

Appendix B

Written Comments
Received on the NOP



103014



STATE OF CALIFORNIA

Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Arnold
Schwarzenegger
Governor

Sean Walsh
Director

Notice of Preparation

October 31, 2005

To: Reviewing Agencies

Re: Wastewater Treatment Plant Expansion Project
SCH# 2005101135

Attached for your review and comment is the Notice of Preparation (NOP) for the Wastewater Treatment Plant Expansion Project draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

David Tucker
City of Merced
678 W. 18th Street
Merced, CA 95340

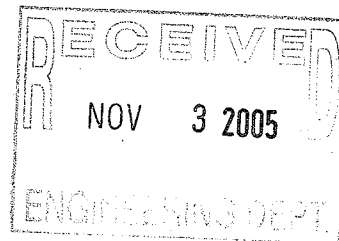
with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

Scott Morgan
Associate Planner, State Clearinghouse

Attachments
cc: Lead Agency



**Document Details Report
State Clearinghouse Data Base**

SCH# 2005101135
Project Title Wastewater Treatment Plant Expansion Project
Lead Agency Merced, City of

Type NOP Notice of Preparation
Description The City of Merced is proposing to upgrade and expand the capacity of its WWTP facilities to serve planned wastewater loads generated within the City and to comply with current and anticipated effluent quality regulatory limits.

Lead Agency Contact

Name David Tucker
Agency City of Merced
Phone (209) 385-6846 **Fax**
email
Address 678 W. 18th Street
City Merced **State** CA **Zip** 95340

Project Location

County Merced
City Merced
Region
Cross Streets Gove Road
Parcel No. Multiple
Township 8 **Range** 13 **Section** **Base** MDB&M

Proximity to:

Highways 99
Airports Merced Municipal
Railways
Waterways Hartley Slough
Schools
Land Use Public / Agriculture

Project Issues Agricultural Land; Biological Resources; Flood Plain/Flooding; Growth Inducing

Reviewing Agencies Resources Agency; Department of Conservation; Department of Water Resources; Department of Parks and Recreation; Native American Heritage Commission; Department of Health Services; Department of Fish and Game, Region 4; California Highway Patrol; Caltrans, Division of Aeronautics; State Lands Commission; Caltrans, District 10; Integrated Waste Management Board; State Water Resources Control Board, Division of Water Quality; Regional Water Quality Control Bd., Region 5 (Fresno)

Date Received 10/28/2005 **Start of Review** 10/28/2005 **End of Review** 11/28/2005

Resources Agency
Fish and Game Region 3
Fish and Game Region 4
Fish and Game Region 5
Fish and Game Region 6
Fish and Game Region 6 I/M
Dept. of Fish & Game M
Other Departments
Food & Agriculture
Dept. of Food and Agriculture
Dept. of General Services
Public School Construction
Dept. of General Services
Environmental Services Section
Dept. of Health Services
Veronica Rameriz
Dept. of Health/Drinking Water
Independent
Commissions, Boards
Delta Protection Commission
Office of Emergency Services
Governor's Office of Planning & Research
Native American Heritage Comm.
Reclamation Board
S.F. Bay Conservation & Dev't. Comm.
Dept. of Water Resources
Fish and Game
Dept. of Fish & Game
Fish & Game Region 1
Fish & Game Region 2

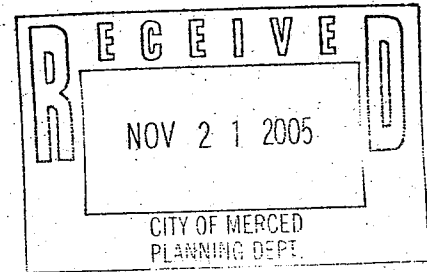
Public Utilities Commission
State Lands Commission
Tahoe Regional Planning Agency (TRPA)
Business, Trans & Housing
Caltrans - Division of Aeronautics
Caltrans - Planning
California Highway Patrol
Housing & Community Development
Dept. of Transportation
Caltrans, District 1
Caltrans, District 2
Caltrans, District 3
Caltrans, District 4
Caltrans, District 5
Caltrans, District 6
Caltrans, District 7

Caltrans, District 8
Caltrans, District 9
Caltrans, District 10
Caltrans, District 11
Caltrans, District 12
Cal EPA
Air Resources Board
California Integrated Waste Management Board
State Water Resources Control Board
State Water Resources Control Board
State Water Resources Control Board
State Water Resources Control Board
Dept. of Toxic Substances Control
Department of Pesticide Regulation

Regional Water Quality Control Board (RWQCB)
RWQCB 1
RWQCB 2
RWQCB 3
RWQCB 4
RWQCB 5S
RWQCB 5F
RWQCB 5R
RWQCB 6
RWQCB 6V
RWQCB 7
RWQCB 8
RWQCB 9
Other

MID MERCED IRRIGATION DISTRICT

November 8, 2005



Bill King, Principal Planner
City Of Merced
678 West 18th Street
Merced, California 95340

Subject: Merced Waste Water Treatment Plant Expansion Project

Dear Mr. King:

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

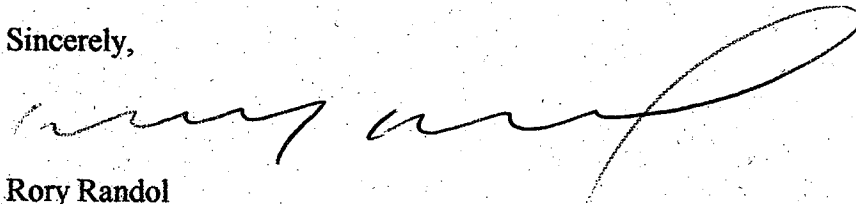
1. MID operates and maintains the Hartley Slough located within an undetermined width easement as recorded in Volume 181, Official Records, Page 147 and Volume 199, Official Records, Page 75, Merced County Records. This facility mostly parallels the west boundary of the subject property.
2. MID operates and maintains the Paden Drain located within a prescriptive easement. This facility parallels the north side of the project site. This drain was physically relocated by the landowner without prior notification to MID. The 70-foot wide easement where the drain was located is still in place and may be impacted by the expansion.
3. MID operates and maintains Miles Creek located within a 70-foot wide easement as recorded in Volume 216, Official Records, Page 379, Merced County Records. This facility is located at the south line of Section 10 of the subject property.
4. MID operates and maintains the Hartley Lateral located within a 40-foot wide easement through the project site and a 60-foot wide easement just north of the project site as recorded in Volume 181, Official Records, Page 147 and Volume 765, Official Records, Page 200, respectively, Merced County Records. This facility mostly parallels the Hartley Slough on the south side thereof.
5. MID operates and maintains an underground electrical line within a 15-foot wide easement that serves power to the City of Merced WWTF. This line enters the sewer plant from the north.

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

1. Any future crossings over MID facilities will require the City and MID to execute a "Joint Use Agreement".
2. If the expansion involves the relocation of any MID facilities, MID would ask for an appropriate width deeded easement from the City pertaining to any relocated facilities.
3. A signature block will be provided for MID on all Improvement Plans.
4. A "Construction Agreement" between the City and the MID shall be executed for any work associated with MID facilities.

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

Sincerely,

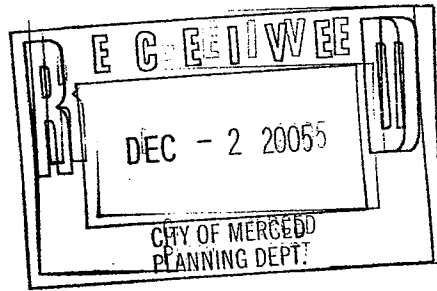


Rory Randol
Facilities Specialist

cc: Garith Krause, General Manager
Ted Selb, Deputy General Manager
Robert Acker, Director of Facilities and Streams
Hicham ElTal, Assistant General Manager - Water Resources Engineering
Ron Price, Associate Engineer - Water Resources
Tim Wendt - Electrical Services

December 2, 2005

City of Merced
Bill King
Principal Planner
678 West 18th Street
Merced, CA 95340



Merced County
Farm Bureau



Re: Notice of Preparation of a Draft EIR for the Wastewater Treatment Plant

Dear Bill:

Thank you for the opportunity to review the Notice of Preparation of a Draft EIR on the expansion of the existing wastewater treatment plant.

Comments:

- Consider mitigation for the conversion of ag land.
- Analyze the growth impacts that the expansion will provide and what is already committed with annexations and projects in the pipeline. With more growth, the pavement expands covering more land inhibiting recharge possibilities. You use more water and have more discharge. While agricultural production uses water it is producing a product which is then put into the economic system. It also offers recharge to our underground aquifers in the process. Housing development in particular is a resource user and producer of waste that is costly to process.
- Study the impacts of the sludge on land and discharge that will be put into the creeks adjacent to the treatment plant. The East San Joaquin Water Quality Coalition's main impact during their sampling season last year and this year has been e-coli. The source has not been identified but Duck Slough and Dutchman's Creek at Gurr Road have issues. I will forward you the Summary Annual Report 2005.

Please keep the Merced County Farm Bureau informed of this project.

Sincerely,

Diana Westmoreland Pedrozo
Executive Director
209-723-3001 office
209-564-2686 cell
209-722-3814 fax
mcfb@pacbell.net



Community Systems Associates, Inc.

"the leader in facilitating community facilities consensus"

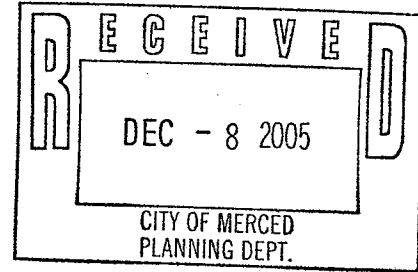
3367 Corte Levanto, Costa Mesa, California 92626

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

ecomunitysys@earthlink.net

December 6, 2005

Mr. Bill King
Merced Planning & Permitting Division
City of Merced
678 West 18th Street
Merced, California 95340



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

**City of Merced Wastewater Treatment
Plant Expansion
Notice of Preparation of a Draft EIR
Initial Study**

Dear Mr. King;

This letter is submitted by Community Systems Associates, Inc. on behalf of the Weaver Union School District ("WUSD"), and is presented as the formal position of the District on the project as described herein. Community Systems Associates, Inc. is the retained consultant of the Weaver Union School District and this letter has been authorized to be presented to the City of Merced.

The District is in receipt of the City of Merced ("City") Notice of Preparation of a Draft Environmental Impact Report ("DEIR") and the accompanying Initial Study ("Initial Study") dated November 4, 2005 with regards to the proposed City of Merced Wastewater Treatment Plan ("Proposal") consisting of the expansion of the current facility from 10 mgd of secondary treated effluent to 20 mgd ("Project"). The Project is located at the current facilities on 11.3 acres approximately 1.5 miles south of the City limits.

The Notice requests the District's comments relative to the preparation of a DEIR as required by CEQA. The District is a responsible and affected agency that will be impacted by the development of the Project. The District has been invited by the City to offer comments with regards to the environmental review of the Project between November 7, 2005 and December 7, 2005.

This letter is intended to address the Proposal, and is further intended to present the District's comments with regards to the impacts of the Proposal and the subsequent

development of the Project on the District, in order to protect the administrative and legal remedies of the District.

The District is not opposed to growth and development of the City, the community, and the District. However, the District does have the fiduciary responsibility and obligation to protect the interest of the constituents, students, and employees of the District from the consequences of project-specific and cumulative growth and the capability of the District to address these consequences in a viable manner without placing an unreasonable financial and physical burden on the community. To this end, the District is obligated and has committed to pursue all administrative and legal remedies. An aspect of pursuing its administrative remedies is to seek through the City's informal and informal processes, the cooperation and partnership with the City and local decision-makers.

The District remains committed to their intent to seek a cooperative, coordinated, and collaborative dialogue with the City of Merced.

The District has recently taken a strong stand with regards to the mitigation of impacts caused by ALL new development within the territory of the District. To this end, the District now is actively participating in the entitlement process of all development applications and related proposals and documentation as presented before the Planning Commission and City Council of the City of Merced, the Board of Supervisors of the County of Merced, and the Local Agency Formation Commission of the County of Merced, and intends to offer written and oral testimony as to the impacts of such similar proposals on the District.

The District requests that the City conduct a comprehensive review of the Project and provide the qualitative and quantitative analysis of the project-specific and cumulative effects the Project will have on the District. To this end, the District would ask that the Initial Study be prepared in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and the City of Merced environmental guidelines and be distributed for review. Of critical importance is the growth inducing consequences of the Project on the District.

The District believes that its comments are warranted with regards to this Project due to the fact that the Project is a "growth inducing" activity initiated by the City and in light of the evidence that has been previously provided by the District that there are inadequate school facilities to accommodate the unprecedented growth that the City has previously and continues to approve.

The District has previously provided the City with evidence that it is and will continue to be overcrowded. Overcrowded schools have a variety of the consequences, which include but are not limited to:

- 1) Deteriorated educational relationships between students and teachers resulting in reduced test scores;
- 2) Student emotional, social and psychological problems in the classroom, in the yards, and in the community;
- 3) Lower moral on the part of the teachers and employees and a lack of trust and confidence by the parents;
- 4) Inability to conduct some activities due to physical limitations or results in having to change normal operations of the school to abnormal operations;
- 5) Increased traffic and circulation problems around schools and increased bussing throughout the community;
- 6) Bussing results in the need for the District to spend educational funds on busses, bus operations, and bus drivers; and
- 7) The need to re-direct general funds revenues needed for salaries and employee benefits, and operational and administrative changes that are inefficient.

All of these are considered environmental impacts under CEQA and the CEQA Guidelines.

The Initial Study states:

“The expansion of the WWTP is not anticipated to directly increase the need for public services, governmental facilities, or resources, nor would it generate an additional demands for public services that would require new or altered facilities, including police, and fire protection. Further analysis of these issues will be presented in the EIR; however, it is anticipated that no impacts would occur.”

The District notes that the City has suggested that the Project will not have a “direct” impact on public facilities and services, including schools. However, the District would suggest that the Project is growth inducing in that the Project is necessary for growth to continue beyond the current capacity of the wastewater treatment facility. This is substantiated by the statements set forth in the Initial Study.

The CEQA Guidelines define an environmental “effect” as follows:

“15358. Effects

Effects" and "impacts" as used in these Guidelines are synonymous.

(a) Effects include:

1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.”

The Guidelines go on to state under the discussion of effect:

“Discussion: Confusion has arisen in interpreting CEQA because the law uses the terms "effects" and "impacts" without making clear whether the words have different or identical meanings. This section is intended to eliminate that confusion and to use the federal definition of the term from the NEPA regulations to the extent that the statutes are similar. Subsection (a) is identical to part of Section 1508.8 in the NEPA regulations, but subsection (b) is different because CEQA is more focused on physical changes than is NEPA.”

The District suggest that the Project includes “growth-inducing effects” and other effects related to “induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems”. These growth inducing effects will indirectly impact the District through additional students requiring school facilities beyond those currently provided by the District.

Section 15126 of the Guidelines states:

“15126. Consideration and Discussion of Environmental Impacts

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

- (a) Significant Environmental Effects of the Proposed Project.
- (b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.
- (c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.
- (d) Growth-Inducing Impact of the Proposed Project.**
(emphasis added)
- (e) The Mitigation Measures Proposed to Minimize the Significant Effects.
- (f) Alternatives to the Proposed Project.

Section 15126.2 of the CEQA Guidelines sets for the provisions with regards to the consideration and discussion of significant environmental impacts, and states:

“(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. (emphasis added)

The discussion under this section states:

“Discussion: This section describes how an EIR must identify and focus on the significant environmental effects, unavoidable significant environmental effects, significant irreversible environmental changes, and **growth-inducing impacts which may result from a project**. Subsection (a) reiterates the baseline discussion contained in section 15125. Subsection (d), discussing growth-inducing impacts, clarifies that the construction of new facilities may be important because that construction itself may have significant effects.” (emphasis added)

The CEQA Guidelines are clear that the explanation of growth inducing impacts is a significant issue to discuss in an EIR.

The District would suggest that the finding that the Proposal could not have a significant effect on the environment can not be supported by the contents of this letter with regards to school impacts. The District would suggest that there are potentially significant impacts on the District, the facilities of the District, and the students, employees, and constituents of the District resulting from the growth inducing factors of the Project. As such, there is at least one potentially significant impact and therefore an EIR should be required. It is the District's conclusion that an Environmental Impact Report should be required to fulfill the intent and requirements of CEQA and the CEQA Guidelines, and that the DEIR should provide a comprehensive discussion of the growth inducing impacts of the Project.

The District suggests that the Proposal is required to be in compliance with the City of Merced Vision 2015 General Plan ("General Plan"). The latest version of the General Plan was adopted by the Merced City Council on April 7, 1997. The General Plan Goals Policies and Implementation Actions as contained in the originally adopted General Plan have not been amended since 1997. The General Plan does contain Appendix A which sets forth General Plan Amendments approved by the City since April 1997. Although an Updated Housing Element was adopted on December 15, 2003 and minor text revisions to the Housing Element on June 21, 2004, there does not appear to be any other amendments to the various elements of the General Plan. Therefore, all projects and proposals relating to the development of the Community are required to comply and conform to the language as set forth in the City's General Plan date April 1997, as amended.

The concept of consistency is used regularly throughout State statutes in order to ensure that decision-making by local agencies are congruent with the planning and policy guides of the local jurisdictions. As stated in the General Plan, "The General Plan shall be utilized as a whole. One section is not to be used at the expense of others, but all of them shall be used together, with flexibility. Employed in this way, the General Plan becomes a powerful tool for ensuring consistency of City actions, while remaining responsive to the changing needs of the times. When optional elements are added to the general plan, they have the same status as a mandated element, and no single chapter or subject supersedes the other."

Therefore, the Project needs to be in compliance with ALL goals, policies, and implementation actions, together with the land use map and the other chapters of the General Plan for it to be found to be consistent with the General Plan. The District would suggest that the Project and the EIR needs to provide adequate evidence to support this finding of consistency.

The District suggests that the analysis of the Project consider in full and complete detail the Project's consistency with the Goals, Policies, and Implementation Programs as set forth herein and as further contained in the General Plan as they relate to growth inducing impact of the Project on school facility issues and other issues such as noise, traffic, other infrastructure, etc.

The EIR prepared on the Project should provide the data and qualitative and quantitative analysis that provides evidence that the Project complies with the Goals, Policies, and Implementation Programs that are set forth in the General Plan. To make findings of General Plan consistency and not set forth the data and qualitative and quantitative analysis would be in violation of the provisions of CEQA and the CEQA Guidelines and would further be in violation of the other Planning and Zoning Laws of the State of California and the City.

The District acknowledges that SB 50 may constrain the ability of the City of Merced to address the District's school facility issues. However, the City has a responsibility to serve the Community in a way that protects their interests. One way to attain this is to insure that all applications, all projects, all proposals, and all applicants fully and complete comply with any and all provisions of local and State laws. The second is to consider those areas within and outside of SB 50 that permits the City to take a more proactive and assertive roles in addressing public facilities and services.

SB 50 was adopted in August 1998 by the California State Legislature as a result of lobbying efforts of the California Building Industry Association ("CBIA") to limit and constrain school districts from taking their previous actions to seek full mitigation of school impacts pursuant to applicable laws and to deny the right of local decisions-makers to not approve certain projects due to the impacts that they might cause. This was "eleventh-hour" legislation that came as a result of compromises between the CBIA and a limited number of Districts which were then suggested to represent the State-wide school community interests. It was also a compromise by those school districts to get what they wanted, which was a significant State-wide bond issue. Many of the Districts affected by growth today were not even a part of this so called "State-wide school community".

The legislation was an attempt to create a theoretical "three-legged stool" of financing with the State through State Bond fund grants providing one-third, the development community through statutory development fees providing one-third, and the local community through local financing techniques providing one-third. Although this was not stated in the legislation, this was the apparent intent of the legislation. Today, school districts know that the intent did not come to fruition.

The system was and is flawed. First, it anticipated that local communities could and would approve ballot measures or fund other local revenue sources to finance their portion of the one-third. Because of bonding capacity limitations, lack of voter approvals

to support existing communities subsidizing new residential developments, and the overall lack of voter approval of local bond measures, the one-third financing has not materialized in many school districts and communities. Second, the statutory development fee was based on a theoretical cost of school facilities which was the equal in all school districts and jurisdictions throughout the State. It did not acknowledge 1) the differences in costs of school construction from one location to another; 2) the differences in the cost of land or the increasing value of land in one location over another; and 3) the differences in design and development standards from school district to school district. In essence, it established a consistent and constant statutory development fee without considering the differences from community to community. Third, it did not contemplate that school districts with unprecedented growth would have different needs than areas that were growing at much slower rates, or the socio-economic difference of communities and the implications that this would have as communities transformed as a result of new development and growth reaching out to them. Finally, it did not contemplate the need for interim facilities and District-wide support facilities that would be required as a result of increasing student enrollments.

As time has run its course since 1998, these flaws have created wider gaps in the funding of schools. The State's share, except for inflationary adjustments has generally remained constant. The statutory development fee share, except for inflationary adjustments has generally remained constant. So, the gap has increased in the local share portion. The burden has become greater at the local share level. And, the Districts with the greatest consequences are the Districts that have the least resources to address the gap.

So regardless of the theoretical financial model and legal statutes of SB 50, the actual implementation and the real world financial parameters have proven that SB 50 has failed. Even the State of California Legislative Analysts Office has acknowledged this situation. But even with this failure and it being knowledge by the development community and local legislative decision-makers, SB 50 continues to be the position that developers and local decision-makers fall back on.

The development community suggests that the issues school districts raise with regards to the limitation of SB 50 needs to be addressed in the State legislature and through the Governors Office. Local decision-makers within cities and counties suggest the same. However, it is the same development community and CBIA representatives who suggest that SB 50 is sacred and that they will lobby against such changes. This has been seen in the political arena for many years and is continuing today. And, it is the same local decision-makers who do not want to get in the middle between the development community and the school districts for fear of the political consequences that may be brought upon them by the development community.

So, the District acknowledges the following which sets forth applicable provisions of SB 50. And, the District suggests that SB 50 does not serve the District or the Community,

and that the City needs to take the initiative to look at what it can do legally to address the consequences of unprecedented growth without adequate measures to address the school district and student enrollment consequences. Failure to do so would fly in the face of the responsibilities and obligations of the City to protect the public services and facilities of the Community. One such measure would be to establish growth management policies and requirements with regards to the approval of projects which would benefit from the expansion of the Wastewater Treatment Plan.

The provisions of SB 50 and/or the California Environmental Quality Act do not prevent the City from offering a transparent presentation of the specific school facility and financial impacts on the District, or the cumulative and growth inducing impacts the Project along with other developments within the District would have on the District's school facilities.

The District offers the following findings with regards to the Project:

1. School facilities and public services offered by the District will not adequately be available to the area to which the Project applies, and can not be provided in an efficient and orderly manner in accordance with the planning, financing, development, and operational policies and requirements of the District.
2. School facilities and services currently offered by the District are inadequate District-wide because of the current over-crowding of the District and the lack of adequate facilities to accommodate projected and proposed enrollments. The Project sets forth no adequate financial plan which sets forth the resources and implementation provisions to support the finding that adequate school facilities for both existing and proposed land uses within the Community will be available to accommodate the student generated by the growth inducing effects of the Project.
3. The City of Merced has no plan of services that demonstrates that needed public services and facilities will be available for the growth inducing effects of the Project, including sufficient revenue sources for those facilities and services.
4. City of Merced has provided no qualitative or quantitative analysis which substantiates that school facility financial resources and implementation provisions provided by the City of the District will address the growth inducing effects of the Project.

It is the finding of the District that an EIR with detailed discussion of the growth inducing effects on the District needs to be prepared to comply with CEQA or the CEQA

Mr. Bill King
Merced Planning & Permitting Division
City of Merced
December 6, 2005
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Guidelines and needs to provide a full and complete disclosure of the Project and the mitigated and unmitigated impacts of the Project on the District. In addition, the findings and conclusions in the EIR need to be supported by factual quantitative and qualitative analysis based on data offered by the District or obtained by the City.

Based on the data, analysis and comments contained herein, the District finds that the Project will have project-specific and cumulative significant unmitigated impact on the District that will adversely affect the community directly resulting from the growth inducing effects of the Project on the Community. This will result in the need for the District to consider the possible implementation of operational and administrative measures, including but not limited to 1) busing of student outside the Community; 2) placing the Community schools on a year-round calendar or double session calendar; 3) loading classrooms and current schools in excess of State and District standards; and/or 4) reducing the quality of school construction and development to standards lower than acceptable to the District and the Community. These consequences will have further additional consequences on the quality of education offered to the students within the District. These operational and administrative measures and their direct and indirect consequences should be evaluated and fully disclosed in an EIR on the Project.

It is recommended that the City has the legal responsibility and obligation to disclose such conclusions to the Community through the decision-making process and the review of environmental documentation. Although legally, the City may be limited as to the mitigation measures that can be applied to address the impacts caused by the Project on the District, SB 50 does not limit or preclude the requirements of CEQA that a full and complete disclosure of the impacts of the Project be offered in an EIR and that the unmitigated impacts and subsequently the direct and indirect consequences be identified. This level of transparency is necessary in the decision-making process and provides the Community and the decision-makers with full disclosures. In addition, there may be other provisions of law which require full and complete disclosure following the approvals of the Project and which may be appropriately considered in the decision-making process.


The District would request that Draft EIR be prepared to a level of detail that would fully and completely disclose the project specific and cumulative impacts, and the growth inducing effects of the Project on the District. The District looks forward to reviewing the contents of the forthcoming Draft EIR.

Mr. Bill King
Merced Planning & Permitting Division
City of Merced
December 6, 2005
Page 12

Thank you for your support, assistance and consideration.

Sincerely,

Community Systems Associates, Inc.
on behalf of the
Weaver Union School District



Mr. Marshall B. Krupp
President

MBK:mbk
Merced-wastewater treatment plan1206.mbk

Cc: Mr. Steven Becker, Superintendent
Weaver Union School District
3076 East Childs Avenue
Merced, California 95340



Community Systems Associates, Inc.

"the leader in facilitating community facilities consensus"

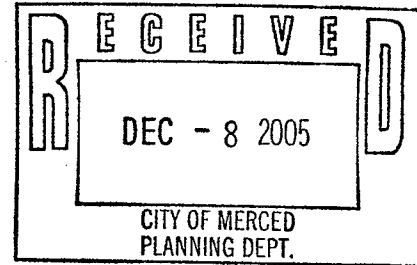
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December 6, 2005

Mr. Bill King
Merced Planning & Permitting Division
City of Merced
678 West 18th Street
Merced, California 95340



Subject: Comments of the Merced Union High School District

**City of Merced Wastewater Treatment
Plant Expansion
Notice of Preparation of a Draft EIR
Initial Study**

Dear Mr. King;

This letter is submitted by Community Systems Associates, Inc. on behalf of the Merced Union High School District ("MUHSD"), and is presented as the formal position of the District on the project as described herein. Community Systems Associates, Inc. is the retained consultant of the Merced Union High School District and this letter has been authorized to be presented to the City of Merced.

The District is in receipt of the City of Merced ("City") Notice of Preparation of a Draft Environmental Impact Report ("DEIR") and the accompanying Initial Study ("Initial Study") dated November 4, 2005 with regards to the proposed City of Merced Wastewater Treatment Plan ("Proposal") consisting of the expansion of the current facility from 10 mgd of secondary treated effluent to 20 mgd ("Project"). The Project is located at the current facilities on 11.3 acres approximately 1.5 miles south of the City limits.

The Notice requests the District's comments relative to the preparation of a DEIR as required by CEQA. The District is a responsible and affected agency that will be impacted by the development of the Project. The District has been invited by the City to offer comments with regards to the environmental review of the Project between November 7, 2005 and December 7, 2005.

This letter is intended to address the Proposal, and is further intended to present the District's comments with regards to the impacts of the Proposal and the subsequent

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The District is not opposed to growth and development of the City, the community, and the District. However, the District does have the fiduciary responsibility and obligation to protect the interest of the constituents, students, and employees of the District from the consequences of project-specific and cumulative growth and the capability of the District to address these consequences in a viable manner without placing an unreasonable financial and physical burden on the community. To this end, the District is obligated and has committed to pursue all administrative and legal remedies. An aspect of pursuing its administrative remedies is to seek through the City's informal and informal processes, the cooperation and partnership with the City and local decision-makers.

The District remains committed to their intent to seek a cooperative, coordinated, and collaborative dialogue with the City of Merced.

The District has recently taken a strong stand with regards to the mitigation of impacts caused by ALL new development within the territory of the District. To this end, the District now is actively participating in the entitlement process of all development applications and related proposals and documentation as presented before the Planning Commissions and City Councils of the Cities of Merced, Atwater, and Livingston, the Board of Supervisors of the County of Merced, and the Local Agency Formation Commission of the County of Merced, and intends to offer written and oral testimony as to the impacts of such similar proposals on the District.

The District requests that the City conduct a comprehensive review of the Project and provide the qualitative and quantitative analysis of the project-specific and cumulative effects the Project will have on the District. To this end, the District would ask that the Initial Study be prepared in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and the City of Merced environmental guidelines and be distributed for review. Of critical importance is the growth inducing consequences of the Project on the District.

The District believes that its comments are warranted with regards to this Project due to the fact that the Project is a "growth inducing" activity initiated by the City and in light of the evidence that has been previously provided by the District that there are inadequate school facilities to accommodate the unprecedented growth that the City has previously and continues to approve.

The District has previously provided the City with evidence that it is and will continue to be overcrowded. Overcrowded schools have a variety of the consequences, which include but are not limited to:

- 1) Deteriorated educational relationships between students and teachers resulting in reduced test scores;
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All of these are considered environmental impacts under CEQA and the CEQA Guidelines.

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The District notes that the City has suggested that the Project will not have a “direct” impact on public facilities and services, including schools. However, the District would suggest that the Project is growth inducing in that the Project is necessary for growth to continue beyond the current capacity of the wastewater treatment facility. This is substantiated by the statements set forth in the Initial Study.

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“15358. Effects

Effects" and "impacts" as used in these Guidelines are synonymous.

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The District suggest that the Project includes “growth-inducing effects” and other effects related to “induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems”. These growth inducing effects will indirectly impact the District through additional students requiring school facilities beyond those currently provided by the District.

Section 15126 of the Guidelines states:

“15126. Consideration and Discussion of Environmental Impacts

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

- (a) Significant Environmental Effects of the Proposed Project.
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- (c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.
- (d) Growth-Inducing Impact of the Proposed Project.**
(emphasis added)
- (e) The Mitigation Measures Proposed to Minimize the Significant Effects.
- (f) Alternatives to the Proposed Project.

Section 15126.2 of the CEQA Guidelines sets for the provisions with regards to the consideration and discussion of significant environmental impacts, and states:

“(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irrecoverable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. (emphasis added)

The discussion under this section states:

“Discussion: This section describes how an EIR must identify and focus on the significant environmental effects, unavoidable significant environmental effects, significant irreversible environmental changes, and **growth-inducing impacts which may result from a project**. Subsection (a) reiterates the baseline discussion contained in section 15125. Subsection (d), discussing growth-inducing impacts, clarifies that the construction of new facilities may be important because that construction itself may have significant effects.” (emphasis added)

Mr. Bill King
Merced Planning & Permitting Division
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The CEQA Guidelines are clear that the explanation of growth inducing impacts is a significant issue to discuss in an EIR.

The District would suggest that the finding that the Proposal could not have a significant effect on the environment can not be supported by the contents of this letter with regards to school impacts. The District would suggest that there are potentially significant impacts on the District, the facilities of the District, and the students, employees, and constituents of the District resulting from the growth inducing factors of the Project. As such, there is at least one potentially significant impact and therefore an EIR should be required. It is the District's conclusion that an Environmental Impact Report should be required to fulfill the intent and requirements of CEQA and the CEQA Guidelines, and that the DEIR should provide a comprehensive discussion of the growth inducing impacts of the Project.

The District suggests that the Proposal is required to be in compliance with the City of Merced Vision 2015 General Plan ("General Plan"). The latest version of the General Plan was adopted by the Merced City Council on April 7, 1997. The General Plan Goals Policies and Implementation Actions as contained in the originally adopted General Plan have not been amended since 1997. The General Plan does contain Appendix A which sets forth General Plan Amendments approved by the City since April 1997. Although an Updated Housing Element was adopted on December 15, 2003 and minor text revisions to the Housing Element on June 21, 2004, there does not appear to be any other amendments to the various elements of the General Plan. Therefore, all projects and proposals relating to the development of the Community are required to comply and conform to the language as set forth in the City's General Plan date April 1997, as amended.

The concept of consistency is used regularly throughout State statutes in order to ensure that decision-making by local agencies are congruent with the planning and policy guides of the local jurisdictions. As stated in the General Plan, "The General Plan shall be utilized as a whole. One section is not to be used at the expense of others, but all of them shall be used together, with flexibility. Employed in this way, the General Plan becomes a powerful tool for ensuring consistency of City actions, while remaining responsive to the changing needs of the times. When optional elements are added to the general plan, they have the same status as a mandated element, and no single chapter or subject supersedes the other."

Therefore, the Project needs to be in compliance with ALL goals, policies, and implementation actions, together with the land use map and the other chapters of the General Plan for it to be found to be consistent with the General Plan. The District would suggest that the Project and the EIR needs to provide adequate evidence to support this finding of consistency.

The District suggests that the analysis of the Project consider in full and complete detail the Project's consistency with the Goals, Policies, and Implementation Programs as set forth herein and as further contained in the General Plan as they relate to growth inducing impact of the Project on school facility issues and other issues such as noise, traffic, other infrastructure, etc.

The EIR prepared on the Project should provide the data and qualitative and quantitative analysis that provides evidence that the Project complies with the Goals, Policies, and Implementation Programs that are set forth in the General Plan. To make findings of General Plan consistency and not set forth the data and qualitative and quantitative analysis would be in violation of the provisions of CEQA and the CEQA Guidelines and would further be in violation of the other Planning and Zoning Laws of the State of California and the City.

The District acknowledges that SB 50 may constrain the ability of the City of Merced to address the District's school facility issues. However, the City has a responsibility to serve the Community in a way that protects their interests. One way to attain this is to insure that all applications, all projects, all proposals, and all applicants fully and complete comply with any and all provisions of local and State laws. The second is to consider those areas within and outside of SB 50 that permits the City to take a more proactive and assertive roles in addressing public facilities and services.

SB 50 was adopted in August 1998 by the California State Legislature as a result of lobbying efforts of the California Building Industry Association ("CBIA") to limit and constrain school districts from taking their previous actions to seek full mitigation of school impacts pursuant to applicable laws and to deny the right of local decision-makers to not approve certain projects due to the impacts that they might cause. This was "eleventh-hour" legislation that came as a result of compromises between the CBIA and a limited number of Districts which were then suggested to represent the State-wide school community interests. It was also a compromise by those school districts to get what they wanted, which was a significant State-wide bond issue. Many of the Districts affected by growth today were not even a part of this so called "State-wide school community".

The legislation was an attempt to create a theoretical "three-legged stool" of financing with the State through State Bond fund grants providing one-third, the development community through statutory development fees providing one-third, and the local community through local financing techniques providing one-third. Although this was not stated in the legislation, this was the apparent intent of the legislation. Today, school districts know that the intent did not come to fruition.

The system was and is flawed. First, it anticipated that local communities could and would approve ballot measures or fund other local revenue sources to finance their portion of the one-third. Because of bonding capacity limitations, lack of voter approvals

to support existing communities subsidizing new residential developments, and the overall lack of voter approval of local bond measures, the one-third financing has not materialized in many school districts and communities. Second, the statutory development fee was based on a theoretical cost of school facilities which was the equal in all school districts and jurisdictions throughout the State. It did not acknowledge 1) the differences in costs of school construction from one location to another; 2) the differences in the cost of land or the increasing value of land in one location over another; and 3) the differences in design and development standards from school district to school district. In essence, it established a consistent and constant statutory development fee without considering the differences from community to community. Third, it did not contemplate that school districts with unprecedented growth would have different needs than areas that were growing at much slower rates, or the socio-economic difference of communities and the implications that this would have as communities transformed as a result of new development and growth reaching out to them. Finally, it did not contemplate the need for interim facilities and District-wide support facilities that would be required as a result of increasing student enrollments.

As time has run its course since 1998, these flaws have created wider gaps in the funding of schools. The State's share, except for inflationary adjustments has generally remained constant. The statutory development fee share, except for inflationary adjustments has generally remained constant. So, the gap has increased in the local share portion. The burden has become greater at the local share level. And, the Districts with the greatest consequences are the Districts that have the least resources to address the gap.

So regardless of the theoretical financial model and legal statutes of SB 50, the actual implementation and the real world financial parameters have proven that SB 50 has failed. Even the State of California Legislative Analysts Office has acknowledged this situation. But even with this failure and it being knowledge by the development community and local legislative decision-makers, SB 50 continues to be the position that developers and local decision-makers fall back on.

The development community suggests that the issues school districts raise with regards to the limitation of SB 50 needs to be addressed in the State legislature and through the Governors Office. Local decision-makers within cities and counties suggest the same. However, it is the same development community and CBIA representatives who suggest that SB 50 is sacred and that they will lobby against such changes. This has been seen in the political arena for many years and is continuing today. And, it is the same local decision-makers who do not want to get in the middle between the development community and the school districts for fear of the political consequences that may be brought upon them by the development community.

So, the District acknowledges the following which sets forth applicable provisions of SB 50. And, the District suggests that SB 50 does not serve the District or the Community,

and that the City needs to take the initiative to look at what it can do legally to address the consequences of unprecedented growth without adequate measures to address the school district and student enrollment consequences. Failure to do so would fly in the face of the responsibilities and obligations of the City to protect the public services and facilities of the Community. One such measure would be to establish growth management policies and requirements with regards to the approval of projects which would benefit from the expansion of the Wastewater Treatment Plan.

The provisions of SB 50 and/or the California Environmental Quality Act do not prevent the City from offering a transparent presentation of the specific school facility and financial impacts on the District, or the cumulative and growth inducing impacts the Project along with other developments within the District would have on the District's school facilities.

The District offers the following findings with regards to the Project:

1. School facilities and public services offered by the District will not adequately be available to the area to which the Project applies, and can not be provided in an efficient and orderly manner in accordance with the planning, financing, development, and operational policies and requirements of the District.
2. School facilities and services currently offered by the District are inadequate District-wide because of the current over-crowding of the District and the lack of adequate facilities to accommodate projected and proposed enrollments. The Project sets forth no adequate financial plan which sets forth the resources and implementation provisions to support the finding that adequate school facilities for both existing and proposed land uses within the Community will be available to accommodate the student generated by the growth inducing effects of the Project.
3. The City of Merced has no plan of services that demonstrates that needed public services and facilities will be available for the growth inducing effects of the Project, including sufficient revenue sources for those facilities and services.
4. City of Merced has provided no qualitative or quantitative analysis which substantiates that school facility financial resources and implementation provisions provided by the City of the District will address the growth inducing effects of the Project.

It is the finding of the District that an EIR with detailed discussion of the growth inducing effects on the District needs to be prepared to comply with CEQA or the CEQA

Guidelines and needs to provide a full and complete disclosure of the Project and the mitigated and unmitigated impacts of the Project on the District. In addition, the findings and conclusions in the EIR need to be supported by factual quantitative and qualitative analysis based on data offered by the District or obtained by the City.

Based on the data, analysis and comments contained herein, the District finds that the Project will have project-specific and cumulative significant unmitigated impact on the District that will adversely affect the community directly resulting from the growth inducing effects of the Project on the Community. This will result in the need for the District to consider the possible implementation of operational and administrative measures, including but not limited to 1) busing of student outside the Community; 2) placing the Community schools on a year-round calendar or double session calendar; 3) loading classrooms and current schools in excess of State and District standards; and/or 4) reducing the quality of school construction and development to standards lower than acceptable to the District and the Community. These consequences will have further additional consequences on the quality of education offered to the students within the District. These operational and administrative measures and their direct and indirect consequences should be evaluated and fully disclosed in an EIR on the Project.

It is recommended that the City has the legal responsibility and obligation to disclose such conclusions to the Community through the decision-making process and the review of environmental documentation. Although legally, the City may be limited as to the mitigation measures that can be applied to address the impacts caused by the Project on the District, SB 50 does not limit or preclude the requirements of CEQA that a full and complete disclosure of the impacts of the Project be offered in an EIR and that the unmitigated impacts and subsequently the direct and indirect consequences be identified. This level of transparency is necessary in the decision-making process and provides the Community and the decision-makers with full disclosures. In addition, there may be other provisions of law which require full and complete disclosure following the approvals of the Project and which may be appropriately considered in the decision-making process.

The District would request that Draft EIR be prepared to a level of detail that would fully and completely disclose the project specific and cumulative impacts, and the growth inducing effects of the Project on the District. The District looks forward to reviewing the contents of the forthcoming Draft EIR.

Mr. Bill King
Merced Planning & Permitting Division
City of Merced
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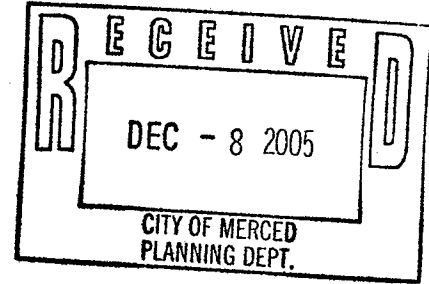
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Section 15126.2 of the CEQA Guidelines sets for the provisions with regards to the consideration and discussion of significant environmental impacts, and states:

“(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. (emphasis added)

The discussion under this section states:

“Discussion: This section describes how an EIR must identify and focus on the significant environmental effects, unavoidable significant environmental effects, significant irreversible environmental changes, and **growth-inducing impacts which may result from a project**. Subsection (a) reiterates the baseline discussion contained in section 15125. Subsection (d), discussing growth-inducing impacts, clarifies that the construction of new facilities may be important because that construction itself may have significant effects.” (emphasis added)

Mr. Bill King
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The CEQA Guidelines are clear that the explanation of growth inducing impacts is a significant issue to discuss in an EIR.

The District would suggest that the finding that the Proposal could not have a significant effect on the environment can not be supported by the contents of this letter with regards to school impacts. The District would suggest that there are potentially significant impacts on the District, the facilities of the District, and the students, employees, and constituents of the District resulting from the growth inducing factors of the Project. As such, there is at least one potentially significant impact and therefore an EIR should be required. It is the District's conclusion that an Environmental Impact Report should be required to fulfill the intent and requirements of CEQA and the CEQA Guidelines, and that the DEIR should provide a comprehensive discussion of the growth inducing impacts of the Project.

The District suggests that the Proposal is required to be in compliance with the City of Merced Vision 2015 General Plan ("General Plan"). The latest version of the General Plan was adopted by the Merced City Council on April 7, 1997. The General Plan Goals Policies and Implementation Actions as contained in the originally adopted General Plan have not been amended since 1997. The General Plan does contain Appendix A which sets forth General Plan Amendments approved by the City since April 1997. Although an Updated Housing Element was adopted on December 15, 2003 and minor text revisions to the Housing Element on June 21, 2004, there does not appear to be any other amendments to the various elements of the General Plan. Therefore, all projects and proposals relating to the development of the Community are required to comply and conform to the language as set forth in the City's General Plan date April 1997, as amended.

The concept of consistency is used regularly throughout State statutes in order to ensure that decision-making by local agencies are congruent with the planning and policy guides of the local jurisdictions. As stated in the General Plan, "The General Plan shall be utilized as a whole. One section is not to be used at the expense of others, but all of them shall be used together, with flexibility. Employed in this way, the General Plan becomes a powerful tool for ensuring consistency of City actions, while remaining responsive to he changing needs of the times. When optional elements are added to the general plan, they have the same status as a mandated element, and no single chapter or subject supersedes the other."

Therefore, the Project needs to be in compliance with ALL goals, policies, and implementation actions, together with the land use map and the other chapters of the General Plan for it to be found to be consistent with the General Plan. The District would suggest that the Project and the EIR needs to provide adequate evidence to support this finding of consistency.

The District suggests that the analysis of the Project consider in full and complete detail the Project's consistency with the Goals, Policies, and Implementation Programs as set forth herein and as further contained in the General Plan as they relate to growth inducing impact of the Project on school facility issues and other issues such as noise, traffic, other infrastructure, etc.

The EIR prepared on the Project should provide the data and qualitative and quantitative analysis that provides evidence that the Project complies with the Goals, Policies, and Implementation Programs that are set forth in the General Plan. To make findings of General Plan consistency and not set forth the data and qualitative and quantitative analysis would be in violation of the provisions of CEQA and the CEQA Guidelines and would further be in violation of the other Planning and Zoning Laws of the State of California and the City.

The District acknowledges that SB 50 may constrain the ability of the City of Merced to address the District's school facility issues. However, the City has a responsibility to serve the Community in a way that protects their interests. One way to attain this is to insure that all applications, all projects, all proposals, and all applicants fully and complete comply with any and all provisions of local and State laws. The second is to consider those areas within and outside of SB 50 that permits the City to take a more proactive and assertive roles in addressing public facilities and services.

SB 50 was adopted in August 1998 by the California State Legislature as a result of lobbying efforts of the California Building Industry Association ("CBIA") to limit and constrain school districts from taking their previous actions to seek full mitigation of school impacts pursuant to applicable laws and to deny the right of local decision-makers to not approve certain projects due to the impacts that they might cause. This was "eleventh-hour" legislation that came as a result of compromises between the CBIA and a limited number of Districts which were then suggested to represent the State-wide school community interests. It was also a compromise by those school districts to get what they wanted, which was a significant State-wide bond issue. Many of the Districts affected by growth today were not even a part of this so called "State-wide school community".

The legislation was an attempt to create a theoretical "three-legged stool" of financing with the State through State Bond fund grants providing one-third, the development community through statutory development fees providing one-third, and the local community through local financing techniques providing one-third. Although this was not stated in the legislation, this was the apparent intent of the legislation. Today, school districts know that the intent did not come to fruition.

The system was and is flawed. First, it anticipated that local communities could and would approve ballot measures or fund other local revenue sources to finance their portion of the one-third. Because of bonding capacity limitations, lack of voter approvals

to support existing communities subsidizing new residential developments, and the overall lack of voter approval of local bond measures, the one-third financing has not materialized in many school districts and communities. Second, the statutory development fee was based on a theoretical cost of school facilities which was the equal in all school districts and jurisdictions throughout the State. It did not acknowledge 1) the differences in costs of school construction from one location to another; 2) the differences in the cost of land or the increasing value of land in one location over another; and 3) the differences in design and development standards from school district to school district. In essence, it established a consistent and constant statutory development fee without considering the differences from community to community. Third, it did not contemplate that school districts with unprecedented growth would have different needs than areas that were growing at much slower rates, or the socio-economic difference of communities and the implications that this would have as communities transformed as a result of new development and growth reaching out to them. Finally, it did not contemplate the need for interim facilities and District-wide support facilities that would be required as a result of increasing student enrollments.

As time has run its course since 1998, these flaws have created wider gaps in the funding of schools. The State's share, except for inflationary adjustments has generally remained constant. The statutory development fee share, except for inflationary adjustments has generally remained constant. So, the gap has increased in the local share portion. The burden has become greater at the local share level. And, the Districts with the greatest consequences are the Districts that have the least resources to address the gap.

So regardless of the theoretical financial model and legal statutes of SB 50, the actual implementation and the real world financial parameters have proven that SB 50 has failed. Even the State of California Legislative Analysts Office has acknowledged this situation. But even with this failure and it being knowledge by the development community and local legislative decision-makers, SB 50 continues to be the position that developers and local decision-makers fall back on.

The development community suggests that the issues school districts raise with regards to the limitation of SB 50 needs to be addressed in the State legislature and through the Governors Office. Local decision-makers within cities and counties suggest the same. However, it is the same development community and CBIA representatives who suggest that SB 50 is sacred and that they will lobby against such changes. This has been seen in the political arena for many years and is continuing today. And, it is the same local decision-makers who do not want to get in the middle between the development community and the school districts for fear of the political consequences that may be brought upon them by the development community.

So, the District acknowledges the following which sets forth applicable provisions of SB 50. And, the District suggests that SB 50 does not serve the District or the Community,

and that the City needs to take the initiative to look at what it can do legally to address the consequences of unprecedented growth without adequate measures to address the school district and student enrollment consequences. Failure to do so would fly in the face of the responsibilities and obligations of the City to protect the public services and facilities of the Community. One such measure would be to establish growth management policies and requirements with regards to the approval of projects which would benefit from the expansion of the Wastewater Treatment Plan.

The provisions of SB 50 and/or the California Environmental Quality Act do not prevent the City from offering a transparent presentation of the specific school facility and financial impacts on the District, or the cumulative and growth inducing impacts the Project along with other developments within the District would have on the District's school facilities.

The District offers the following findings with regards to the Project:

1. School facilities and public services offered by the District will not adequately be available to the area to which the Project applies, and can not be provided in an efficient and orderly manner in accordance with the planning, financing, development, and operational policies and requirements of the District.
2. School facilities and services currently offered by the District are inadequate District-wide because of the current over-crowding of the District and the lack of adequate facilities to accommodate projected and proposed enrollments. The Project sets forth no adequate financial plan which sets forth the resources and implementation provisions to support the finding that adequate school facilities for both existing and proposed land uses within the Community will be available to accommodate the student generated by the growth inducing effects of the Project.
3. The City of Merced has no plan of services that demonstrates that needed public services and facilities will be available for the growth inducing effects of the Project, including sufficient revenue sources for those facilities and services.
4. City of Merced has provided no qualitative or quantitative analysis which substantiates that school facility financial resources and implementation provisions provided by the City of the District will address the growth inducing effects of the Project.

It is the finding of the District that an EIR with detailed discussion of the growth inducing effects on the District needs to be prepared to comply with CEQA or the CEQA

Guidelines and needs to provide a full and complete disclosure of the Project and the mitigated and unmitigated impacts of the Project on the District. In addition, the findings and conclusions in the EIR need to be supported by factual quantitative and qualitative analysis based on data offered by the District or obtained by the City.

Based on the data, analysis and comments contained herein, the District finds that the Project will have project-specific and cumulative significant unmitigated impact on the District that will adversely affect the community directly resulting from the growth inducing effects of the Project on the Community. This will result in the need for the District to consider the possible implementation of operational and administrative measures, including but not limited to 1) busing of student outside the Community; 2) placing the Community schools on a year-round calendar or double session calendar; 3) loading classrooms and current schools in excess of State and District standards; and/or 4) reducing the quality of school construction and development to standards lower than acceptable to the District and the Community. These consequences will have further additional consequences on the quality of education offered to the students within the District. These operational and administrative measures and their direct and indirect consequences should be evaluated and fully disclosed in an EIR on the Project.

It is recommended that the City has the legal responsibility and obligation to disclose such conclusions to the Community through the decision-making process and the review of environmental documentation. Although legally, the City may be limited as to the mitigation measures that can be applied to address the impacts caused by the Project on the District, SB 50 does not limit or preclude the requirements of CEQA that a full and complete disclosure of the impacts of the Project be offered in an EIR and that the unmitigated impacts and subsequently the direct and indirect consequences be identified. This level of transparency is necessary in the decision-making process and provides the Community and the decision-makers with full disclosures. In addition, there may be other provisions of law which require full and complete disclosure following the approvals of the Project and which may be appropriately considered in the decision-making process.


The District would request that Draft EIR be prepared to a level of detail that would fully and completely disclose the project specific and cumulative impacts, and the growth inducing effects of the Project on the District. The District looks forward to reviewing the contents of the forthcoming Draft EIR.

Mr. Bill King
Merced Planning & Permitting Division
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Thank you for your support, assistance and consideration.

Sincerely,

Community Systems Associates, Inc.
on behalf of the
Merced City School District



Mr. Marshall B. Krupp
President

MBK:mbk
Merced-wastewater treatment plan1206.mbk

Cc: Mr. Steve Shields
Assistant Superintendent
Merced City School District
444 West 23rd Street
Merced, California 95340

DEPARTMENT OF TRANSPORTATION

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November 14, 2005

**10-MER-59-PM 13.13
NOP for WWTP
SCH #2005101135**

Mr. David Tucker
City of Merced
Planning Department
678 W. 18th Street
Merced, CA 95340

Dear Mr. Tucker:

The California Department of Transportation (Department) appreciates the opportunity to review and comment on the Notice of Preparation (NOP) for the Wastewater Treatment Plant (WWTP) Expansion Project. The proposed project is to upgrade and expand the capacity of its WWTP facilities to serve planned wastewater loads. The proposed site is located at 10260 Gove Road, in the rural portion of Merced County. The Department has the following comments:

The Department looks forward to reviewing the Draft Environmental Impact Report (DEIR) for further analysis of transportation related impacts that it will provide.

Caltrans encourages contacting the Native American Heritage Commission: 915 Capitol Mall, Room 364, Sacramento, California, 95814, Telephone (916) 657-5390 for advice on consulting with Native Americans regarding any cultural concerns within the project area.

If you have any questions or would like to discuss these comments in more detail, please contact Dec Maddox at (209) 942-6022 (email: dec_maddox@dot.ca.gov) 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 Intermodal Planning**

cc: Scott Morgan
State Clearinghouse



California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair

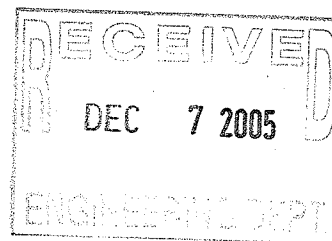
Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Fresno Branch Office
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Arnold
Schwarzenegger
Governor

6 December 2005



Mr. David Tucker
City of Merced
678 W. 18th Street
Merced, CA 95340

NOTICE OF PREPARATION FOR THE MERCED WASTEWATER TREATMENT PLANT EXPANSION PROJECT ENVIRONMENTAL IMPACT REPORT, SCH# 2005101135, CITY OF MERCED, MERCED COUNTY

Your request for comments on the Notice of Preparation (NOP) for the City of Merced Wastewater Treatment Plant (WWTP) Expansion Project was received on 3 November 2005. The City of Merced proposes to expand the WWTP capacity from 10 million gallons per day (mgd) to 15 mgd initially and ultimately to 20 mgd. The City also proposes to implement tertiary treatment in addition to various other treatment process upgrades. Our comments are presented below.

BIOSOLIDS DISPOSAL

The City currently applies biosolids to its 580-acre Industrial Wastewater Disposal Site (regulated under Waste Discharge Requirements Order No. 97-034) south of the WWTP. The Initial Study indicates the City is studying two biosolids disposal options. One option is onsite disposal, which includes expanding the existing biosolids application area by approximately 80 acres. The expanded acreage borders the east bank of Hartley Slough on the west-central portion of the WWTP property. The other option is to transport all biosolids to an offsite disposal facility, such as the Forward Landfill in San Joaquin County.

Both options should be evaluated in the Environmental Impact Report (EIR). The biosolids application impact analysis should include a thorough technical evaluation of the existing groundwater monitoring data to quantify background quality, assimilative capacity, and impacts from all discharges (e.g., wastewater, biosolids, industrial wastewater, etc.) to the WWTP property and the Industrial Wastewater Disposal Site. The assimilative capacity of the soils in the expanded biosolids application area should also be evaluated given that the area was used for food processing waste solids disposal (e.g., peach pits). The EIR should include a complete antidegradation analysis to satisfy the antidegradation provisions of State Water Resources Control Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution 68-16) (see Antidegradation Analysis section below).

California Environmental Protection Agency

The EIR should evaluate the flood potential (i.e., frequency and extent of flooding) for all land disposal areas within the WWTP property (including expanded biosolids application acreage along Hartley Slough) and the potential for waste constituents to impact surface water quality during flood events. Control measures to mitigate flood impacts should be identified and evaluated for effectiveness.

ANTIDegradation ANALYSIS

In addition to an antidegradation analysis for biosolids disposal options, the EIR should include an antidegradation analysis for all other WWTP waste discharges to surface water and groundwater. The antidegradation directives of Resolution 68-16 apply to surface water and groundwater and require that the high quality waters of the State be maintained "consistent with the maximum benefit to the people of the State." High quality waters refer to "background" water quality conditions (i.e., the best known quality of the receiving waters since 1968 upgradient of the project and unaffected by other discharges of waste constituents). Resolution 68-16 requires implementation of Best Practicable Treatment or Control (BPTC) to ensure that the highest water quality is maintained consistent with the maximum benefit to the people of the State. BPTC is the level of treatment technologically achievable using "best efforts" and employing proper operation and maintenance. An antidegradation analysis is required before a discharger can use any assimilative capacity of a receiving water, and under no circumstances does Resolution 68-16 allow activities which result in water quality less than prescribed by State policies.

The Antidegradation Analysis, at a minimum, must include the following:

1. A comparison of the background receiving water quality to applicable water quality objectives and to the projected impact(s) caused by **all** waste discharges from the WWTP. Narrative and numeric water quality objectives for surface water and groundwater are contained in the *Water Quality Control Plan, Fourth Edition, for the Sacramento River Basin and the San Joaquin River Basin* (Basin Plan). If background water quality is better than the water quality as defined by the water quality objectives, the background water quality shall be maintained unless the City can demonstrate (1) degradation is consistent with maximum benefit to the people of the State, (2) degradation will not unreasonably affect beneficial uses or result in water quality less than prescribed by State policies, and (3) its impact will not result in water quality lower than that prescribed in State policies.
2. A study of the long-term and short-term economic and social costs, tangible and intangible, of waste discharges from the WWTP compared to the benefits. The study must consider the economic costs and the financial ability of the City to pay for the necessary treatment and/or control measures to maintain background water quality. Both costs to beneficiaries of the proposed project as well as the affected public must be considered. In order for the Regional Board to allow degradation, the City must provide a socioeconomic analysis demonstrating that maintaining the background water quality would cause a significant adverse impact on the community.
3. An evaluation of proposed alternative control and/or disposal measures which might reduce, eliminate, or compensate for negative impacts caused by waste discharges from the WWTP. Acceptance of any degradation, to the extent there is any remaining assimilative capacity, requires implementation of BPTC.

The antidegradation analysis must also consider that monitoring data shows the unlined sludge drying beds have caused groundwater in the vicinity of the proposed biosolids application expansion area to

exceed water quality objectives for salts and nitrogen compounds. A preliminary review of monitoring data obtained within the City's Industrial Wastewater Disposal Site also indicates degradation of groundwater with salts. Therefore, little to no assimilative capacity appears to remain in these specific areas.

SALINITY IMPACTS TO THE SAN JOAQUIN RIVER

The San Joaquin River between the south Delta boundary and Mendota Pool is listed in accordance with Section 303(d) of the Clean Water Act for exceeding salinity (among other parameters) objectives. The Clean Water Act requires the development of a Total Maximum Daily Load (TMDL) for waters identified on the 303(d) list. A Basin Plan amendment to implement a TMDL for salt and boron in the lower San Joaquin River was adopted by the Regional Board in September 2004, and it is currently making its way through the approval process. The amendment includes waste load allocations for point sources that are designed to meet existing salt and boron water quality objectives.

The EIR should evaluate the discharge's impact on the salt TMDL developed for the lower San Joaquin River. Specifically, the EIR should examine the total and relative salt loads to the San Joaquin River under varying hydrologic conditions. The EIR should also include an analysis of salt sources within the collection system and present an examination of the following elements:

1. Economic feasibility of potential salt control options including source abatement, pretreatment processes and treatment options,
2. Proposed actions to control salt discharges, and
3. Proposed long-term monitoring program.

CONSTRUCTION STORM WATER PERMIT

Since the project will disturb more than one acre, compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated With Construction Activity will be required for potential discharges to surface waters, including ephemeral and intermittent drainages. Before construction begins, the City must submit a Notice of Intent (NOI) to comply with the permit, a site map, and an appropriate fee to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan (SWPPP) must be prepared. The SWPPP must contain at a minimum all items listed in Section A of the General Permit including descriptions of measures taken to prevent or eliminate unauthorized non-storm water discharges, and both temporary (e.g., fiber rolls, silt fences, etc.) and permanent (e.g., vegetated swales, riparian buffers, etc.) best management practices (BMPs) that will be implemented to prevent pollutants from discharging with storm water into waters of the United States.

DREDGE AND FILL ACTIVITIES WITHIN WATERS OF THE UNITED STATES

The Initial Study indicates that relocating the effluent outfall would require construction activities in the levee and banks of Hartley Slough. If these activities or other activities related to the project will result in the discharge of dredged or fill material into navigable waters or wetlands (jurisdictional waters), the City must obtain a permit pursuant to Section 404 of the Clean Water Act from the US Army Corps of Engineers and a Section 401 Water Quality Certification from this office. The Regional Board will

Mr. David Tucker
City of Merced
Merced County

- 4 -

6 December 2005

review the Section 401 certification application to ensure that discharges will not violate water quality standards. If the project will result in the discharge of dredged or fill material into wetlands that are determined by the Corps to be non-jurisdictional, the City will not be required to obtain a Section 401 Water Quality Certification, but may be required to submit a report of waste discharge (RWD) if the wetlands are waters of the State. The Regional Board will either prescribe waste discharge requirements (WDRs) that will incorporate measures to mitigate potentially significant impacts to water quality and potential public nuisances or issue a waiver of WDRs. For more information regarding Section 404 permitting, contact the Sacramento District of the Corps of Engineers at (916) 557-5250.

We appreciate the opportunity to comment on the subject NOP. If you have any questions concerning this matter, please contact Matt Scroggins at (559) 445-6042.



W. DALE HARVEY
Senior Engineer
RCE No. 55628

MSS

cc: State Clearinghouse, Office of Planning and Research

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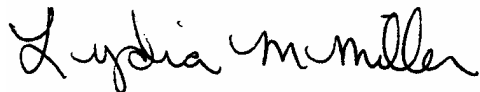
December 5, 2005
via email

Re: NOP of DEIR, Merced Waste Water Treatment Plant Expansion Project

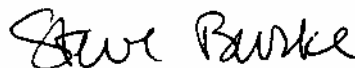
Dear Mr. Tucker,

We would like to be kept informed about the progress of the City sewer expansion project through the CEQA process, because we might be making comments on it at the appropriate time.

Respectfully submitted,



Lydia M Miller



Steve Burke

Cc: Interested parties