced, Planning Dept.

Re: Draft E.I.R. for proposed Wal-Mart Distribution Center

The Merced Group of the Sierra Club welcomes the opportunity to submit comments on the Draft Environmental Report (D.E.I.R.) for the Wal-Mart Distribution Center (W-M D. C.) proposed in the City of Merced. We have concerns about specific areas of the document where mitigations are not fully explored and those that are included are not adequately described. Also lacking throughout many mitigation proposals is a mechanism to monitor compliance and enforcement specifics. We also see some overall areas that are treated too cursorily and explored incompletely. These include the sections on alternatives, air quality, health risks , and urban blight (degradation of the local community). We also have concerns that other environmental impacts such as those on water quality and containment of hazardous wastes are not adequately addressed in this rendition of the E.I.R. We expect that the Final E.I.R. will be more thorough and complete so that the City of Merced can objectively discern whether the proposed Wal-Mart Distribution Center on balance will be a benefit to the community or a liability.

The Merced Sierra Club also goes on record as saying that inadequate time was given to the public to properly read and weigh the information contained in the DEIR. The document and its supporting appendices are some voluminous and represent technical analysis and study that was three years in the process. In fact Wal-Mart took an additional year to rework the document once they saw some of the complications and complexities it posed. Despite this, the public was given only 60 days to read the entire document, digest its contents, check its facts, and make informed comment on the issues posed.

The review process has been further complicated by the fact that all documents were presented only in English. The Merced community at large and much of those in the immediate vicinity of the project are not english speaking. The public requested that at least the executive summary and the basic impacts and mitigations be translated into Spanish and Hmong. There was also a request for some presentations be made to the community, focusing on residents in the project area and those whose children attend the nearby schools. it was hoped translators would be made available. In other words "extenuating circumstances" exist-specifically the complexity of the document and language barriers of those most impacted. Under CEQA provisions more time is allowed and should be granted to insure proper involvement by the public in the project review process. The City Council was approached by the public early in this process requesting an extension to the review and comment period. By a vote of 5 to 1 they rejected these requests.

The CEQA process demands that proper review by the public and the opportunity for input be provided. The Merced Sierra Club was among those who actively implored the City council in written and public comment to make this process as open and transparent as possible. In our opinion this was not done.

Air Quality

The ultimate conclusion of the DEIR's analysis is that impacts on air quality by the Distribution Center are "insignificant" (page 5-34). Estimates are that the WMDC will produce 74,812 tons of carbon dioxide per year. This is more than double the total greenhouse gas emissions for the entire county calculated for 2005. Recent recognition by the federal government that CO2 is indeed a factor in climate change requires that our community be attentive and responsive to meeting the expectations of lowering these levels. The California Air Resources Board (CARB) has recently passed their cleanup plan for diesel emissions through the year 2030. How 600-900 trucks a day can run in and out of the WMDC, idling as they load and unload, without causing a significant impact is imponderable. Reference is made to low emission W-M trucks being used. Hopefully this will indeed be the case and will also be monitored and enforced. There is no mechanism in the DEIR to make sure this happens. Nor are contingencies or consequences spelled out should this commitment not be followed through on.

Of important note is that many of the trucks (up to 2/3 by some accounts) moving in and out of the distribution center will not be company vehicles. There need to be the same 'air friendly' requirements for them as the Wal-mart vehicles. If not then the DEIR analysis needs to define how this impact will be prevented or mitigated. It is definitely not "insignificant" as stated under the construction and long term emissions section (page 5-34).

It is clear that our County with its number 6 ranking in the state and our Valley with 4 counties out of the 10 worst in the country, cannot afford to indulge any business or industry that flagrantly adds to our severely compromised air quality. Especially when there are ways to do business in a more responsible manner. A company such as Wal-Mart (second largest in the nation) can certainly be a trend setter in finding effective controls and mitigations for this challenge.

Idling rules are of a similar concern. The Wal-Mart trucks are stated to have a three minute automatic shut off feature. There are also electric hook ups for those parked for an extended time. These are good features to help control emission impacts. Will all the Wal-Mart company trucks entering and leaving the distribution center have these features? Will the non-Wal-Mart trucks have similar controls? They should. And all of this should be monitored and enforced by an outside agency or party chosen by the city and paid for by Wal-Mart. Penalties for violations should be stated upfront and fully mitigate any compromising of Valley air quality. Of note is that recent studies out of Los Angeles have shown that diesel emissions have been directly linked to lung damage if sensitive receptors like schools are nearby.

The impacts of the WMDC on our local and regional air quality need to be explored in depth and mitigated completely. The second largest company in the U.S. certainly has the resources to be responsive to the health and quality of life impacts which they bring to our residents.

Traffic

Clearly traffic impacts of the WMDC will be monumental, not just on Hwy 99

and its on and off ramps, but on local residential streets as well. One of the great errors in siting this facility was its location so close to schools and residences. Traffic flow through many intersections will be degraded to unacceptable levels. The DEIR states that during the AM peak hours six intersections will be rated LOS F and one LOS E. During the PM peak conditions are only slightly better with five at the F level and two at the E level. Mitigations for these significant impacts are minimal. One signal with a possible lane addition is the ONLY mitigation offered for these impacts on local intersections.

One stretch of road identified as impacted is a segment of Tower Rd. between SR 140 and Gerard Ave. The current striping is identified as faded- Wal-Mart's mitigation is to paint it darker. Is this a reasonable commitment to the problem?

The only other stretch of roadway impacted according to the traffic analysis is SR 140 between Kibby and Santa Fe. That would be degraded to a LOS of E during AM peak traffic. The mitigation- add a lane in each direction for that stretch alone. Why not double the width of all existing roadways that WM trucks and over 900 employee commuters will use? Why not really improve our already inadequate roadways and intersections in the area (many already rated at LOS D)?

And what of our 63 million dollar Mission interchange which Wal-Mart had no part in helping to finance (though their intent to build a distribution center nearby and use it extensively was clear). Impacts recognized as "significant" in the DEIR are mitigated by restriping the northbound and westbound approaches. Will this adequately compensate for over 3800 "auto equivalents" per day (90% of the 4300 total) created by the distribution center trucks and employees ? Is this what the city and county had in mind when they designed the main access route to UC Merced? Is this the 'first impression' we wanted to make for those visiting our newest showpiece and the potential future attractant for real green jobs and industries? Was this additional load on freeway access taken into account when the campus parkway and Mission interchange were planned? In either case restriping seems an overly simplistic solution to a serious traffic dilemma.

The WMDC clearly will have major impacts on local roadways and the nearby freeway access ramps. Though large trucks may be equated to "four autos' in the analysis by DKS Associates, the reality of their impact logically seems greater. These large trucks have reduced mobility, acceleration limitations, wider turning radii, wide girth, and visibility constraints which will impact local roadways far more than the equivalency numbers acknowledge.

Land Use

Although the proposed site for the WMDC is indeed zoned "industrial", the City should certainly have reconsidered that designation as housing and schools grew right up to the borders of this land parcel. When the application by Wal-Mart was submitted that would have been a perfect time to reassess. Three sides of the project site are county rural areas. The west side border is filled by low and medium density residential homes and a mobile home designation. The only "developed" land in the area is a tiny neighborhood commercial designation and another similar parcel on the other side of the freeway. This does not sound like a prime area to replace productive farmland with an intensely used industrial facility.

The City's objectives for this land's use are: maintaining proper buffers, creating jobs for local residents, and improving roadways (3.6.1) The General Plan standards of maintaining suitable buffers have been ignored. Wal-Mart refuses to make any specific commitments to employing locals at the distribution center. In fact what Wal-Mart terms "full time jobs" often mean as few as 28 hour work weeks. The City needs to demand some tangible, written commitments that will assure us that the economic benefits we seek reach our citizens? And finally, the improvements to roadways are meager and in fact do not even maintain current LOS levels on existing roads. Many intersections will be lowered to LOS' of E and F but the traffic created by the Wal-Mart project. The City should find an applicant who indeed meets their own stated objectives for this land parcel.

Underscoring how inappropropriate the distribution center is for this area of town, is the significance of impacts caused by the proximity to residences and schools. Impacts like: light pollution, noise, storage of large amounts of toxic chemicals, potential impacts on runoff and groundwater, and diesel fumes are especially unsuited to these kinds of neighbors. And these impacts are magnified because they exist 24-hours-a-day. These homes and schools are 'neighbors' who were already there, neighbors who undoubtedly had no awareness that such a facility could spring up nearby. Ones who had no idea that they and their families were settling in a neighborhood where a facility of this size and problems of this magnitude would be their "neighbor".

This points to another issue largely ignored in the DEIR- that of urban blight. The impact on homeowners is the nearby community and the investment they have in their family homes cannot be ignored. it cannot be deemed insignificant. Property values in the area are sure to plummet if the distribution center becomes a reality. Major truck traffic, significant commuter traffic, light pollution, 24 hour a day noise issues, environmental hazards, potential traffic accidents all make the nearby homes undesirable residences. What impact will this have on an already depressed and desperate housing market? Will this be an area of town where people migrate to or exodus from. The answer seems clear.

Also of note if we are appraising the future of the community adjacent to and in the vicinity of the distribution center is the potential impact of the trucking subculture. Truck stops are notorious for drug-dealing and prostitution. As trucks park and wait to unload, perhaps for hours or overnight, what assurances do we have that such trafficking will not occur. If they do: pity to the nearby residents and their families, woe to the schools nearby, and heads up to local law enforcement. The EIR needs to have contingency plans and mitigations should such problems come with this project. Should they not then the issue will be moot and no one's welfare will be compromised.

Finally, in regards to land use, the fact that this is productive crop land places the city's zoning of it as industrial in to question. What resource is more rare in the world, critical to feeding mankind, and essential to the economic soundness of our region than farm land? Aren't there more marginal lands in the county more suitable for industrial use. The City's General Plan is in a update process. Hopefully they are following suit with the county and the region by trying to preserve as much farmland as possible, and encourage higher density use within the existing footprint.

Other Environmental Concerns

Air quality rates its own discussion but other impacts associated with this project are noteworthy too. Will the run-off basins be adequate to meet the 100 year flood standards? What assurances are there that runoff and groundwater will not be contaminated by petrochemicals in the ____square feet of blacktop? Those same waters could be in jeopardy from chemicals stored on site, including 6,000 gallons of new oil, up to 2500 gallons of waste oil, and 20,000 gallons of diesel fuel. Given the many problems neighborhood gas stations have had with leaks and ground contamination, how ca we be assured that these incredibly larger amounts will be safely stored and monitored. No one wants a spill or leakage but the fact is they do occur. There need to be specific standards to safeguard transportation and storage of these toxins and consequences built-in should they impact our health, water supplies, land, etc. In fact are the impacts of the fuel trucks bringing diesel and oil on to site included in the traffic as well as safety impacts?

Noise is another problem of no small consequence. Diesel trucks will pass by homes and near schools 24-7. Another major noise impact is the practice of "dropping" which where trucks release their trailers. This creates a resounding noise- Hundreds of times per day, day and night?!

The DEIR states that light will be "contained within the borders of the distribution center site" and therefore will not be a significant impact. This is an interesting new physics discovery- the fact that light will not cross property lines. Forty-five foot high poles with halogen lights, even if directed downward, will indeed illuminate the neighborhood. The glow across the Valley from major facilities like the local prisons makes this seem obvious.

Health Risk Assessment

A comprehensive health risk assessment is sorely lacking for the DEIR document. The health of Merced citizens is the top priority of our community and should be for our elected leadership. We need analysis of how air quality degradation will impact the health of residents nearby, the three schools in the area (and a potential fourth), and our community as a whole. Experts agree that the cost of health care is one of the main factors creating our economic crisis. We in the Central Valley, and Merced County specifically, already have asthma and respiratory problems far in excess of state and national averages. The costs for medical care of these conditions is in billions of dollars. A project like the Wal-Mart distribution center which will bring more traffic accompanying emissions to our area will increase both the human and monetary health costs. The DEIR needs to attempt to estimate these impacts and Wal-mart needs to propose some preventive measures and/or mitigations. For instance build and staff a local respiratory clinic. Too much to ask? too expensive? well the certainly same is true for the city's citizenry. It seems only fair that the entity creating the hardship should pay for its impact.

Alternative Sites

The alternatives proposed by the Merced City panning staff and analyzed in the DEIR seem very limited, as though they are meant to point to the proposed site

between Childs Ave. and Girard and tower Roads as the only acceptable one. Are there really such limited options in the city? in the county?

Alternative #1 is geographically very close and current use very similar so that many of its advantages and disadvantages are identical to the chosen siting. The main advantage cited is that employee autos would have easier access via the Mission interchange instead of using Childs Ave. and hwy 99.

Alternative #2 west of Hwy 99 is zoned as a "business park" so it does not seem compatible with the project. One clear plus is that it does not have any residences or sensitive areas adjacent to it. The DEIR does not see this as a difference. It equates this property as "similar" because it has the "potential for residences" (5-31). With this logic wouldn't any land be termed "similar" since conceivably houses could be built almost anywhere at a future time? This seems an invalid point of 'similarity' that ignores a definite advantage of this alternative which does not have the neighborhoods and schools around it that the chosen site does.

Alternative #3 is an industrial zone of town with many facilities of this kind already located nearby. To discount it as 'a possible wetlands" makes one wonder why it is designated industrial already and how nearby businesses have cleared such concerns. Hazardous materials near an airport are discussed as a concern. Aren't these an even greater concern near residences and schools! at the proposed site?

In essence the alternatives presented are limited and seem skewed in their analysis to favor the chosen site between Childs Ave. and Gerard and Tower Roads as the only viable alternative. This is not a valid conclusion. One alternative that may make sense in this DEIR is that of "no project". This distribution center in fact might not belong in the city limits. Other centers in the state are more removed and remote from population and traffic. Other locations in the county may better meet the criteria for both Wal-Mart and Valley citizens. Hopefully the City will not make undefendable compromises just to land some possible revenues. Jobs would still come to Merced citizens as long as other sites were within the county.

<u>In Conclusion</u>

The overall focus of the DEIR is misplaced. The limited extent of study and discussion reflects the priorities of the applicant, not those of the community. In the appendices, which cite relevant studies and statistics, over 200 pages are allotted to traffic concerns. This is 1 1/2 times the TOTAL for all other areas combined. Air quality should head the list given the potential impacts on nearby schools and residents not to mention the community as a whole. It is given a mere 28 pages of consideration. Is this because data regarding our area's air quality, asthma and respiratory complications, and impacts on children and the elderly is not available. To the contrary, air quality has been a focus of regulation and legislation at the regional and state level. AB 32 has underscored this focus. The addition of a scientist and health expert to the CARB Board show commitment to tackling this crisis aggressively. Recently adopted statewide standards and goals for ozone, P.M. 10, PM 2.5, and diesel emissions show this to be a "hot issue". An yet it remains an understated and little discussed portion of this DEIR.

So why are traffic issues so thoroughly analyzed in the appendices and later discussed and mitigated in the DEIR? Probably because this impact is most tied to the efficient running of the distribution center. Circulation along roadways is what Wal-Mart prioritizes for their needs. Their concern is likely less for Merced residents than for the ease of moving 600-900 trucks a day on and off their premises.

Human health concerns, impacts on local residents and school children, these are not the priorities of Wal-Mart. To be accepted and responsible new members to our city and our community they should be. Our elected officials have the responsibility to make sure they are top priorities for Wal-mart as well as any other new business entering our community. Yes we need jobs, yes we need economic stimulus, but what these really bring us is "quality of life". Cleaner air to breathe, safety and conservation of our water resources, preservation of our productive farmland, and perhaps most importantly the health of our citizens are critical for true "quality of life". Let's demand that new businesses meet this vision. If a Wal-Mart Distribution Center can meet those criteria, then welcome them with open arms, if they do not, then please send them back to the drawing board.

Please keep us appraised of further developments in the Wal-Mart Distribution Center project. We certainly are anxious to see if the Final EIR for this project meets the community's needs and expectations. I trust that each of the City Council members thoroughly reviewed the DEIR and will take letters of comment into consideration when they make recommendations for the final EIR. We also appreciate the expertise of City Staff in advising the Council in their deliberations on this proposed project.

Roderick Webster

Roderick Webster
Chair, Merced Group of the Sierra Club/ Tehipite Chapter
P.O. Box 387
Merced, CA 95340
209-723-4747
rwebster@elite.net

MID MERCED IRRIGATION DISTRICT

April 14, 2009

Kim Espinosa, Planning Manager
City Of Merced
678 West 18th Street
Merced, California 95340

Subject: Completion of DEIR for Wal-Mart Distribution Center – APN's 61-250-90, 61-290-47

Dear Ms. Espinosa:

The Merced Irrigation District (MID) has reviewed the above referenced notice and offers the following comments:

MID operates and maintains the Doane Lateral in a pipeline assembly of varying diameters, west of, the west property line of the project.

MID respectfully requests that the City require the following, as conditions of approval upon development, the following:

1. If storm water is to be discharged to any MID facility, the owner/applicant shall enter into a "Storm Drainage Agreement" with the Merced Irrigation District Drainage Improvement District No. 1 (MIDDID No. 1), paying all applicable fees.

2. MID offered Wal-Mart alternatives regarding discharging storm water to either the Fairfield Canal or the Farmdale Lateral/Doane Lateral. Wal-Mart needs to engage MID to verify discharge rates, means for connection and water quality requirements before MID can set its final requirements. Depending upon the approved route and discharge location, certain improvements, including but not limited to, pipelines, sensors, discharge structure assemblies and their appurtenances would be required. MID will notify the City as these issues are worked out between MID and Wal-Mart

3. That the property owner must execute an appropriate agreement for all crossings over or under any MID facilities, including utilities, crossings and pipelines.

4. A signature block will be provided for MID on all Improvement Plans that impact MID facilitiles.

5. A "Construction Agreement" between the owner and the MID shall be executed for any work associated with MID facilities.

744 West 20th Street P.O. BOX 2288 Merced, California 95344-0288
Administration / Electric Services (209) 722-5761 / FAX (209) 722-6421 / Water Resources Engineering (209) 722-5761 / FAX (209) 726-4176
Finance \ Billing Dept. (209) 722-3041 / FAX (209) 722-1457 / Irrigation Operations (209) 722-2720 / FAX (209) 722-1457

6. In response to Page 2-30, Item 4.6-1, please note that construction runoff into MID facilities is not allowed. In addition, said Doane Lateral is in a pipeline assembly. Therefore, no storm runoff into said lateral is possible. Storm water discharges meeting MID requirements during the construction phase can be discussed, subject to proper design considerations to protect water quality within the Doane Lateral and any downstream connected facilities or creeks.

7. There is an MID 21KV electrical line located within the Kibby Road extension right of way that services City Well No. 10 at the south end of the project site. According to the site plan, the west portion of the warehouse would be in direct conflict with this existing electrical line. Mitigation of this problem will require the realignment of said electrical line within a new, appropriately sized easement.

8. MID requests a copy of the final, signed CEQA documents.

In addition to providing reliable, low-cost power, the Merced Irrigation District has developed a New Construction Rebate Program for new businesses. Rebates are available for projects estimated to exceed a Title-24 or standard practice baseline by at least 10% on a whole building performance basis. The maximum rebate is $150,000 per year, per customer and will not exceed 50% of the project's cost (equipment plus labor). These incentives encourage owners to make energy efficiency a major goal in new building projects. For more information, please contact David Carroll at 722-5761.

The project is located within an area of the Merced Irrigation District where untreated surface water (secondary water) is available for landscape irrigation. The use of surface water for landscape irrigation will help conserve valuable groundwater in the Merced area. The developer should explore the installation of a dual water system and utilize MID surface water to irrigate landscape areas within the project.

Thank you for the opportunity to comment on the above referenced notice. If you have any questions, please contact me at 722-5761.

Sincerely,

Rory Randol
Facilities Specialist

cc: Dan Pope, General Manager
Robert Acker, Director of Facilities and Streams
Hicham ElTal, Assistant General Manager - Water Resources Engineering
Ron Price, Associate Engineer - Water Resources
Robert Lindsey, MIDDID No. 1
Steve Dunn, Assistant General Manager - Electrical Services
David Carroll, Assistant General Manager - Business and Resource Planning - Electrical Services

MERCED LAO FAMILY COMMUNITY, INC.
A Non-Profit Organization

March 6, 2009

City of Merced
The Honorable Mayor and City Council
C/O Planning Department
678 W. 18th Street
Merced, CA. 95340

Dear Mayor and City Council,

It has been reported in the newspaper that several members of the community are calling on the city to extend the Wal-Mart environmental impact report's public comment period so that it can be translated into Spanish and Hmong. We believe that this would be an unnecessary cost to the city and taxpayers.

The Merced Lao Family Community, Inc is more than pleased to work with the city to help overcome any language barriers associated with interpreting the content of the EIR, including providing interpreters at city planning commission and council meetings. Working together, we are confident that the Hmong community will be well informed and comfortable with knowing that our elected leaders will act in the best interest of our community.

To date, no member of our community has expressed any concern with the project. In fact, the response has been overwhelmingly supportive for a distribution center project that promises over 900 full-time jobs.

With the news that Merced County's jobless rate has reached nearly 19%, I can assure you that unemployment among the Hmong community is even higher and this is very concerning. For every day that the Wal-Mart project is delayed for unnecessary and costly requests, it is one less paycheck for the thousands of residents seeking employment.

We urge the city to continue its course and again, we offer our services and support to you.

Thank you for considering our invitation to work with you for the betterment of the Merced community.

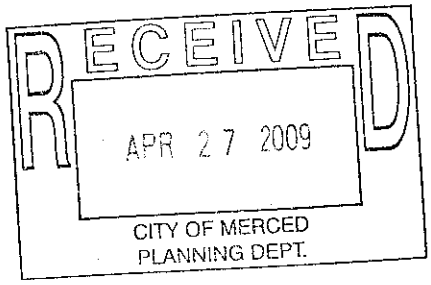
Sincerely,

Chong Sue Xiong
Vice President

855 W. 15th Street • Merced, California 95340 • (209) 384-7384 • Fax: (209) 384-1911
Website: www.laofamilymerced.com • Email: mlfc@laofamilymerced.com

April 1, 2009

Ms. Kim Espinosa
Project Director
Merced Planning Department
678 W. 18th St.
Merced, CA 95340



Kim,

Why is it that Health Risk Assessments are only taken seriously in the Wal-Mart DEIR when it comes to the children of the employees? What happens if you admit that the health risks resulting from the distribution center are so bad for children that the distribution center should not have on-site child care, but the distribution center is fine for all the children who currently live in Southeast or attend our schools? What is NOT good for the goose it good for the gander? That's pretty insensitive and very insulting to me.

Mike Baldwin
Merced-Mariposa Asthma Coalition - Steering Committee
559-903-4570
41810 Rd 406
Coarsegold, Ca 93614

April 27, 2009

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

RE: Comments on the Draft Environmental Impact Report for the Proposed Wal-Mart Distribution Center in Southeast Merced (State Clearinghouse Number 2006071029)

Ms. Espinosa:

We are the Stop Wal-Mart Action Team: a three year-old grassroots community group opposed to the impacts of the proposed Wal-Mart distribution center. Many of our members and supporters live in South and Southeast Merced, meaning that our health and quality of life will be among those most affected by the proposed distribution center and other development in southeast Merced. Since 2006, over 4,000 Merced County residents have signed petitions opposing the project as proposed and expressing their concern over its impacts.

Over the past several years, members of the Stop Wal-Mart Action Team have commented on a number of matters related to the proposed distribution center and issues related to its impacts. We are deeply concerned that without adequate political representation, southeast Merced will continue to develop as an underserved neighborhood facing the concentrated build-out of the highest-polluting land uses in Merced. We find it unacceptable for this project to happen on the backs of southeast Merced residents.

Our reading of the Draft Environmental Impact Report (DEIR) is based on the Southeast Merced Community Survey conducted from November 2008 to April 10, 2009 by Stop Wal-Mart Action Team members, volunteers, friends and family members. This letter is divided into two sections: first, a discussion of the survey and its results, and second, comments on the DEIR itself which are informed by the survey. However, we wish for the entire letter to be considered by the City of Merced in the course of preparing written responses to comments, as required for production of the Final EIR.[C1]

I. The Southeast Merced Community Survey

Why we conducted the survey
We believe that people who are most affected by development in their community should be heard the loudest in the decision-making process. San Joaquin Valley communities that are already overburdened with higher-than-average crime, poverty, pollution and foreclosure rates often find themselves coping with the local impacts of industrial and otherwise "unwanted" land uses. These communities – our communities – are also more likely to feel excluded from the local political system.

Many of the proposed distribution center's most severe impacts are local; however, the voices of people most affected by the project have largely been missing from public dialogue about the project. We see this survey as an effort to support southeast Merced residents in having their interests heard in what is likely the most controversial project in the history of southeast Merced.

Methodology
We define "southeast Merced," as the area within Merced city limits east of Highway 99, south of Highway 140 and bounded by Mission Ave. to the south and Tower Rd. to the East. The Survey was conducted over a six month period using an intensive door-to-door interviewing process with a mail or drop off option for

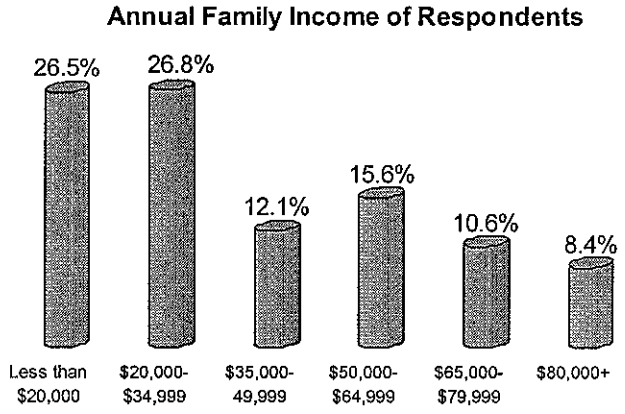
those residents who were not home. Door-to-door surveys improve the quality and level of response, allow more personal interaction and ensure that certain groups, for example young people, people who speak English as a second language, or people living in a particular neighborhood are able to participate meaningfully.

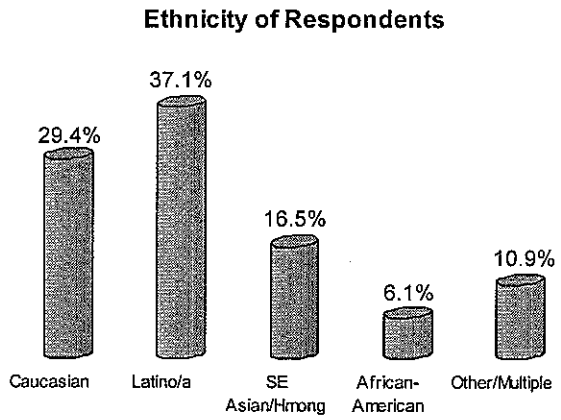
We estimate that roughly 90% of southeast Merced residents were given the opportunity to take the survey either via a personal visit at their door or a survey left at their doorstep. The other 10% includes homes and apartment buildings that restrict access to outsiders and allows for some human error by volunteers[C2].

Respondents

Of the 416 surveys received, 25 were administered via a Spanish language version questionnaire, and a smaller number were verbally translated into Hmong. Survey respondents were demographically diverse in terms of income, ethnicity, language, and family size. About a quarter of respondents earn a total annual family income of less than $20,000 a year, while another quarter earn between $20,000 and $35,000, and 8% have a family income of $80,000 or more. Respondents self-reported their ethnicity as roughly 37% Latino/a, 29% Caucasian, 17% Southeast Asian (including Hmong), and 6% African American. Almost two-thirds of respondents speak primarily English at home, but a fifth spoke either primarily Spanish or a mix of English and Spanish, and another fifth Hmong or English and Hmong. About 70% of respondents have children living at home with them; of these, the majority have either one or two children, but 10% had five or more.[1]

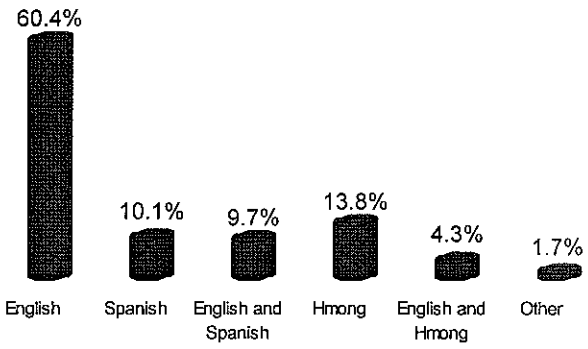
Altogether, although detailed census data are badly out of date as an objective standard of comparison, our familiarity with our city leads us to believe that the demographic mix of respondents to the survey is representative of the neighborhood as a whole. We can characterize Southeast Merced as a multiethnic, residential/family-oriented neighborhood rapidly transitioning to an urban center from its rural/agricultural roots.



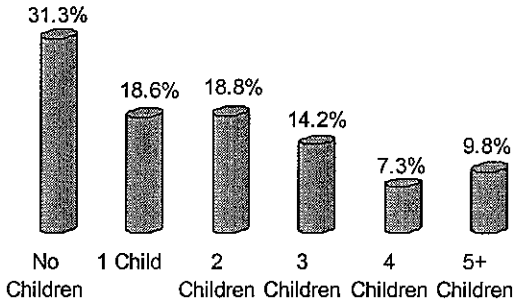


[1] Calculations of percentages of survey respondents reported herein exclude any respondents who did not provide an answer to a particular question.

Primary Language Spoken at Home by Respondents

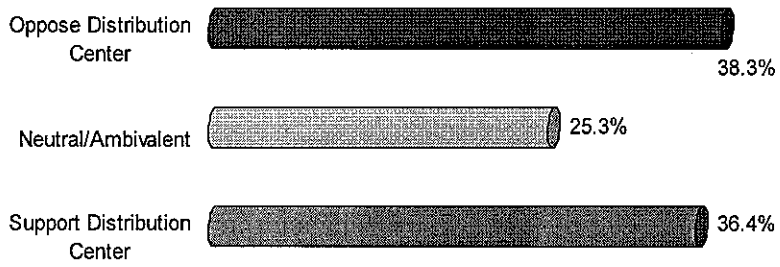


Number of Children Living at Home with Respondents



Findings

❖ **A plurality of respondents opposed the distribution center, but overall feelings about the project were very mixed.**



Many claims of popular support have been made in the contentious debate over the proposed Wal-Mart distribution center. Our results show that, in reality, southeast Merced is deeply divided on the issue. Perhaps the most notable aspect of these results is that a full quarter of respondents fell somewhere between support and opposition—they filled in "2" on a scale of support for the distribution center ranging from 1 (oppose) to 3 (support). This finding suggests that meaningful mitigation of project impacts or guarantees of benefits could create a solid base of support for the project—but without real mitigation or guarantees, even the support it currently enjoys is likely to erode.

❖ **Neither income, nor ethnicity, nor number of children had any significant effect on levels of support for the distribution center.**

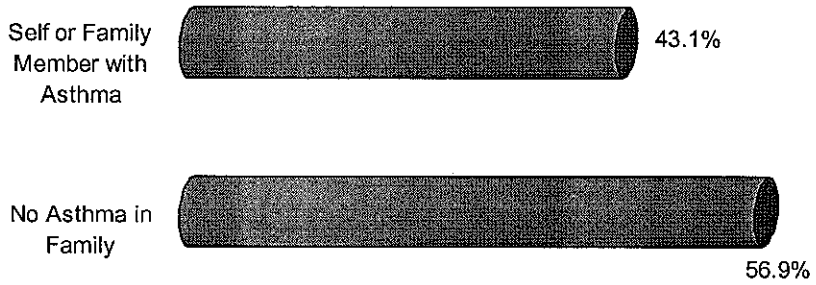
One might expect that a respondent's annual family income would be closely related to level of support for the distribution center. Lower-income residents might be expected to be more interested in new jobs, and thus be more supportive of the distribution center. However, we found that there were no significant differences in levels of support for the center among respondents of different income levels.[2] Similarly, one might have expected that residents with more children would be more supportive, due to interest in new jobs both for themselves (to better support their children in the present) and for their children (for the future). However, again, we found no significant differences among respondents with different numbers of children living at home in terms of levels of support for the center.[3] Finally, although it is unclear precisely what effect one might have expected ethnicity to have on support for the distribution center, it is still worth noting

[2] An ANOVA revealed that there were no significant differences (P=0.179) among respondents within different annual family income classes in terms of their level of support for the distribution center.

[3] An ANOVA revealed that there were no significant differences (P=0.444) among respondents with different numbers of children in terms of their level of support for the distribution center.

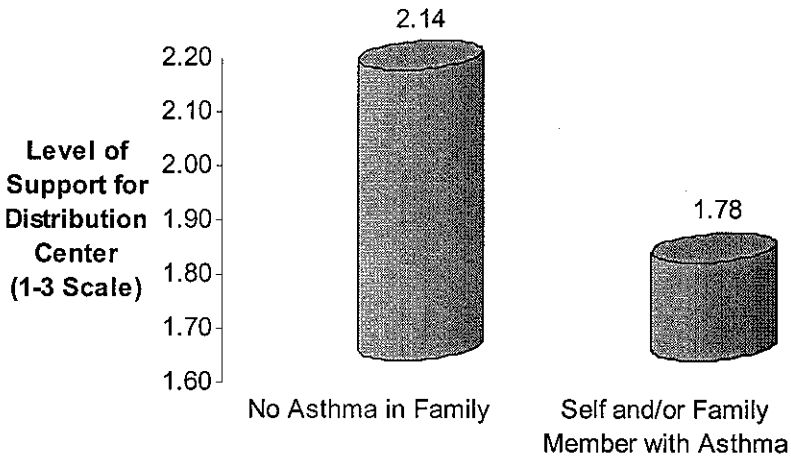
that we found no significant differences among respondents of different ethnicities in this regard.[4] These findings suggest that other factors are making the difference between support and opposition for the distribution center.

- **Almost half of respondents had asthma themselves, had a family member with asthma or respiratory problems, or both.**



Existing, widely reported data indicate that twenty percent of children in the San Joaquin Valley have been diagnosed with asthma.[5] Our survey results indicate what this means for Merced families—more than 43% of respondents had asthma themselves, had a family member with asthma, or both.

- **Experience with asthma or respiratory problems significantly decreased support for the distribution center.**



Respondents who have asthma, have a family member with asthma, or both showed a significantly lower level of support for the distribution center than those with no experience of asthma in their families.[6] Furthermore, the average score for those with no asthma in their families was above the neutral "2" (meaning they tended slightly toward support for the center), while the average score for those with asthma in their families was below neutral (meaning they tended toward opposition). This finding, combined with the extremely high levels of asthma in the community, helps to explain the serious concerns about the distribution center's air quality impacts that have been frequently expressed over the past several years.

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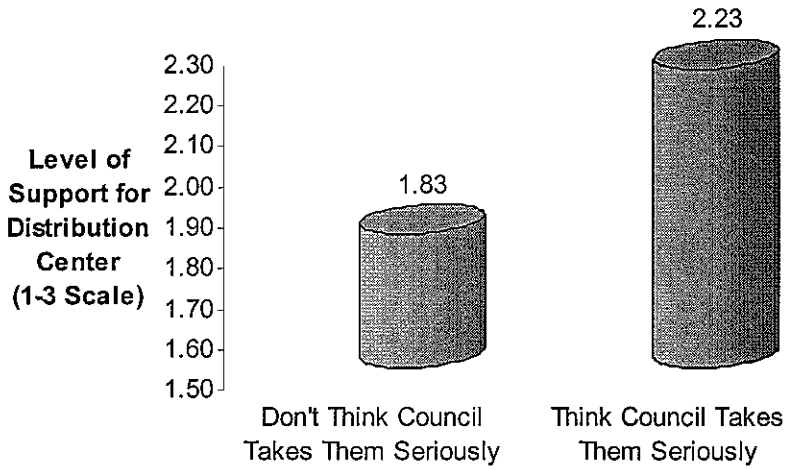
[4] An ANOVA revealed that there were no significant differences (P=0.694) among respondents of different ethnicities in terms of their level of support for the distribution center.

[5] See for example the Merced/Mariposa County Asthma Coalition's 2008 "Report to the Community on Asthma."

[6] A two-sample *t*-test assuming unequal variances found that respondents who had asthma and/or family members with asthma scored significantly lower than others in terms of support for the distribution center. In fact, the difference was highly significant (for one-tailed test, P=0.00006).

❖ **Opponents of the distribution center felt more politically disenfranchised than supporters.**



Nearly half (47%) of respondents felt that the Merced City Council as a whole would not take them seriously if they stated their opinions to City Council. Furthermore, these disenfranchised residents on average were significantly more opposed to the distribution center than those who felt that the City Council did take them seriously.[7] In short, southeast Merced residents will be uniquely impacted by this project, and yet feel uniquely excluded from the process by which this project will be considered by City Council.

Other results:

- In order of favorable response, southeast Merced residents want the following types of development in their neighborhood: Places to shop (71%); parks (70%); health care (63%); schools (59%); offices (56%); industrial (36%); residential (34%).
- 56% of respondents feel that truck traffic near schools in southeast Merced is a "major problem." However, 37% of respondents feel that truck traffic is not *currently* an issue in the neighborhood. We feel these answers indicate a consciousness of the health and safety threat posed by the build-out of nearby industrial land.
- By a two to one ratio[C3], respondents felt that they have "no confidence" that City Council makes decisions that benefit the health and quality of life of residents in south and southeast Merced.
- Despite years of publicity surrounding the project, 30% of respondents in southeast Merced were unaware of the project.

Full results of the Southeast Merced Community Survey are attached to this document.

II. Comments on the Wal-Mart Distribution Center Draft Environmental Impact Report

The DEIR as written is inadequate as an informational document. It should be recirculated via an inclusive process that allows residents most affected by the project's impacts to participate meaningfully.

Participation and process

Throughout the DEIR comment period, the City has heard from residents struggling to understand what the DEIR says. At the first available City Council meeting on March 2, several residents approached Council to ask for a 1-2 month extension of the comment period; meaningful translation of part of the DEIR;

[7] A two-sample *t*-test assuming unequal variances found that respondents who thought City Council did not take them seriously scored significantly lower in terms of support for the distribution center than those who thought Council took them seriously. In fact, the difference was highly significant (for one-tailed test, P=0.0006).

notification to residents near the project site; and a public hearing in southeast Merced, with translators, to explain the DEIR's findings and receive comments. All of these requests were rejected by a 5-1 vote when the requests were agendized at the March 16 City Council meeting.

As demonstrated by the Southeast Merced Community Survey, residents directly affected by this project want to participate meaningfully in the CEQA process, but have been frustrated by the barriers erected by the City and contempt expressed by some City Councilmembers. [C4]

According to CEQA, "EIRs shall be written in plain language and may use appropriate graphics so that decision-makers and the public can rapidly understand the documents" (CEQA Guidelines § 15140). There are a number of established ways to measure how easy it is for a reader to understand a given piece of writing. For example, the text from 4.2-42 to 4.2-44 describes how the project's long-term on-site operational emissions supposedly result in a "less than significant" exposure of carcinogenic soot to sensitive receptors. This passage scores an 18.59 in the Standard Measure of Gobbledygook (SMOG) test, and a 17.9 in the Flesch-Kincaid grade level test, meaning that a Master's-level education is required to comprehend the section. As a whole, the Air Quality chapter scores a 15.9, meaning that it requires a four-year degree to understand the chapter. According to the 2006 Census, 11.6% of Merced County residents have a Bachelor's Degree or higher.

Unfortunately, the DEIR comment period will be closed by the time you read this letter, excluding many of our members and affected residents from meaningful participation.

Southeast Merced is already an underserved, overburdened neighborhood
The project site is 4.2 miles from the nearest fire engine company station and 7.1 miles from the nearest truck company station. According to Fire Chief Mitten, the project site falls outside of the City of Merced Fire Department's accepted response standards (Lyons Annexation #97-22 memo dated 4/29/1998). Quantities of flammable and hazardous materials would be stored on-site, jeopardizing the health and safety of southeast Merced residents. Adequate fire and police protection must be in place before the facility is operational.

There is a long-acknowledged, regular level of diesel truck travel through Childs Ave. and Gerard Ave. in southeast Merced. Residents in the neighborhood have long complained about truck parking in residential neighborhoods, excessive truck idling, and illegal off-route truck driving. Communities near distribution centers commonly experience these issues. The EIR should identify measures to actively enforce and, where necessary, strengthen existing laws regarding truck traffic.

The Weaver School District was predicted to exceed its K-8th grade facility capacity of 2,470 students at the beginning of the 2008-2009 school year. Given the elevated health impacts, absenteeism, safety risks, infrastructure degradation and population increase generated by the project, Wal-Mart should pay a 2:1 School Facilities Impact Fee.

If Toxic Air Contaminants generated by diesel trucks using this facility require the Weaver School District to relocate its planned school site between Gerard Ave. and Childs Ave. adjacent to the western edge of the Campus Parkway, Wal-Mart should be required to reimburse the School District fully for the costs of relocating its long-planned school site.

Agriculture
The DEIR should explain how the tax assessment of the project site will increase pressure adjacent agricultural land to convert their land for development. [C5]

The project site does not incorporate an adequate buffer from adjacent agriculturally-zoned land.

The DEIR does not assess the crop damage due to elevated ozone exposure from this project.

We feel that 4:1 mitigation is appropriate for the conversion of prime agricultural land on the project site.

Air quality

We follow southeast Merced residents' clear concern over the effects of localized diesel truck emissions as expressed in the Southeast Merced Community Survey. Forty-seven percent of southeast Merced residents either have asthma or other respiratory problems, or have a family member that does. This is an urgent public health crisis. We have identified several deficiencies in assessment of these impacts in the DEIR.

A Health Risk Assessment (HRA) that incorporates cancer risk from off-site operational traffic emissions generated by vehicles using the facility must be conducted for southeast Merced residents to fully understand how this project will impact their health. The HRA ignores construction phase impacts and Toxic Air Contaminant exposure to truck drivers and other workers employed at the facility.

Any mitigation agreement should prioritize the elimination of emissions generated by the project's mobile and stationary sources. We oppose any voluntary agreement that permits concentrated local emissions over the life of this project because of uncertain and questionable off-site in-lieu fees.

The DEIR prematurely identifies the project's regional operational air quality impacts as less than significant by relying on undefined mitigation measures, such as those supposed to exist in not-yet-negotiated voluntary agreements between Wal-Mart and the San Joaquin Valley Air Pollution Control District (SJVAPCD)[C6]. The DEIR denies the 47% of families with a member with respiratory problems the opportunity to appropriately assess and participate in this aspect of the process. The DEIR should be recirculated with identified emission reduction measures to allow for public review and comment before discretionary approval.

The DEIR fails to assess how criteria air pollutants generated by this project will impact Air Basins outside of the San Joaquin Valley, including Yosemite National Park and Kings Canyon National Park.

Cumulative on- and off-site emissions generated by the project represent a significant cancer risk level. Wal-Mart should provide proper warning to the surrounding neighborhood that its development will cause an elevated cancer risk.

A Safe Use Determination pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 must be obtained regarding the diesel engine exhaust produced and concentrated locally as a result of the project before discretionary approval can be granted. The DEIR, at the very least, must contain a full discussion of the Act and its applicability to the project.

The Air Impact Assessment mitigation process described in the Air Quality chapter improperly defers mitigation. Construction and operational particulate emissions generated by the project after Indirect Source Review mitigation are still significant and should be treated as such. The approach taken in the DEIR—namely, refusing to quantify the effects of mitigation measures and instead merely asserting that standard control measures will ensure less-than-significant impacts—ignores the unusually high levels of particulate emissions produced by the project.[C7]

The discussion of carbon monoxide (CO) inappropriately uses SJVAPCD screening criteria to rule out in-depth study of CO hot spots. First, SJVAPCD's screening criteria are pre-empted by a more stringent

standard contained in a mitigation measure for the current General Plan (and also incorporated as a 1998 Lyons annexation mitigation measure): "Appropriate CO (CALINE or equivalent) hot-spot air quality studies shall be prepared to identify appropriate project level mitigation measures for all development proposals which can be expected to reduce road segment or intersection levels of service below "D"." Every segment or intersection with a projected "E" or "F" level of service in 2010 or 2030 must be subjected to a CO hot-spot study. Furthermore, the rationales provided in the DEIR for not performing these required studies are unsupportable and are not found in either the SJVAPCD screening criteria or the General Plan/Lyons annexation mitigation measure.

Mitigation[C8]
The mitigation measures related to air quality and energy use are inappropriately vague and improperly defer mitigation, denying the public an opportunity to assess and comment upon proposed mitigation.

The EIR improperly assumes that a number of air quality and traffic impacts will be less than significant after mitigation. There are too many uncertainties in the implementation of the Air Impact Assessment, proposed voluntary agreements between Wal-Mart and the SJVAPCD, and proposed roadway improvements to support those conclusions.

The City of Merced has a history of not fulfilling its mitigation monitoring enforcement responsibilities, including on this very site. This project violates adopted mitigation measures for the Weaver Annexation and Lyons Annexation. [C9]

Traffic
There is little evidence that the City has coordinated with the County or CalTrans about this project's impacts, including changes to the Campus Parkway. The DEIR should be circulated with the Campus Parkway EIR/EIS and UC-Merced Long Range Development Plan EIR.

The DEIR requires modifications to Campus Parkway to accommodate project traffic. Currently, plans for Campus Parkway have been finalized and approved by all applicable agencies, but construction has not yet begun. Making modifications to the project will require either recirculation of Parkway plans or waiting until the first phase of the Parkway is completed as currently planned (and then making modification to accommodate the distribution center).

The City of Merced and Lyons Investments, LLC have piecemealed the expansion of Childs Ave. and Gerard Ave. adjacent to the distribution center site in order to facilitate the approval of this project[C10]. The DEIR must assess the full impacts of these expansions, which to date have been considered separately.

The traffic study is unnecessarily vague and inadequate. It makes unsupportable assumptions about the route that trucks would use to reach the facility, the number of trucks using the facility at peak hours and the types of vehicles using the facility.

Noise
The noise impacts identified are not significant and unavoidable. Commonly used mitigation measures such as soundproofing windows are not discussed.

Cumulative impacts
Expanded Initial Study #97-22 assumes that full build-out of the entire 484-acre Lyons Annexation land will occur over a 40-year period (by 2037). Various studies included in the EIR ignore the build-out of this

industrial area, even while incorporating the build-out of other adjacent uses into their analyses. These probable future projects include a 500 megawatt natural gas peaking power plant and industrial park near Childs Ave. and Kibby Rd.

The DEIR improperly concludes that cumulative air emissions are less than significant. This conclusion is particularly unwarranted in the case of exposure to Toxic Air Contaminants, as the Health Risk Assessment fails to address the substantial current and future "background" exposure levels of sensitive receptors near the project site from existing and planned emission sources.

Economics

When the City of Merced considers discretionary approvals for this project, any economic benefits from the project need to be weighed against the project's costs in damage to human health, productivity, infrastructure and agricultural crop yields (many of which are localized to southeast Merced and eastern Merced County), among other impacts. Because some impacts have been determined to be "significant and unavoidable," the City will have to adopt a Statement of Overriding Considerations if it chooses to approve the project. The DEIR must provide adequate information for decision-makers to consider in weighing this choice.

Because the project's impacts are primarily local, the project's benefits should be local as well. The DEIR should 1) describe how many employees at the facility would be new hires, and 2) include a binding mitigation measure that 100% of new employees hired at the facility reside in Merced County.

The DEIR should assess local hiring as a mitigation measure to reduce employee trips and reduce the project's air quality emissions.

Wal-Mart has faced a long history of lawsuits charging structural discrimination against women and people of color. Because of the demographics of Merced County, a local hiring requirement would not be adequate without addressing these issues. Thus, the local hiring mitigation measure described above should incorporate binding conditions from its recent settlement with African-American truck drivers. The settlement directs Wal-Mart to "establish benchmark hiring goals so future hires are proportionate by race to the composition of applicants, select a diversity recruiter, and improve its recruitment efforts and advertising aimed at African-Americans" (*Wall Street Journal,* 02/20/2009).

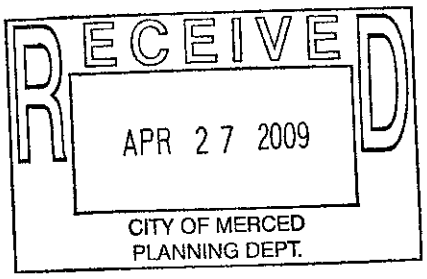
Alternatives

The Project Objectives are unnecessarily limited; just because Wal-Mart rejected an otherwise viable site doesn't mean that the site should be rejected without further question. Legitimate alternatives were discarded inappropriately.

The rationale behind discarding the Reduced Site Plan as the Environmentally Superior Alternative is confusing and unnecessarily vague.

The DEIR and the CEQA process for this project to date have failed to meet legal standards and excluded residents most affected by the project, resulting in an unacceptable burden on an underserved, impacted neighborhood. We reserve the right to submit additional information at the time of the public hearing on the Final Environmental Impact Report.

The Merced Stop Wal-Mart Action Team
Kyle Stockard Marilynne Pereira
Co-Chairs[C12]



MEMORANDUM

TO: Mark Hamilton, Planner
City of Merced Planning & Permitting Division
678 West 18th Street
Merced, CA 95340

CC: Mayor, City Council members and
Other interested parties

FROM: The Merced Stop Wal-Mart Action Team
1735 Canal St. Suite 13
Merced, CA 95340
swat@mercedstopwalmart.org

DATE: July 7, 2008

RE: Comments on Lyons Investments for Irrigation and Drainage Pipeline Encroachment Permit #288 / Mitigated Negative Declaration Item K-2 on July 7 City Council agenda

Mr. Hamilton,
We are the Merced Stop Wal-Mart Action Team: a broad, grassroots coalition of community groups and thousands of Merced residents opposed to the construction of the proposed Wal-Mart distribution center in Southeast Merced. Many of our members and supporters live in South and Southeast Merced, meaning that our health and quality of life will be among those most affected by the proposed distribution center.

Site Plan Application #288 proposes a "14-inch irrigation pipeline" which would travel under the Campus Parkway and close to or onto the proposed Wal-Mart distribution center site, thus interacting intimately with two of the largest, most complex projects in the history of our city. The pipeline must, therefore, be considered in light of its relationship to these two projects. Furthermore, the relationship between the "irrigation pipeline" and the proposed Wal-Mart distribution center is far closer than mere adjacency. Rather, the pipeline is an integral part of the Wal-Mart project and/or nearby anticipated industrial development whose separate consideration is misleading to the public and to decisionmakers and contravenes the California Environmental Quality Act (CEQA).

The purpose of this letter is to comment on Site Plan Application #288 and the accompanying Mitigated Negative Declaration. We conclude that the pipeline is not approvable as proposed and its impacts must be further examined as part of the environmental review process for the larger industrial development of which it is a part.

I. The Pipeline Is Part of the Wal-Mart Distribution Center Project and/or nearby Industrial Development

The Mitigation Measure proposed by the City's Mitigated Negative Declaration which purports to limit the use of the pipeline to irrigation purposes states in part:

> The applicants shall only use the irrigation pipes for watering the existing agricultural use (orchard). They may not use the pipes for storm drainage or any other purpose for any future development, **until that use (an industrial one per the current zoning) goes through an environmental review and is approved by the City.** (emphasis added)

In other words, the Mitigated Negative Declaration recognizes the pipeline's future use as a stormwater pipe for "an industrial use" such as the proposed distribution center and expressly allows such stormwater use following approval of the industrial project by the City. Indeed, since the distribution center and nearby industrial development are intended to replace all of the current agricultural use on the site either concurrently with or soon after the Campus Parkway is constructed, the project's ostensible purpose—allowing the pipeline to continue to function after the Parkway is built—only makes sense if the applicant's primary intention is to use the pipeline for industrial stormwater rather than for agricultural irrigation.

The proposed Wal-Mart Distribution Center is separated from the nearest major canals and laterals by City rights-of-way and substantial distances, posing problems for Wal-Mart's stormwater drainage plans. The nearest waterway into which Wal-Mart could potentially deliver its stormwater is the Doane Lateral, but the Lateral is separated from the distribution center site by the right-of-way of the proposed Campus Parkway. A memorandum from Wal-Mart's engineer to the City dated July 5, 2007, lays out the two potential options for stormwater drainage then being negotiated by Wal-Mart and the Merced Irrigation District (Attachment A). Both routes would require thousands of linear feet of pipeline (Attachments A1, A2).

A stormwater pipe which, instead of being forced to follow the Campus Parkway right-of-way until it crossed the Doane Lateral, crossed under the Campus Parkway, could potentially reduce the linear footage of a distribution center stormwater pipe by over half over the two current options, if the discharge point was approved by MID. The "irrigation pipeline" provides just such a route.

It therefore seems very likely that the pipeline will become an integral part of the Wal-Mart project. If so, any approvals required for the pipeline must be included in the Wal-Mart project description and analyzed together with the rest of the impacts of the proposed Wal-Mart distribution center in the forthcoming Environmental Impact Report for that project (CEQA Guidelines 15124 et seq.). If the pipelines connects to another project adjacent to the distribution center (the only other option), the same principle applies. The courts have consistently held that splitting one project into two or more smaller projects for the purposes of avoiding full environmental review is unacceptable under CEQA, yet this is the only possible explanation for the current attempt to have the pipeline considered separately from any industrial development it would serve .

The Mitigated Negative Declaration for Site Plan Application #288 is inadequate in that it does not consider all of the impacts of the full Wal-Mart distribution center project and/or nearby industrial development. The proposed pipeline cannot be approved prior to certification of the EIR for the industrial development of which it is a part, which EIR must analyze it as part of said industrial project(s). Should the applicant wish to pursue the pipeline as an independent project, the City must remove the qualifying statement from the proposed Mitigation Measure cited above and instead must expressly prohibit any future stormwater use of the pipeline regardless of the outcomes of the City's environmental review and permitting processes for any other pending and future projects.

II. An "Irrigation Pipeline" Contravenes Title 20 of the Merced Municipal Code

Even assuming that the proposed pipeline would or could in fact be used for agricultural irrigation, Site Plan Application #288 cannot be approved. In fact, even temporary usage for agricultural irrigation prior to conversion to industrial stormwater use is prohibited by Title 20 of the Merced Municipal Code.

Rather disingenuously, the "Land Use" section of Initial Study #08-21 states in part:

> Given the zoning and the surrounding industrial and agricultural uses in the area, the project is very compatible with the purpose and the intent of the City's General Plan designation of Industrial.

In fact, agricultural uses are **not** allowed under the site's current zoning designation of I-H, as they are not listed as Permitted (MMC Section 20.36.020), Accessory (MMC Section 20.36.030), or Conditional Uses (MMC Section 20.36.040) in the City's Code. The current agricultural use of the site is a legal nonconformity, resulting from the continuation of such use from a time prior to the establishment of the site's current zoning (MMC Section 20.60). However, the City may not approve new plans or uses for the site which do not conform with the current zoning restrictions (MMC Section 20.60.050), and no new or existing agricultural structures—such as the proposed irrigation pipeline—may be built, modified, or moved on the site (MMC Section 20.60.060).

The proposed "irrigation pipeline" is in fact intended to be a stormwater drainage pipeline, as discussed above. Even as an irrigation pipeline, however, it is not an allowable use under the site's current zoning designation.

III. The Pipeline Environmental Review is Inadequate

The Mitigated Negative Declaration is an invalid document under CEQA, as it is the product of a piecemeal environmental review of only one part of a larger project or projects—the proposed Wal-Mart distribution center and/or nearby industrial development. Even if the Declaration were to stand on its own, however, the document would be inadequate on several grounds.

First, the project description is incomplete. When the pipeline was first proposed (along with a second nearby pipeline) several months ago, the applicant requested encroachment permits from the City to allow the pipelines to cross City rights-of-way (Attachment B). The current project is framed as a site plan application, which is appropriate, but an encroachment permit also remains necessary. The project description should include both approvals.

The failure to address the encroachment permit requirement appears to have contributed to some of the inadequacies of the environmental review for the pipeline. For example, the conclusion that the pipeline will have negligible impacts on public services results from a failure to consider the potential restrictions on the construction of the Campus Parkway and attendant drainage facilities which could be caused by the placement of the pipe under the roadway.

Further inadequacies resulted from failure to consider the impacts of the acknowledged future use of the pipeline for stormwater drainage. Thus, the Mitigated Negative Declaration rejects without sufficient analysis the possibility of significant impacts on surface water quality, on the capacity of receiving waters to continue to receive stormwater from other sources, etc. Furthermore, the document fails to acknowledge that the project will, in fact, "result in a significant alteration of the present or planned land use" of the area by facilitating the conversion of existing agricultural land to the proposed and anticipated industrial uses.

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In sum, the proposed pipeline cannot be approved at the current time in any form. The pipeline "project" is in fact part of a much larger industrial development—most likely the Wal-Mart distribution center project currently undergoing environmental review—and must be analyzed and reviewed accordingly; even if the pipeline were in fact an independent project accurately described by the applicant, no new irrigation pipeline can be approved on the site pursuant to its current zoning designation; and the current Mitigated Negative Declaration is in any case inadequate.

Attachments

Attachment A:	Memorandum from Wal-Mart's Engineer, Dated July 5, 2007
Attachment A1:	"Preferred Stormwater Drainage Route"
Attachment A2:	"Alternate Stormwater Drainage Route"
Attachment B:	Request for Encroachment Permits
Attachment C:	Merced Municipal Code

Sincerely,

The Merced Stop Wal-Mart Action Team (SWAT)

MEMORANDUM

TO: Kim Espinosa, Planning Manager
City of Merced
678 West 18th Street
Merced, California 95340

CC: Mayor and City Council Members
Jack Lesch, Development Services Department
Frank Quintero, Development Manager

FROM: The Merced Stop Wal-Mart Action Team
1735 Canal St., Suite 13
Merced, CA 95340

DATE: April 25, 2008

RE: Proposed Kibby Road Abandonment for Wal-Mart Distribution Center Violates Adopted Mitigation Measures, Other Regulations

In the past two years, the Merced Stop Wal-Mart Action Team has conducted several California Public Records Act requests. As a result of reading these thousands of pages of documents, it has come to our attention that the site plan for the proposed Wal-Mart Distribution Center in Merced, if approved, would be in violation of a number of binding restrictions and regulations on the use of the site.

We write this letter to protect the public's right to participate in development review and the broader planning process, and ensure those concerns are enforced by City staff as is their legal obligation. Merced residents depend on City staff to enforce binding mitigation measures in development agreements. To ignore or alter these measures behind closed doors represents a betrayal of the public trust.

One problem with the Site Plan which has come to our attention centers on the proposed abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues. This abandonment is key to the configuration of the Distribution Center as currently proposed.

I. The proposed abandonment of Kibby Road would violate adopted mitigation Measures.

In 1998, the City annexed an area which contained the majority of the site on which the Distribution Center is now proposed to be located (the "Lyons Annexation"). At the time, the City's Planning Division produced an "Expanded Initial Study #97-22 for Lyons Annexation to the City of Merced." This Expanded Initial Study formed the basis for a Mitigated Negative Declaration, and both documents were adopted by the City. The City then proceeded with the Lyons Annexation and accompanying project approvals.

The Mitigation Measures adopted by the City with the Expanded Initial Study and Mitigated Negative Declaration include the following:

> The developer shall construct all collector, local, or cul-de-sac streets within the Project boundaries to their ultimate right-of-way with full frontage improvements . . . This includes Kibby Road, Gerard Avenue, Tower Road, and any new interior streets within the Project boundaries. . . .

Kibby Road's right-of-way is fully or partially "within the Project boundaries" of the Lyons Annexation between Childs Avenue and Mission Avenue, and it is classified as a "collector" in the City's General Plan throughout this segment. The City may believe that the proposed General Plan amendment eliminating this segment of Kibby Road from the General Plan relieves the developer from constructing Kibby in conformance with this adopted Mitigation Measure. This is not the case. Removing Kibby's General Plan designation as a "collector" cannot obscure the fact that it is named specifically in the adopted Mitigation Measures as a street which the developer must construct "to its ultimate right-of-way." Thus, even with an appropriately approved General Plan amendment, approving the Site Plan as proposed would produce a clear violation of this adopted Mitigation Measure.

It should be noted that the requirement for the developer to construct Kibby Road between Childs and Mission Avenues was based in part on the need for acceptable traffic routes between this industrial area and Highway 99. The Expanded Initial Study makes this clear:

> [T]here will be three possible major routes in and out of the Project area. Route 1 would be Kibby Road to Highway 140, Route 2 would be Childs Avenue to Highway 99, and Route 3 would be Kibby Road to Mission Avenue to Highway 99. . . . Some vehicle trips would also be routed to Gerard Avenue and the Eastern Beltway/Campus Parkway but these trips are not projected to be as significant in number.

Specifically, the Study projected that only 10% of trips would use the Gerard Avenue/Campus Parkway route. In contrast, the plan proposed by Wal-Mart for its Distribution Center involves eliminating Kibby Road and placing no entrance on Childs Avenue, thus putting all trips onto Gerard Avenue. In fact, Wal-Mart proposes routing all truck traffic to Highway 99 via the Gerard Avenue/Campus Parkway route—virtually the only route available given the proposed site configuration. This would fly in the face of the projections relied upon in the Expanded Initial Study.

II. The proposed abandonment of Kibby Road violates the City's Storm Drain Master Plan.

The City's adopted Storm Drain Master Plan includes a storm drain running along part of the Kibby Road right-of-way between Childs and Gerard Avenues. In fact, it is our understanding that this storm drain is already constructed. General Plan Implementing Action P-1.1.d directs the City as follows:

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

The vacation of the segment of Kibby Road at issue and the construction of the Wal-Mart Distribution Center as proposed would necessitate removal or re-routing of the storm drain in the

Kibby Road right-of-way, in contravention of the adopted Storm Drain Master Plan and the City's General Plan.

III. The proposed abandonment of Kibby Road violates the conditions of approval of the 2005 subdivision of the site.

In December 2005, the Merced City Minor Subdivision Committee approved a Minor Subdivision of the proposed Wal-Mart Distribution Center site (Lot Split Application #05-15). Resolution #871, passed by the Committee, approved the Minor Subdivision with the following condition of approval:

> Prior to the issuance of an occupancy permit on any parcel, the street frontages (except Campus Parkway which is addressed under Condition #7) shall be improved to full City standards. Improvements shall include, but not be limited to, curb, gutter, fire hydrants, paving, street trees, street lights, under grounding of utilities and canals, and traffic control devices. . . .

As there is no exception made for Kibby Road, this condition of approval requires Kibby to be constructed between Childs and Gerard Avenues.

Another condition of approval contained within Resolution #871 requires compliance with the City's Storm Drain Master Plan:

> Before issuance of a building permit, subdivider shall demonstrate, to the satisfaction of the City Engineer, that storm drainage is designed to function as an integral part of a larger system. . . . This shall include compatibility with the City's Storm Drain Master Plan.

As described above, the proposed abandonment of Kibby Road would inevitably result in non-compliance with this Master Plan. Thus, the proposed abandonment would result in the violation of two of the conditions of approval of this Minor Subdivision.

IV. The proposed abandonment of Kibby Road would result in violations of the General Plan's policies on industrial traffic.

The General Plan's Implementing Action T-1.1.b directs the City as follows:

> Whenever feasible implement a system of arterials and higher order streets in new growth areas based on the adopted concept of arterials/expressways.

The description of the Implementing Action specifies further:

> Arterials and higher order streets will carry the higher-speed traffic to adjacent commercial, industrial, and other major destinations. Collectors and local streets will be designed for local, neighborhood traffic . . .

The plan outlined in the Lyons Annexation Expanded Initial Study and Mitigation Measures would have largely conformed to these policies: For example, Kibby Road was to be used to access the industrial area to and from Mission Avenue (an arterial), which would provide access to Highway 99. This plan is consistent with the current General Plan and remains feasible. However, the abandonment of Kibby Road, along with other aspects of the proposed Site Plan for the Wal-Mart Distribution Center, would instead result in a street system and traffic pattern

that violates the General Plan by funneling all of Wal-Mart's industrial traffic onto Gerard Avenue (a collector). As the General Plan recognizes, collector streets like Gerard Avenue are simply not designed to handle this kind of high-volume, high-speed industrial traffic. Maybe these issues are being addressed in the current General Plan update process; maybe not. The City must rely on the existing General Plan until the update process is completed and a new document is approved.

V. The City and Wal-Mart have recognized the necessity of constructing this segment of Kibby Road since the beginning of planning for this project.

In 2003, before making a final decision to pursue a Distribution Center in Merced, Wal-Mart submitted a number of questions regarding the currently proposed Distribution Center site to Frank Quintero, the City's Economic Development Manager. In his response, Mr. Quintero clearly indicated that Kibby Road had to be constructed between Childs and Gerard Avenues. He stated in part:

> Right of Way for Kibby Road extended may be moved; however, Kibby Road must go through from Childs Avenue to Mission Avenue for public safety access.

He further stated:

> Kibby Road, Tower Road, Mission Avenue, Gerard Avenue and Childs Avenue would have to be improved to City Standards.

It is unclear to us why Wal-Mart and the City have proceeded so far with the review of Wal-Mart's proposed Site Plan and Kibby Road abandonment, despite apparently recognizing at the beginning that this segment of Kibby Road could not be abandoned. Regardless, the information outlined herein (which only recently came to our attention) must serve to remind the City and Wal-Mart of the impossibility of the proposed Kibby Road abandonment.

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The Mitigation Monitoring Program adopted by the City along with the Lyons Annexation Mitigation Measures states in part:

> Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the City Planner in written form providing specific information on the asserted violation. The City Planner shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the City Planner shall cause appropriate actions to remedy any violation.

It has been clearly demonstrated herein that the proposed abandonment of Kibby Road would result in violation of the adopted Lyons Annexation Mitigation Measures as well as several other applicable rules and restrictions. The City's planning staff must investigate and take appropriate steps to ensure that this does not occur. In other words, if Wal-Mart wishes to build a Distribution Center on the currently proposed site in Merced, it must discard the idea of abandoning Kibby Road and re-design its Site Plan around the Kibby Road right-of-way. It is the City's duty to ensure that this occurs by enforcing its own regulations governing development of the site.

MEMORANDUM

TO: Jack Lesch, Director of Development Services
Planning Division
City of Merced
678 West 18th Street
Merced, California 95340

CC: Mayor, City Council and Planning Commission members
Other interested parties

FROM: The Merced Stop Wal-Mart Action Team
1735 Canal St. Suite 13
Merced, CA 95340
swat@mercedstopwalmart.org

DATE: June 2, 2008

RE: Comments on University Industrial Park Vesting Tentative Subdivision Map #1299
Item 4.1 on June 4 City of Merced Planning Commission agenda

Mr. Lesch,
We are the Merced Stop Wal-Mart Action Team, a broad, grassroots coalition of community groups and thousands of Merced residents opposed to the construction of the proposed Wal-Mart distribution center in Southeast Merced. Many of our members and supporters live in South and Southeast Merced, meaning that our health and quality of life will be among those most affected by the proposed distribution center and nearby projects.

We appreciate the opportunity to comment on this project. The University Industrial Park Subdivision is located near the Campus Parkway and proposed Wal-Mart distribution center, two of the largest, most complex projects in the history of our city. It is essential that projects abutting the Parkway and distribution center site take into account the cumulative impacts of rapidly-shifting conditions on the ground in Southeast Merced, a fast-growing area that will "transform a sleepy corner of southeast Merced into a residential and commercial hub" (Merced Sun-Star, Aug. 22, 2007).

The studies for the Tentative Subdivision Map are outdated

Due to numerous changed circumstances in the past decade, some of the studies found in the University Industrial Park Subdivision Initial Study #98-06 – released to the public on May 21, 1998 and approved by the Planning Commission on July 8, 1998 – are out-dated and contradict other City statements and findings. Consequently, TSM #1299 should not be permitted to tier off of the Negative Declaration.

A "Negative Declaration" is a "written statement by the Lead Agency briefly describing the reasons that a proposed project...will not have a significant effect on the environment and therefore does not require the preparation of an EIR" (CEQA Guidelines, §15371). A negative declaration must be prepared when after completing an initial study, a lead agency determines that a project "would not have a significant effect on the environment" [Public Resources Code §21080 (c)]. This determination can only be made if there is "no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment" [Public Resources Code, §21080 (c)(1)].

The "fair argument" standard under CEQA applies when a lead agency decides whether to issue a negative declaration. This standard places a greater burden of proof on the project proponent to demonstrate that it cannot be "fairly argued" that a project could result in a significant impact. Additionally, "the existence of serious public controversy in itself indicates that preparation of an EIR is desirable" [*No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68]*. The intent is to err towards a broad application of CEQA that protects the right of the public to participate in decisions that may worsen the environment and their own health and quality of life.

The Negative Declaration should be withdrawn. A full Environmental Impact Report needs to be prepared to correct factual errors in previous studies, evaluate cumulative impacts and determine alternatives to the project. The City can no longer certify that this proposed project "could not have a significant effect on this environment" or that no "serious public controversy" exists.

We also want to remind the Planning Commission and City Council of the various duties and obligations of the Developer as detailed in the 32 conditions found in the Staff Report for this item, some of which are required before issuance of the final map when prepared. Additionally, we urge City staff to re-examine the appropriateness of these conditions after over ten years' time.

Comments on Initial Study #98-06 Environmental Evaluation

B.) Air

Since 1998, the scientific and medical communities' understanding of the health impacts of non-attainment of ozone and particulate standards has improved dramatically. We live in a terrible air quality public health crisis where, according to a report released by the California Air Resources Board on May 22, over 2,900 Valley residents die prematurely every year from exposure to fine particulate. New projects must take the health and quality of life of most affected Merced residents into account in every step of the permitting process.

The Applicant should communicate with the San Joaquin Valley Air Pollution Control District to determine whether new standard requirements have taken effect since 1998. For the tentative map phase, the Air District suggests a variety of mitigations, including:

- Contribute to Local Air Quality Mitigation Fee Fund
- Energy conservation measures above and beyond requirements
- Pay for fleet vehicle conversions to alternative fuels

There is an inadequate discussion of how the Applicant plans to mitigate localized toxic air emissions that will likely come from industrial use.

The City of Merced is currently updating its General Plan. The Applicant should communicate with City staff to create an updated list of roadway and intersection improvements in the vicinity of the site.

C.) Water

The years of study used to determine the City's peak water capacity – 1990-1994 – are outdated and inadequate to understand how this project will impact City water supply. Subdivision of the project may result in greater-than-anticipated water usage when compared to other types of industrial usage. The intervening years have been some of the driest on record; the City needs the latest analysis possible to make wise decisions about our limited groundwater supply.

I.) Traffic
The traffic study upon which the mitigated negative declaration was based is flawed and must be conducted again.

The study estimates 9 Average Daily Trips (ADT) per 1,000 square feet and estimates that this project will generate 3,880 ADT at full build-out. The study does not, however, describe how many of those trips will be cars or trucks, or how that traffic will interact with current traffic levels and circulation.

The study assumes:

- 50% of the traffic uses Kibby Road north to Highway 140 (75% will go west, 20% will go east and 5% will continue north)
- 35% use Childs Avenue West to Highway 99
- 10% use Kibby Road south to Highway 99
- 5% use Childs Avenue eastbound (or other miscellaneous local needs)

Since 1998, Wal-Mart purchased the parcel to the south of this project, subdivided it, and proposed to amend the City's General Plan to abandon build-out of Kibby Road south to Highway 99. It is our contention in a letter dated April 25, 2008 and attached for your convenience, that the abandonment of Kibby Road violates numerous adopted City plans and mitigation measures and contradicts the advice of City staff. In addition to the points raised in this April 2008 letter, we now add that Vesting Tentative Subdivision Map #1299 would also preclude the abandonment of Kibby Road as proposed by Wal-Mart. In any case, the City must clearly state its intentions with regard to the proposed abandonment of Kibby Road before this project can move forward as proposed.

A document entitled "Weaver Conditions," last updated June 15, 1995, includes binding mitigation measures for the Pluim-Sutter-Vierra annexation. Condition 03.01 (c) states:

> Whenever practical construction-related truck traffic should be prohibited from using adjacent arterial and collector streets, and all truck traffic should be directed to State Highway 140 via Childs Avenue or Gerard Avenue to Kibby Road.

This binding mitigation measure is currently violated on a daily basis as any Southeast Merced resident can attest. The City is obligated to post relevant signage in and around the project site and work with users of the industrial park to educate drivers about where they can park and drive their trucks. Perhaps the added truck traffic through Kibby to SR 140 with the enforcement of City code would impact improvements necessary to Kibby Road and circulation in the area. Without a new traffic study, we will not know.

MEMORANDUM

TO: Kim Espinosa, Planning Manager
City of Merced Planning & Permitting Division
678 West 18th Street
Merced, CA 95340

CC: Mayor, City Council members and other interested parties

FROM: The Merced Stop Wal-Mart Action Team
1735 Canal St. Suite 13
Merced, CA 95340
swat@mercedstopwalmart.org

DATE: January 20, 2008

RE: Proposed Abandonment of a Portion of a Certain Right-of-Way and Storm Drain Detention Basin for the Campus Parkway Project

Environmental Review #08-52 (CEQA Section 15162 Finding)

Ms. Espinosa:

We are the Merced Stop Wal-Mart Action Team: a broad, grassroots coalition of community groups and thousands of Merced residents opposed to the construction of the proposed Wal-Mart distribution center in Southeast Merced. Many of our members and supporters live in South and Southeast Merced, meaning that our health and quality of life will be among those most affected by the proposed distribution center and other development in southeast Merced.

We are writing to continue our previous comments found in the City Council Administrative Report as Attachment #5.

Summary

The City proposes to vacate to Lyons Investments a 59,729 sq. ft. piece of land (a map is found in Staff Report Attachment #1). This is land for which the City paid Lyons Investments about $90,000 in 2006, but the City does not propose to request any refund from Lyons for returning it by means of the vacation. The area was intended to be a storm drain basin for the Campus Parkway, but, according to the City, it was determined to be no longer needed. The City describes the impact of this abandonment as "negligible."

The City also proposes to acquire a 3,718 sq. ft. piece of land located at the southeast corner of the Campus Parkway and Childs Ave. intersection to be used as an additional and/or modified right turn lane from Northbound Campus Parkway onto Eastbound Childs Ave. A 10 ft. temporary construction easement would surround both of these pieces of land. The draft City Council Resolution included in the Staff Report describes

the vacation as conditional upon the acquisition of the 3,718 sq. ft. piece of land near Childs Ave. on or before Feb. 13, 2009.

However, the City also proposes to independently acquire 10,150 sq. ft. of land along Gerard Ave. The staff report identifies the use of the Gerard Ave. land only as "additional right of way" and claims without explanation that both pieces of land to be acquired "[add] to the functionality of the Campus Parkway project." The accompanying plat maps, legal description and the rationale for bundling the Gerard Ave. land to be acquired with this action are confusing, contradictory, and obscure. Therefore, we must use these comments to shed light on the subject.

We are obliged to point out that, before City Council can adopt the draft resolution approving the vacation, the City must:

- Show fiscal responsibility and demand that Lyons Investments refund the portion of fee reimbursement it received in 2006 from the City of Merced for the land now proposed for vacation—according to the assessment value used when right-of-way was originally acquired, Lyons Investments should refund the City $89,126.70;
- Appropriately amend the "Public Facilities Impact Fee Credit or Reimbursement Agreement" entered into by the City and Lyons Investments in 2006;
- Amend Lot Split Resolution #871, including Condition #7, which requires dedication of the area proposed to be abandoned and the construction of storm drainage improvements on this land;
- Add an addendum to the Campus Parkway EIR/EIS that explains the new information that prompted the City to believe land originally intended as a storm drain basin is in fact unneeded and can be abandoned without loss of critical storm drainage capacity, as well as why changes to the right turn lane configuration from the Campus Parkway onto Childs Ave. is necessary, including any traffic study conducted;
- Describe why the City now believes that the expansion of the Childs Ave./Campus Parkway intersection requires no environmental review after several years of arguing the opposite in various environmental documents;
- Describe the intended use of the 10,150 sq. ft. of land to be acquired along Gerard Ave. and how this acquisition and subsequent improvement interacts with surrounding development, including the Lyons Investments properties and the proposed Wal-Mart distribution center;

Fiscal Responsibility

On Feb. 6, 2006, the City of Merced and Lyons Investments entered into a "Public Facilities Impact Fee Credit or Reimbursement Agreement" for storm basin right-of-way and oversize right-of-way dedication "in excess of 74 feet (collector standard) or 37 feet measured from both the east and west ultimate right-of-way line." Per this agreement, the City of Merced paid $758,615 to Lyons Investments in April 2006 to acquire 21 acres of land. This included $464,490 for storm basin right-of-way, including the land now proposed for vacation, which was purchased at $65,000 per acre. At 59,729 sq. ft., or

1.37118 acres, the land proposed for vacation cost the City $89,126.70 when Lyons Investments dedicated it in 2006.

Furthermore, it is important to note that Lyons Investments is not eligible for reimbursement for the land now proposed for acquisition by the City. In September 1998, the Merced City Council approved Expanded Initial Study #97-22 for the Lyons Annexation, adding approximately 484 acres of agricultural land pre-zoned as Heavy-Industrial (I-H) in the southeast corner of the City of Merced. The Expanded Initial Study also includes a number of mitigation measures that are binding on future development within the annexation area, including Transportation/Circulation item M-3:

> M-3 **The developer shall dedicate the full right-of-way for all arterial and higher order streets within the Project boundaries as defined in the *Merced Vision 2015 General Plan.* For those arterial or higher order streets that are adjacent to but do not lie completely within the Project boundaries, the developer shall dedicate half of the required right-of-way. This includes Childs Avenue, Mission Avenue, and the Campus Parkway.** Consistent with Mitigation Measure 7.b of the *Merced Vision 2015 General Plan EIR,* where the extent of right-of-way dedication exceeds the City's development standards for a collector street (currently 74 feet for a collector street located entirely within the Project and 37 feet for a collector abutting the Project), then the developer is eligible for reimbursements in accordance with the City's Public Facilities Impact Fee Ordinance and guidelines, unless a traffic study determines that the Project's traffic impacts require additional dedication. (emphasis supplied)

The 10,150 sq. ft. piece of land along Gerard Ave. is part of a planned minor arterial in the City General Plan and falls completely within the project boundaries and is therefore not eligible for reimbursements. The 3,718 sq. ft. piece of land along Childs Ave. is an arterial adjacent to the annexation area and therefore Lyons is contractually obligated to dedicate this required right-of-way without reimbursement as well.

Our members include taxpayers who reside within the City of Merced. As former City Manager Jim Marshall wrote in his final memo for the fiscal year 2008-2009 City of Merced Municipal Budget:

> We are public servants. We need to keep a narrow focus during tight budgets and not attempt to publicly finance every project or program that presents itself. Basic public services must not be diluted at the expense of providing deep pocket funding to those who are unwilling or unable to develop their own source of capital. Be vigilant.

In the spirit of fiscal responsibility and vigilance, we demand that the City obtain a refund for the portion of storm drain basin right-of-way it purchased from Lyons Investments but has determined is no longer needed. The land at issue has both market value, and, as indicated in the Administrative Report, potential future "bike path and open space benefits." To return this land to Lyons Investments without fair compensation would be to waste valuable City assets. We demand, then, that the City obtain a refund from Lyons Investments for the costs of acquiring and later abandoning this piece of land, including at least $89,126.70 for the land itself, as well as compensation for staff time and attorney's fees. We also remind the City of California Code Section 526a:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a

citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.

Amendments to Existing Agreements and Resolutions

On December 15, 2005, during the final review of the Campus Parkway EIR/EIS, the City of Merced Minor Subdivision Committee approved the resubdivision of 313 acres of the Lyons Annexation, including the portion of land the City proposes to vacate in this action. Resolution #871 of the City's Minor Subdivision Committee contains 14 conditions that apply to the land described in this action. Most importantly, Condition #7 of the Resolution required Lyons Investments to dedicate right-of-way along the route of the future Campus Parkway, including the right-of-way now proposed for vacation. Therefore, the vacation will result in non-compliance with Resolution #871 unless the Resolution is amended prior to the vacation.

Furthermore, the Reimbursement Agreement described above includes a finding, contained within Recital C, that the improvements intended for the right-of-way now proposed for vacation are critical for the city's infrastructure. The City must amend this finding prior to abandoning the right-of-way—and thus any potential future infrastructure on it.

Additional Environmental Review

In October 1998, the City signed a development agreement with Lyons Investments, LLC that contains 35 "sections" that define how the City will govern future development within the annexation area. Since the portion of land that the City proposes to vacate is within the Lyons Annexation area, both the Expanded Initial Study #97-22 and the Lyons Annexation development agreement contain conditions that apply to the land described in this action. In the following years, the City and County of Merced, CalTrans and the U.S. Department of Transportation conducted the planning and environmental review for the Campus Parkway. The Campus Parkway EIR/EIS document was released for public review mid-2005.

Page 2-27 of the "Project Alternatives" chapter of the Campus Parkway Final EIR/EIS clearly describes the potential significant impacts of widening the intersection of Childs and the Campus Parkway:

> A constraint to widening the Childs Avenue intersection at Campus Parkway was identified as a result of environmental review. The Sunshine Dairy is southwest of and adjacent to the Hartley Lateral, which parallels the existing Childs Avenue in the area of the proposed Campus Parkway. Adding turning lanes on Childs Avenue may require minor relocation of the canal, which would require acquisition of a small sliver of land in the existing fields at the Sunshine Dairy. The Sunshine Dairy was determined eligible for listing in the National Register of Historic Places and the California Register of Historic Resources. To avoid this property entirely, the traffic signal and the intersection of Childs Avenue and Campus Parkway would be designed to minimize widening of Childs Avenue.

These same constraints were reiterated by the City in Staff Report #07-01 dated January 2007 for General Plan Amendment #06-12.

On July 5, 2005, Lyons Investments submitted a traffic study performed by Fehr & Peers as comments on the Campus Parkway EIR/EIS. Senior Transportation Engineer Richard Lee writes of the Childs and Campus Parkway intersection:

> It is important that this intersection provide an adequate level of service for traffic, including truck traffic, traveling to and from the existing and future industrial facilities along Childs Avenue. Please confirm that there will be sufficient right of way on the western leg of the Childs Avenue/Campus Parkway intersection to develop Childs Avenue as an arterial as it is designed in the City of Merced's 1997 General Plan.

The reply:

> The constraints noted in the Draft EIS/EIR would remain as long as the dairy is present. When and if a development plan is submitted for this parcel, intersection improvements (or at least right-of-way acquisition or dedication) would be made a requirement. If no development plan is advanced for this parcel, the intersection is still functional.

The Jan. 20, 2009 action apparently proposes to only widen the southeastern portion of the Childs/Campus Parkway intersection. Even so, portions of the Hartley Lateral would still need to be rebuilt. How would this impact the existing canal system in the area? Who will conduct those improvements? Has the City notified MID that it has plans to rebuild its canal? The staff report and Environmental Review #08-52 do not provide answers. In fact, the acquisition of 3,718 sq. ft. of land for an additional right turn lane onto Childs contradicts evidence provided in the Campus Parkway EIR/EIS; it is totally unacceptable to tier off of this document per CEQA Guidelines 15162. Additional review is needed.

Furthermore, Condition #6 of Resolution #871 states clearly that any additional right-of-way needed for the Childs Ave./Campus Parkway intersection must be "addressed at the Site Plan Approval stage." In other words, the Resolution anticipates that extra right-of-way may be needed to accommodate future industrial projects within the Lyons subdivision area—exactly the reason we believe the City is currently attempting to acquire additional right-of-way in these locations—and requires this issue to be addressed during site plan review. As we have noted in our previous comments, the present action is in this and many other ways a part of the Wal-Mart distribution center project and/or other future Lyons industrial projects, and must be reviewed as part of those projects, not independently.

Conditions of Approval

The City has noted the value of this land as open space, and the Administrative Report implies that even after abandonment the land will remain open space. If this is accurate, it would alleviate some of our concerns regarding the action. Therefore, when abandoning this piece of land, we also request that the City add certain conditions, particularly that Lyons Investments place the land into an easement that guarantees its use as open space in perpetuity, and that it will not be used to piecemeal the development of other industrial development or induce other types of high-polluting development in the area.

Attachments:

Lyons Annexation Development Agreement, signed Oct. 19, 1998, and Lyons Annexation Expanded Initial Study #97-22 mitigation measures
http://www.mercedstopwalmart.org/images/SWAT_PDFS/lyonsdevelopmentagreement.pdf

Public Facilities Impact Fee Credit or Reimbursement Agreement dated February 6, 2006, and Lot Split Resolution #871, adopted Dec. 19, 2005
http://mercedstopwalmart.org/images/SWAT_PDFS/lyonsreimbursement.pdf

City of Merced Staff Report #07-01 to Planning Commission, Jan. 17, 2007.
http://www.cityofmerced.org/civica/filebank/blobdload.asp?BlobID=5047

Campus Parkway Final EIR/EIS
http://www.dot.ca.gov/dist10/media/docs/CampusParkwayFinalEIS.pdf

City of Merced 2015 General Plan, Chapter 4: Transportation and Circulation
http://www.cityofmerced.org/civica/filebank/blobdload.asp?BlobID=3997

Marshall, James G. "Fiscal Year 2008-2009 City of Merced Municipal Budget,"
http://www.cityofmerced.org/civica/filebank/blobdload.asp?BlobID=6494

An Overview

of the

WILSON ENERGY CENTER

Presented to the

City of Merced and its ***Councilmembers***

by

APEX Power Group, LLC

May 19, 2008

ENERGY INVESTORS FUNDS

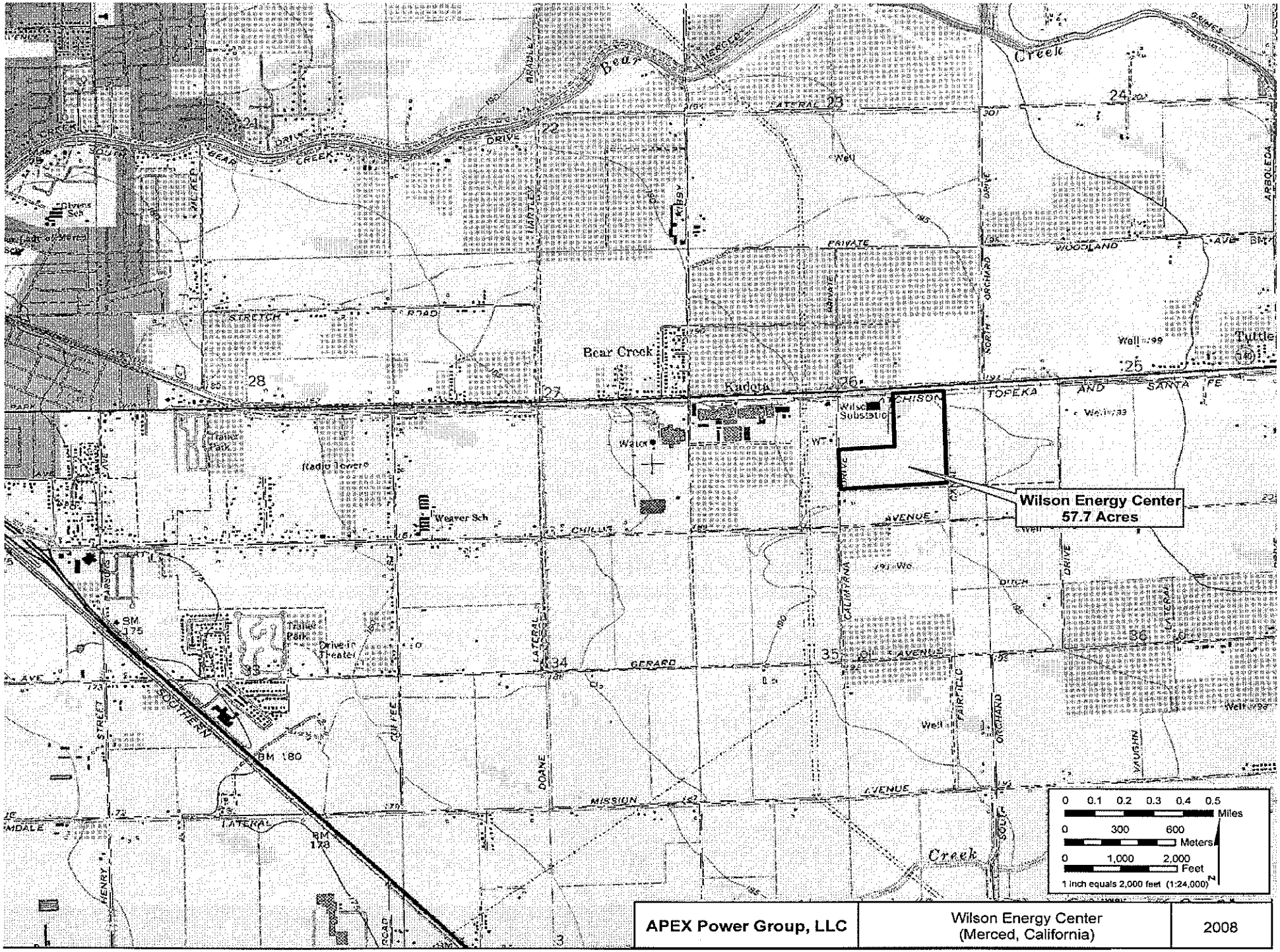
BOSTON SAN FRANCISCO NEW YORK

APEX and its Affiliations

- Energy Investors Funds
- General Electric Company
- Kiewit Constructors and Engineers
- URS Corporation

Why Choose Merced?

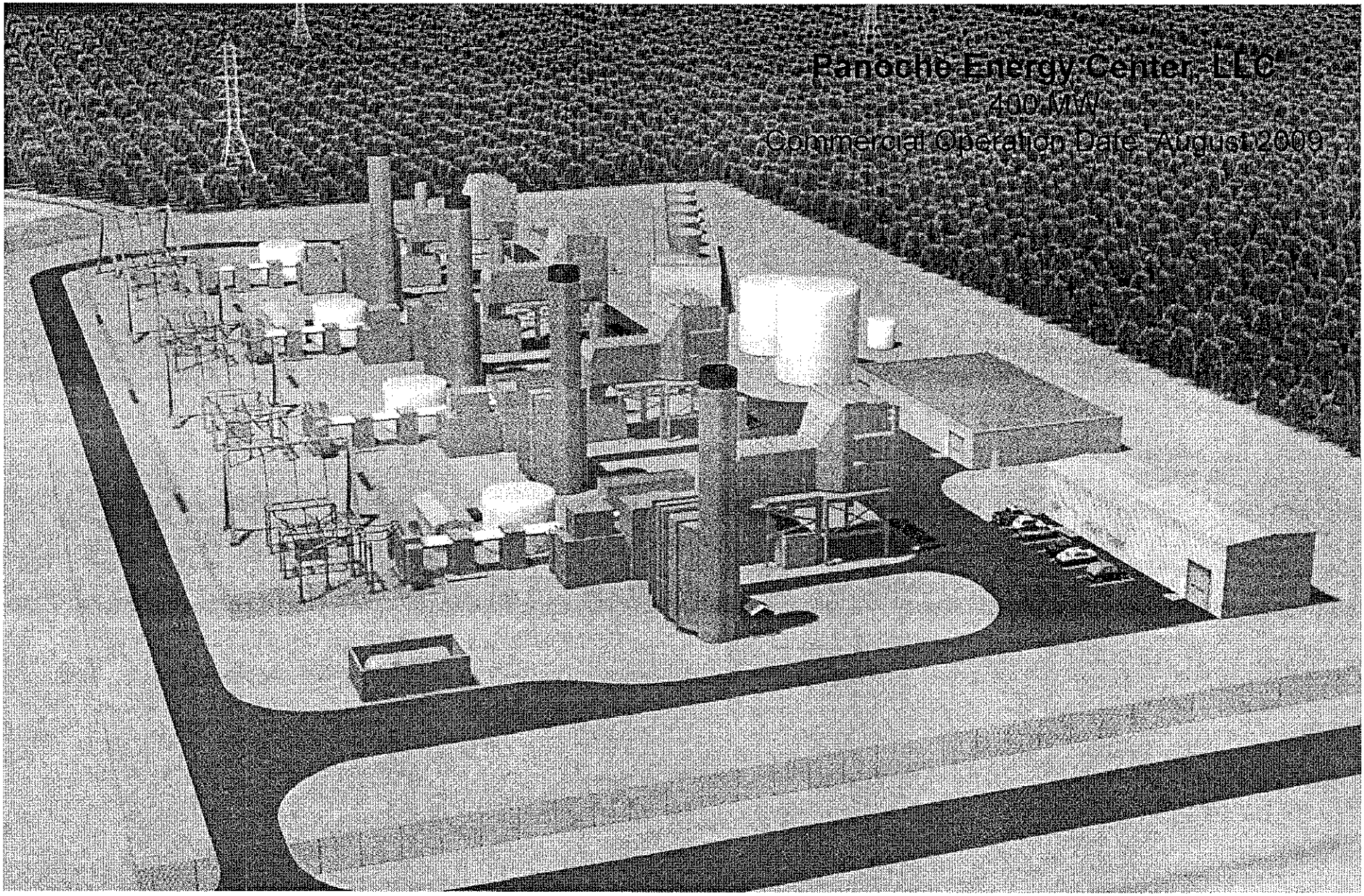
- Central Valley generating capacity shortage
- Electrical grid congestion and overloading
- Available infrastructure and resources
- Societal Changes and Load Growth Forecast
- Heavy Industrial zoning designation



APEX Power Group, LLC	Wilson Energy Center (Merced, California)	2008

Technology and Plant Design

- 5 General Electric LMS 100 units
- Same technology as Panoche plant
- BACT compliant
- Highly flexible and efficient units
- 500 MW total
- Tie to Wilson substation



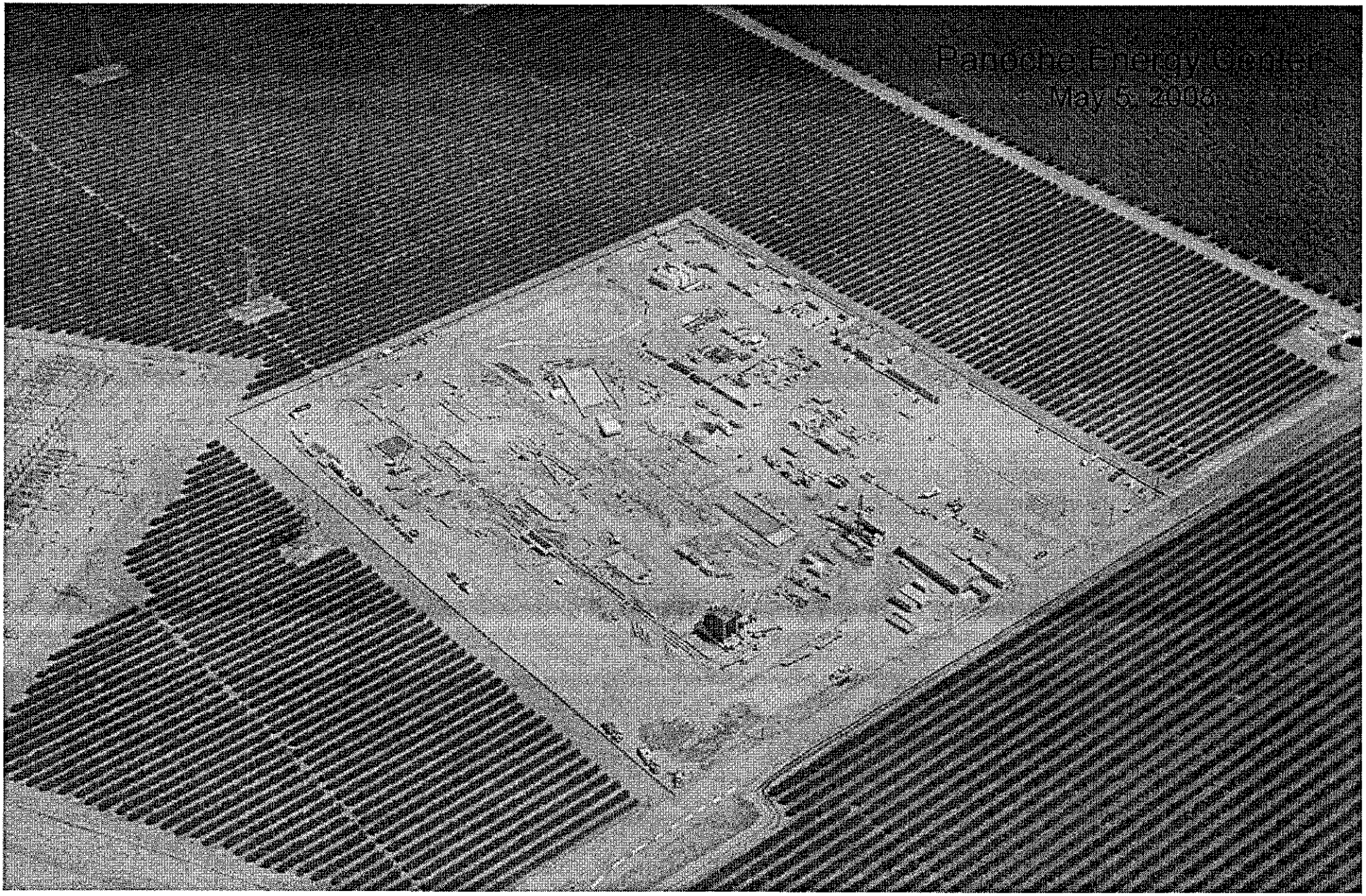
ENERGY INVESTORS FUNDS

BOSTON SAN FRANCISCO NEW YORK

APEX Power Group, LLC

CONSTRUCTION and OPERATIONS

- Construction by Kiewit Power Corporation
- 18-month construction period
- Peak work force ~350
- All workers from California building trades
- Operations by highly experienced company – to be determined



ENERGY INVESTORS FUNDS

BOSTON SAN FRANCISCO NEW YORK

APEX Power Group, LLC

PG&E *Request for Offers*

- RFO and Bidding process
- PG&E Gas and Electric Studies
- Power Purchase Agreement

California Energy Commission

- *Warren-Alquist Act* and CEC authority
- *Application for Certification* (AFC) process and the *CA Environmental Quality Act*
- City AFC review and approvals
- No City administered *Environmental Impact Report* (EIR)

Environmental Considerations

- Air Emissions
- Water Resources
- Geologic Hazards
- Public Health & Safety
- Traffic & Transportation
- Noise
- Biological Resources
- Cultural Resources
- Visual Resources
- Paleontological Resources
- Land Use
- Socioeconomics
- Waste Management
- Hazardous Materials
- Worker Safety
- Cumulative Impacts
- Agriculture & Soils

AIR EMISSIONS

- Apply BACT to lower NOx, CO and VOC emissions
- Project worst-case emissions for NO_x, CO, VOC, PM, SO_x, NH_3, CO_2
- Offset NOx, VOC, PM and SOx with Emission Reduction Credits (1 to 1.5 ratio)
- Perform ambient and cumulative analyses per SJVAPCD and EPA procedures

WATER RESOURCES

- Water is used to lower NOx emissions and to improve energy conversion efficiency
- Maximum use 1400 ac/ft per year
- ~50% returned to the City
- Proposed water plan with MID
- Proposed wastewater plan with City

Local Benefits

- Employment of skilled and professional positions
- Sales Taxes ($12-$15 million)
- Property Taxes ($5 million per year)
- Power capacity and electric grid integrity

Employment

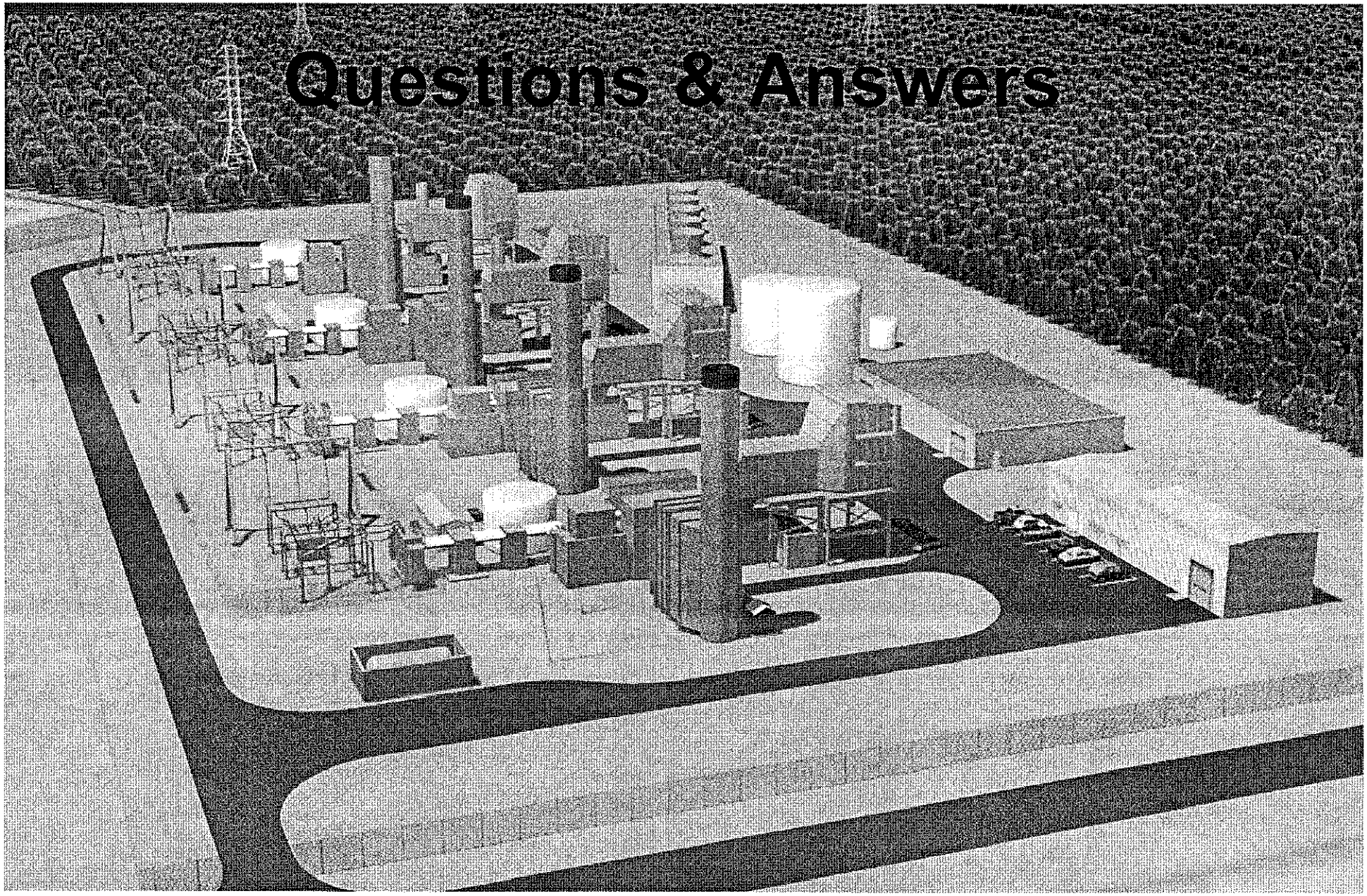
- Up to 350 workers during construction - from California building trades
- Up to 15 permanent skilled and professional positions during operations
- Periodic contracted skilled maintenance work force
- Local and regional service contractors

Community Growth and Changes in Electricity Use

- Wilson would increase local/regional capacity margins by 500MWs
- Improve power quality
- Improve power reliability
- Lower line losses (increase transmission efficiency)
- Could enhance regional groundwater balance through exchange and enhancement programs
- Would provide peaking generation that supports alternative energy development and use

Milestone Schedule

• PG&E Bids	July 21, 2008
• PG&E Short List	October 20, 2008
• PG&E Contract Award	December 2008
• File CEC Application	March 2009
• CPUC Approval	June 2009
• CEC Approval	August 2010
• Start of Construction	October 2010
• Commercial Operation	April 2012



ENERGY INVESTORS FUNDS

BOSTON SAN FRANCISCO NEW YORK

APEX Power Group, LLC

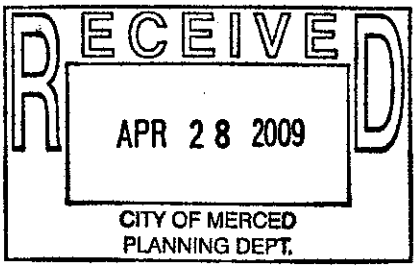
Espinosa, Kim

From: Nick Robinson [ndrobinson@gmail.com]
Sent: Monday, April 27, 2009 5:20 PM
To: Espinosa, Kim
Subject: Additional attachment

Kim,
Please accept this attachment to the Stop Wal-Mart Action Team's comments that were submitted this afternoon.

Thank you,
Nick Robinson

--
Nick Robinson
209.489.1740 | ndrobinson@gmail.com



RESULTS

Below are each of the questions which appeared in our survey of Southeast Merced residents, exactly as they appeared on the survey. The percentage of respondents who chose each option is presented below that option in **red**. These are the results of the survey in their most basic form. Please note that percentages for each question were calculated based on the total number of respondents who answered each question; thus, respondents who did not answer a given question (or who did not answer it within the parameters provided) were not included in the total for that question. However, countable response rates were generally above 98%, so the influence of this exclusion on calculations is insignificant. (Also: percentages are rounded to whole numbers, and unless otherwise noted, any failure of percentages for a given question to add to 100% is a result of rounding.)

1. Did you know that Wal-Mart wants to build a distribution center between Childs and Gerard Avenues in southeast Merced?

☐ Yes	☐ No
70%	**30%**

Many different things *could* be built in Southeast Merced. We want to know which are most important to people who live in southeast Merced. By "southeast Merced," we mean the area within Merced city limits east of Highway 99, south of 140, and with Mission Ave. to the south.

If you *don't* like it, then circle 1; if you like it a lot and want to see it built, circle 3.

2. More places to shop for groceries, clothing, or other things	1 **16%**	2 **13%**	3 **71%**
3. More homes and apartments	1 **44%**	2 **22%**	3 **34%**
4. More places for professionals to work, like offices or banks	1 **21%**	2 **23%**	3 **56%**
5. More doctor, dental and other healthcare	1 **16%**	2 **21%**	3 **63%**
6. More industrial, like storage, manufacturing or warehouses	1 **43%**	2 **21%**	3 **36%**
7. More schools	1 **20%**	2 **21%**	3 **59%**
8. More parks and playgrounds	1 **11%**	2 **19%**	3 **70%**

9. How many children under the age of 18, if any, live with you?

0	1	2	3	4	5+
31%	**19%**	**19%**	**14%**	**7%**	**10%**

10. Do you or does anyone in your family have asthma, problems breathing, or use an inhaler to help them breathe?

☐ Yes – I do.	☐ Yes – A family member.	☐ No
14%	**33%**	**57%**

(Percentages do not add to 100% due to some respondents who both had asthma themselves and had a family member with asthma.)

11. Children who grow up within about 1,500 feet of a major road have a higher risk of developing asthma. There are plans to build another elementary school less than 500 feet from the Campus Parkway. How concerned are you about car and truck traffic near schools in southeast Merced?

1 means truck traffic is not an issue → | 1 | 2 | 3 | ← 3 means it's a major problem
|---|---|---|---|
| 16% | 27% | 56% | |

12. How do you feel about the level of truck traffic in the neighborhood right now?

1 means truck traffic is not an issue now → | 1 | 2 | 3 | ← 3 means truck traffic is a major problem
|---|---|---|---|
| 37% | 34% | 28% | |

13. Based on what you know, do you support or oppose the Wal-Mart distribution center?

1 means you *oppose* the project as proposed → | 1 | 2 | 3 | ← 3 means you *support* it
|---|---|---|---|
| 38% | 25% | 36% | |

After they hear from residents, the Mayor and six elected Merced City Council members will vote on whether to approve site plans and environmental studies for the distribution center.

14. How much confidence do you have that City Council makes decisions that benefit the health and quality of life of residents in south and southeast Merced?

1 means you have no confidence in City Council → | 1 | 2 | 3 | ← 3 means you are completely confident
|---|---|---|---|
| 34% | 50% | 16% | |

15. Do you think City Council as a whole takes you seriously if you give them your opinion?

1 means you don't feel taken seriously → | 1 | 2 | 3 | ← 3 means you feel taken seriously
|---|---|---|---|
| 47% | 36% | 18% | |

16. Do you think in general, City Council understands issues important to Southeast Merced residents?

1 means City Council doesn't understand your issues → | 1 | 2 | 3 | ← 3 means City Council understands
|---|---|---|---|
| 36% | 41% | 23% | |

17. What is your ethnicity?

1. ☐ Caucasian	2. ☐ Hispanic, Latino	3. ☐ Punjabi
30%	**38%** *(including "Mexican," etc.)*	**0%**
4. ☐ Southeast Asian	5. ☐ African American	6. ☐ Other _____
17% *(including "Hmong," etc.)*	**7%**	**9%**

(Percentages do not add to 100% due to some respondents who marked more than one ethnicity.)

18. What language is spoken the most at home?

1. ☐ English	2. ☐ Spanish	3. ☐ Hmong	4. ☐ Mien
76%	**20%**	**18%**	**0%**
5. ☐ Laotian	6. ☐ Punjabi	7. ☐ Other _____	
0%	**0%**	**1%**	

(Percentages do not add to 100% due to some respondents who marked more than one language.)

19. What is your family's combined yearly income?

1. ☐ $0-$19,999	2. ☐ $20,000-$34,999	3. ☐ $35,000-$49,999
27%	**27%**	**12%**
4. ☐ $50,000-$64,999	5. ☐ $65,000-$79,999	6. ☐ $80,000+
16%	**11%**	**8%**