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FINAL
Environmental Impact Report
Merced Gateway Master Plan
City of Merced, Merced County, California

State Clearinghouse Number 2015101048

Prepared for:
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Date: June 7, 2017

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SECTION 1: INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Merced has evaluated the comments received on the Merced Gateway Master Plan Draft Environmental Impact Report (EIR). The Responses to Written Comments and Errata, which are included in this document, together with the Mitigation Monitoring and Reporting Program, form the Final EIR for use by the City of Merced in its review.

This document is organized into three sections:

- **Section 1—Introduction.**
- **Section 2—Responses to Written Comments.** Provides a list of the agencies, organizations, and individuals who commented on the Draft EIR. Copies of all of the letters received regarding the Draft EIR and responses thereto are included in this section.
- **Section 3—Errata.** Includes an addendum listing refinements and clarifications on the Draft EIR, which have been incorporated.

The Final EIR includes the following contents:

- Draft EIR (provided under separate cover)
- Draft EIR appendices (provided under separate cover)
- Responses to Written Comments on the Draft EIR and Errata (Sections 2 and 3 of this document)
- Mitigation Monitoring and Reporting Program (provided under separate cover)

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SECTION 2: RESPONSES TO WRITTEN COMMENTS

2.1 - List of Authors

A list of public agencies, organizations, and individuals that provided comments on the Draft EIR is presented below. Each comment has been assigned a code. Individual comments within each communication have been numbered so comments can be crossed-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

Author **Author Code**

State Agencies

Caltrans District 10 ..... CALTRANS
San Joaquin Valley Air Pollution Control District ..... SJVAPCD

Local Agencies

Merced County Department of Public Works ..... MCDPW
City of Merced Fire Department ..... MFD
Weaver Union School District ..... WUSD

Organizations

Merced County Farm Bureau ..... MCFB

Individuals

Tera Mondo ..... MONDO
Bill Spriggs ..... SPRIGGS
Wanger Jones Helsley PC, letter 1 ..... WJH.1
California Gold Development Corporation ..... CGDC
Wanger Jones Helsley PC, letter 2 ..... WJH.2

2.2 - Responses to Comments

2.2.1 - Introduction

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Merced, as the lead agency, evaluated the comments received on the Draft EIR (State Clearinghouse No. 2015101048) for the Merced Gateway Master Plan, and has prepared the following responses to the comments received. This Response to Comments document becomes part of the Final EIR for the project in accordance with CEQA Guidelines Section 15132.

2.2.2 - Comment Letters and Responses

The comment letters reproduced in the following pages follow the same organization as used in the List of Authors.

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Serious Drought.
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August 12, 2016

10-MER-99-PM R011.565
Draft EIR #15-18
Merced Gateway Master Plan
SCH# 2015101048

Bill King
Principal Planner
City of Merced
Development Services
678 W. 18th Street
Merced, CA 95340

Dear Mr. King:

The California Department of Transportation appreciates the opportunity to review the Draft Environmental Impact Report and Traffic Impact Study for the Merced Gateway Master Plan. The project is located in the south of the City of Merced. It is bounded by East Gerard Avenue on the north, East Mission Avenue on the south, and South Coffee Street on the west. The plan includes 601,127 square feet of commercial space and 178 multi-family residential units. The Department has the following comments:

Planning

1. To provide pedestrian access between the Pioneer Elementary School and the residential buildings in the northwest corner of the project, the Department suggests the following:
   a. Crosswalks should be added to the southern leg of the intersection of Coffee Street and Gerard Avenue.
   b. Sidewalks should be provided along the south side of Gerard Avenue and the east side of Coffee Street.
   c. Sidewalks or crosswalks should be provided at the cul-de-sac on Coffee Street.

1

2. To connect the proposed residences and hotel with commercial areas, the Department recommends that pedestrian facilities be provided throughout the project area

2

3. To provide pedestrian connectivity with the existing sidewalk on Campus Parkway, the Department suggests that sidewalks be constructed on the east side of Coffee Street south of Parsons Avenue. 3

4. The Department recommends that crosswalks be provided across Campus Parkway to provide pedestrian connectivity between the sections of the project to the north and south. 4

5. The Department suggests that bicycle lanes be added to Gerard Ave, Coffee St, Parsons Ave, Campus Parkway, and Mission Ave to provide bicycle access to the development. We also suggest that the development provide bike racks for use by residents and customers. 5

Traffic Operations

6. Mitigation Measure TRANS-1e is not feasible and will create potential safety issues and turning movement conflicts.
   a. The mitigation proposes making the right-turn lane of the northbound SR-99 off-ramp "free" at the intersection of SR-99 NB ramps/Mission Ave under mitigations for "Existing Plus Project with Access as Proposed & General Plan Streets", "Existing Plus Approved Project Plus Project (EPAP Plus Project)/Access as Proposed", and "Cumulative Plus Project with Access as Proposed & General Plan Streets". This proposed mitigation will create potential safety issues and turning movement conflicts between the northbound right-turn & eastbound Mission Avenue. This right-turn movement needs signalized controls.
   b. The mitigation proposes making the right-turn lane from the westbound Mission Avenue to the northbound SR-99 on-ramp "free" at the intersection of SR-99 northbound ramps/Mission Ave under mitigations for "Existing Plus Project with Access as Proposed & General Plan Streets", "Existing Plus Approved Project Plus Project (EPAP Plus Project)/Access as Proposed", and "Cumulative Plus Project with Access as Proposed & General Plan Streets". This proposed mitigation will create potential safety issues and turning movement conflicts between Mission Avenue's westbound right-turn lane & its eastbound left-turn lane. This right-turn movement needs signalized

6

controls with an overlap phase on the westbound right-turn. 6 CONT

7. The DEIR's TIS needs to be revised to provide feasible mitigations under "EPAP Plus Project and Cumulative Plus Project Access as Proposed". The TIS analyzes the traffic impact under this condition, and indicates that the adjacent approved projects will worsen the traffic conditions at the ramp intersections and adjacent intersections, in addition to impacts from the Merced Gateway project. The TIS proposes the using the same "Existing Plus Project" mitigations as the mitigation for the "EPAP Plus Project & Cumulative Plus Project Access as Proposed". However, these proposed mitigations do not mitigate the project's significant impacts to traffic. For example, with these mitigations at the SR-99 NB Ramps/Mission Ave, the LOS is still E and F in the PM peak and Saturday as shown in Table 42, Mitigated EPAP Plus Project Conditions, Merced Gateway TIS. 7

8. Under the "Access as Proposed" scenario, the Merced Gateway DEIR's TIS provides the traffic analysis and mitigations for "Existing Plus Project Conditions", "EPAP Plus Project Conditions", and "Cumulative Plus Project Conditions". However, under the General Plan Circulation scenario, the TIS ignores the "EPAP Plus Project Conditions". The DEIR's TIS needs to mitigate the project's significant impacts during the "EPAP Plus Project with General Plan Circulation Conditions". 8

9. The design and placement of the Central Access point on the south side of Campus Parkway may result in traffic queues that will extend beyond the SR-99 NB Ramps/Mission Ave intersection under the Access as Proposed Scenario.
    a. For example, under "Mitigation Existing Plus Project" (Saturday), this proposed intersection of Campus Pkwy/Central Access includes two thru lanes with a traffic volume of 158 vehicles and a dedicated right-turn lane with a traffic volume of 715 vehicles. The large right-turn traffic volume at this access will create a traffic queue which will block the far right lane and extend back beyond the SR-99 NB Ramps/Mission Ave intersection. Drivers will tend to use the far right lane while approaching the right-turn at the Central Access. The NB Off-ramp right-turn traffic will also be blocked due to this traffic back up. A review of the provided SimTraffic performance report under "Mitigated Existing Plus Project Saturday with Project Street 9

Layout" shows the SR-99 NB Ramps/Mission Ave intersection has an overall delay of 48 seconds. However this is misleading since it is an average delay of all the approaches. The vehicle delay at the NB Off-ramp is more than 500 seconds, which is an unacceptable LOS. This will create long queues on the NB off-ramp, in addition to creating a potential safety issue at the off-ramp and also freeway mainline. 9 CONT

b. The TIS needs to disclose and address these potential traffic/safety impacts and consider other alternative solutions such as relocating the central access on the south side of Campus Parkway to the location of the east access.

10. The Synchro files submitted to the Department contained the following errors and inconsistencies:
    a. The TIS provides the traffic analysis and mitigations for "Existing Plus Project with General Plan Circulation" and "Mitigated Existing Plus Project with General Plan Circulation". However, the provided electronic Synchro files did not include the analysis for these conditions. Please provide these Synchro files to the Department for review. 10
    b. The TIS provides the traffic analysis and mitigations for "Cumulative Year 2035 Plus Project Conditions with General Plan Circulation" for all studied intersections. However, the provided electronic "Mitigated Cumulative Plus Project with General Plan" Synchro file only includes intersection #1 (Childs Ave/Parson Ave) and ignores the rest of the studied intersections. Please provide Synchro files that include all studied intersections under the "Mitigated Cumulative Plus Project with General Plan". 11
    c. A review of the provided electronic Syncho file under "Mitigated Existing Plus Project", "Mitigated EPAP Plus Project", and "Mitigated Cumulative Plus Project" shows the NB Off-Ramp at the SR-99 NB Ramps/Mission Ave intersection with a right-turn lane storage of 800 feet, which is 350 feet longer than the existing storage lane. However, the TIS never mentions lengthening the NB Off-ramp right-turn lane storage as a part of the proposed mitigations. Either the Synchro file needs to be revised to use the correct storage length or the mitigations need to lengthen the NB off-ramp accordingly. 12
    d. According to Figure 22 (Mitigations for Existing Plus Project/Access as Proposed) and Figure 24 (Mitigations for Existing Plus Project with General Plan Streets) of the TIS, there will be two WB left-turn lane at Campus 13

Pkwy/Coffee Street. However, a review of the provided Mitigation Synchro file shows a single left-turn lane on WB Campus Pkwy. This inconsistency must be corrected. 13 CONT

e. According to Table 41 (Mitigations for EPAP Plus Project Conditions) in the TIS, the improvement does not mention adding a second left-turn lane on WB Campus Pkwy at the Coffee Road/Campus Pkwy intersection. However, a review of the provided Synchro file shows two left-turn lanes on EB Campus Pkwy under "Mitigations for EPAP Plus Project Conditions". This inconsistency must be corrected. 14

f. The traffic analysis uses an unreasonably low percentage of truck traffic. A review of the provided electronic Synchro analysis file shows that under all traffic analysis conditions, only 2% of all turning movements at the intersections of SR-99 SB Ramps/Mission Ave, SR-99 NB Ramps/Mission Ave, and Campus Pkwy/Coffee Street will be trucks. This seems unreasonably low and would affect the saturation flow and level of service results between the ramp intersections and the nearby intersection of Campus Pkwy/Coffee Street. The TIS needs to be revised to provide a reasonable truck percent input in Synchro analysis under all study scenarios. 15

11. The proposed Merced Gateway Master Plan and Adjacent Approved Projects will have potential significant impacts to both operations and safety on mainline State Route 99 facilities. The TIS does not disclose or address these impacts. Therefore the Merced Gateway DEIR's TIS needs to include freeway merge and diverge analyses at the SR-99/Mission Ave interchange. HCS 2010 should be used for the merge and diverge analyses. 16

12. The proposed project will also will have potential significant impacts to both bicycle and pedestrian traffic in the area. The District suggests that the project include more of a Complete Streets approach to the streets and pedestrian facilities. The project should have adequate bicycle and pedestrian pathways and ensure that connections to existing and future pedestrian and bicycle facilities are easily made 17

13. The project should also provide amenities and access for public transit users to help reduce the number of vehicle trips and vehicle emissions. Including amenities such as public transit bus pullouts, bus shelters, bike racks, preferential parking for car 18

pool vehicles and electric vehicle charging stations will help encourage use of alternate modes of transportation and reduce pollution.

18
CONT

Due to the concerns we have with this project, we encourage the lead agency to schedule a meeting with us to discuss the project in greater detail. Please contact Nicholas Fung at (209) 948-7190 or myself at (209) 941-1921.

Sincerely,

TOM DUMAS, CHIEF
OFFICE OF METROPOLITAN PLANNING

State Agencies

Caltrans District 10 (CALTRANS)

Response to CALTRANS-1
The commenter suggests sidewalks and crosswalks at various locations on Coffee Street and Gerard Avenue.

Sidewalks will be installed with the project's frontage improvements on Coffee Street and Gerard Avenue. Sidewalks will be provided at the Parsons Avenue/Coffee Street intersection adjoining the cul-de-sac.

Response to CALTRANS-2
The commenter recommends pedestrian facilities to connect the proposed residences and hotel with the commercial areas of the proposed project.

The comment is acknowledged.

Response to CALTRANS-3
The commenter suggests sidewalks be constructed on the east side of Coffee Street south of Parsons Avenue.

Sidewalks will be constructed as suggested on Coffee Street.

Response to CALTRANS-4
The commenter recommends crosswalks across Campus Parkway.

Crosswalks will be provided by the project applicant.

Response to CALTRANS-5
The commenter suggests that bicycle lanes be added to Gerard Avenue, Coffee Street, Parsons Avenue, Campus Parkway, and Mission Avenue.

There is an existing Class I bikeway along the north side of Campus Parkway. The Merced Gateway Master Plan provides for Class II bicycle lanes along Gerard Avenue, Coffee Street, and Mission Avenue in Figure 32: Bikeway Plan, consistent with the City of Merced General Plan. Parsons Avenue will meet City requirements. The Master Plan also provided for conveniently located bicycle parking.

Response to CALTRANS-6
The commenter states that Mitigation Measure TRANS-1e is not feasible and will create potential safety issues and turning movement conflicts.

The City of Merced and Caltrans have consulted on the issues associated with the State Route 99 (SR-99)/Mission Avenue intersection and have identified an applicable strategy to address these concerns noted in this comment. The northbound SR-99 ramps approach to Mission Avenue will not include a "free" right-turn lane, but instead a second northbound right-turn lane will be provided. These improvements would be required for both the proposed project and the GP Circulation Alternative. In addition, a second right-turn lane will be provided at the project's mid-block driveway on Campus Parkway under the proposed project and the eastbound shared through/right

turn at Coffee and Campus Parkway will be split into a separate through lane and separate right-turn lane. These changes are noted in the revised Figures 22, 23, 24, 26, 27, 28, and 29 and revised Tables 37, 41, and 43 from the Traffic Study in Appendix I to the DEIR and the corresponding Exhibits 3.11-11, 3.11-12, 3.11-13, 3.11-18, 3.11-19, 3.11-24, 3.11-25, and 3.11-26 and Tables 3.11-16, 3.11-28, 3.11-37, 3.11-38, and 3.11-39, which are included in the Errata to the Draft EIR as part of this Final EIR.

Response to CALTRANS-7
The commenter states that the DEIR Traffic Impact Study needs to be revised to provide feasible mitigations under "EPAP Plus Project and Cumulative Plus Project Access as Proposed."

The City of Merced and Caltrans have consulted on the issues associated with the SR-99/Mission Avenue intersection and have agreed that the mitigation measures as revised above are sufficient to address these concerns. The resulting Levels of Service (LOS) would be similar to those identified in the DEIR but would still result in significant and unavoidable impacts as indicated in the DEIR.

Response to CALTRANS-8
The commenter states that the EIR needs to mitigate the project's significant impacts during the "EPAP Plus Project with General Plan circulation Conditions."

The evaluation of the GP Circulation alternative satisfies CEQA requirements for alternatives. The impacts of this alternative were evaluated under Existing and Cumulative conditions. CEQA does not require evaluation of the Existing Plus Approved Projects background condition.

Response to CALTRANS-9
The comment states that the design and placement of the Central Access point on the south side of Campus Parkway may result in traffic queues that will extend beyond the SR-99 NB Ramps/Mission Avenue intersection under the Access as Proposed Scenario.

The City of Merced and Caltrans have consulted on the issues associated with the SR-99/Mission Avenue intersection and have identified an applicable strategy to address these concerns noted in this comment. A second right-turn lane will be provided at the project's mid-block driveway on Campus Parkway under the proposed project, and the eastbound shared through/right turn at Coffee Street and Campus Parkway will be split into a separate through lane and separate right-turn lane.

Response to CALTRANS-10
The commenter points out errors and inconsistencies in the Synchro traffic analysis files submitted to the Department.

Revised Synchro-SimTraffic files were provided to Caltrans and were part of the collaboration between the City and Caltrans that led to the identified improvement strategy.

Response to CALTRANS-11
The commenter points out errors and inconsistencies in the Synchro traffic analysis files submitted to the Department.

Revised Synchro-SimTraffic files were provided to Caltrans and were part of the collaboration between the city and Caltrans that led to the identified improvement strategy.

Response to CALTRANS-12
The commenter points out errors and inconsistencies in the Synchro traffic analysis files submitted to the Department.

Revised Synchro-SimTraffic files were provided to Caltrans and were part of the collaboration between the city and Caltrans that led to the identified improvement strategy.

Response to CALTRANS-13
The commenter points out that according to Figure 22 (Mitigations for Existing Plus Project/Access as Proposed) and Figure 24 (Mitigations for Existing Plus Project with General Plan Streets) in the Traffic Study would require a second westbound left-turn lane at Campus Parkway/Coffee Street, but review of that second left-turn lane is not provided in the Mitigation Synchro file.

The mitigation measure requires two westbound left-turn lanes at the Campus Parkway/Coffee Street intersection. Because the westbound left-turn traffic volumes under Existing plus Project and EPAP plus Project conditions are small, the absence of the second lane does not have an appreciable bearing on the operation of the intersection.

Response to CALTRANS-14
The commenter states that Traffic Study Table 41 (Mitigation for EPAP Plus Project Conditions) does not mention adding a second left-turn lane on Westbound Campus Parkway at the Campus Parkway/Coffee Street intersection and that inconsistency should be corrected.

The mitigation measure requires two westbound left-turn lanes at the Campus Parkway/Coffee Street intersection. Because of the westbound left-turn traffic volumes under Existing plus Project and EPAP plus Project conditions are small, the absence of the second lane does not have an appreciable bearing on the operation of the intersection.

Response to CALTRANS-15
The commenter states that the traffic analysis uses an unreasonably low percentage of truck traffic.

The Traffic Impact Analysis made assumptions for truck percentages that were applicable to each scenario. Under existing and Existing plus Project conditions, the truck percentages would be typical since the project is the primary traffic source and its truck percentage would be appreciable. The 2-percent assumption is valid. Under EPAP conditions, the Walmart Distribution Center's truck traffic was included and the truck percentage was raised. Under long-term cumulative conditions, the truck percentage returned to a typical value as the specific truck contribution of approved projects were diluted and new routes for that traffic were identified.

Response to CALTRANS-16
The commenter states the proposed Merced Gateway Master Plan and Adjacent Approved projects will have potential significant impacts to both operations and safety on mainline State Route 99 facilities.

The City of Merced and Caltrans have consulted on the issues associated with the SR-99/Mission Avenue intersection and have identified an applicable strategy to address these concerns noted in this comment. Applicable improvements to SR-99 ramps were identified, including the addition of auxiliary lanes to NB and SB off ramps.

Response to CALTRANS-17
The commenter states that the project will have potential significant impacts to both bicycle and pedestrian traffic in the area.

Comment acknowledged. Applicable sidewalks and bicycle facilities are included in the Master Plan and the frontage improvements required by the City of Merced.

Response to CALTRANS-18
The commenter states that the project should also provide amenities and access for public transit users to help reduce the number of vehicle trips and vehicle emissions.

As requested by the commenter, a bus stop is included in the Master Plan.

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

August 24, 2016

Bill King
City of Merced
Development Services Department
Planning Division
678 West 18th Street
Merced, CA 95340

Agency Project: Draft Environmental Impact Report (DEIR) for the Merced Gateway Master Plan – SCH # 2015101048

District CEQA Reference No: 20160444

Dear Mr. King:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the above referenced project. Per the DEIR, the proposed project consists of (1) General Plan Amendments, (2) corresponding zone changes, and (3) the establishment of a Planned Development Zone. A planned development zone would be adopted to allow the development of up to 601,127 square feet of commercial uses and 178 multi-family dwelling units. The proposed project includes a 1.53-acre site for a fire station. The 77.5-acre project site is located in the City of Merced. The project site is bounded by two non-continuous segments of South Coffee Street on the west, East Gerard Avenue on the north, undeveloped land on the east, and East Mission Avenue on the south. The commercial square footage would be located on Campus Parkway, with 358,535 square feet on the north side and 242,592 square feet on the south side. End uses would include retail/commercial development, i.e. supermarket, regional shopping center(s), discount club, free-standing discount superstore, restaurants, convenience market and gas station, movie theatre, and hotel.

The District offers the following comments:

1. **Project Specific Emissions**

Based on information provided to the District, project specific emissions of NOx, ROG, and PM10 are not expected to exceed District significance thresholds of 10 tons/year NOx, 10 tons/year ROG/VOC and 15 tons/year PM10 with mitigations. 1

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Executive Director/Air Pollution Control Officer

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2. Voluntary Emission Reduction Agreement (VERA)

The DEIR relies on the reductions from a VERA to mitigate year 2023 and year 2026 operational emissions of ROG to less than the District significance threshold of 10 tons/year ROG.

The DEIR, *Air Quality/Greenhouse Gas Emissions*, Section 3, page 3.3-53, states: "Mitigation Measure AIR-2e requires the project proponent to enter into a VERA to reduce the operational emissions of ROG to a less than significant level."

Mitigation Measure Air-2e states: *"The project proponent shall submit evidence, verified by SJVAPCD, that demonstrates that the project's operational-related ROG emissions will be reduced to below SJVAPCD's numeric threshold of 10 tons per year, respectively. These reductions can be achieved by any combination of project design and/or via the project proponent entering into a development mitigation contract (e.g., Voluntary Emission Reduction Agreement, or VERA), with the SJVAPCD."*

Implementation of project design and the implementation of a VERA are two distinctive and complimentary approaches. The District has a mechanism where emission reductions are achieved by implementation of project design but it is through compliance with District Rule 9510 (Indirect Source Review). The project is subject to District Rule 9510 (Indirect Source Review). However, as mentioned in the DEIR, Section 3.3 Air Quality/Greenhouse Gas Emissions, page 3.3-51, "... *design elements, mitigation measures, and compliance with District rules and regulations are not sufficient to reduce project-related impacts on air quality to a less than significant level.*" VERAs provide a mechanism under which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds and implements emissions reduction projects, with the District serving the role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. 2

To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate project specific emissions by providing funds to mitigate the project's impact on air quality. Once entered into, VERAs become legally enforceable mechanisms for achieving air quality mitigation. After the project is mitigated, the District certifies to the lead agency that the mitigation is completed, providing the lead agency with an enforceable mitigation measure demonstrating that project specific emissions, i.e. the project's operational-related ROG emissions, have been mitigated to less than the District's ROG threshold of 10 tons/year. The City and the project proponent can engage in the discussion with the District regarding the implementation of a VERA prior to the finalization and certification of the EIR.

In conclusion, it is unclear how the City of Merced (City) is requiring evidence of project design implementation to reduce the project's operational-related ROG

emissions and how that would be enforceable. The City of Merced, as the lead agency for the project, has the authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment (CCR §15041(a)). These changes, also known as mitigation measures, must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CCR §15126.4(a)(2)). Therefore, the District recommends the City revise Mitigation Measure Air-2e to specifically require the project proponent to mitigate the project's operational-related ROG emissions through one method and the revised mitigation measure should include sufficient details that allow the measure to be enforceable. This would allow the City to fully disclose to the public the extent of the actual mitigation proposed. 2 CONT

The District is providing an example of a VERA mitigation measure:

"Prior to final project approval by the City (or other specific time), the project proponent shall enter into a Voluntary Emission Reduction Agreement (VERA) with the SJVAPCD to mitigate the project's operational-related ROG emissions estimated at 14.56 tons for operational year 2023 and 19.50 tons for operational year 2026 to below the SJVAPCD's level of significance of 10 tons per year of ROG. The project proponent shall submit to the City a VERA executed by the project proponent and the SJVAPCD."

3. **Mitigation Measure Air-2f**

All project specific assumptions that have the effect of reducing or mitigating project related impacts must be fully enforceable.

Mitigation Measure Air-2f states: *"During the site preparation and grading of Phases 1 and 4, the project applicant shall require that either at least half of the construction equipment utilized during site preparation and grading activities for Phases 1 and 4 meet Tier 4 emissions standards, or the project applicant shall restrict the simultaneous site preparation and grading activities for Phases 1 and 4."* 3

All project specific assumptions used in the analysis that have the effect of reducing or mitigating project related impacts must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines §15126.4, subd.(a)(2)).

4. **SJVAPCD (District) Attainment Status**

The SJVAPCD offers clarification of the District's current federal and state attainment status designation.

The DEIR, Section 3.3 Air Quality/Greenhouse Gas Emissions, page 3.3-5, states: *"The Air Basin is designated as nonattainment for ozone (state and national), PM_{10} (state), and $PM_{2.5}$ (state and national)."* 4

At the federal level, the District is currently designated as extreme nonattainment for the 8-hour ozone standards; nonattainment for the PM2.5 standards; and attainment for the 1-Hour ozone, PM10 and CO standards. At the state level, the District is currently designated as nonattainment for the 8-hour ozone, PM10, and PM2.5. 4 CONT

5. Ambient Air Quality Analysis

An ambient air quality analysis (AAQA) should be performed if the project's daily mitigated construction or operational emissions exceed the screening value of 100 pounds per day for any criteria pollutant.

To evaluate a potential impact to air quality, Section 8.4.2 of the Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) suggests using the project's daily mitigated construction and operational emissions as a screening tool. If emissions exceed the screening value of 100 pounds per day for any criteria pollutant for construction or operation, an ambient air quality analysis (AAQA) should be performed. This analysis should include all emissions from construction and operations for each year the project exceeds the screening threshold. Operational emissions include those from mobile sources and permitted and non-permitted stationary sources. Note that all project related mobile source emissions within ¼ mile of the project boundary should be included as part of the project. 5

6. Health Impacts Assessment

Merced Gateway Project related health impacts should be evaluated to determine the construction and operational impacts to onsite future residents and/or worksites and offsite residents/school/worksites, existing or proposed.

The Impact Analysis, *Construction: Toxic Air Contaminants*, Section 3, page 3.3-63, states: *"Although construction of the project would involve the use of diesel-fueled vehicles, construction risks were not analyzed because of the short duration of the construction phase."* However, the District recommends a Health Risk Assessment (HRA) of the potential project related health impacts be performed to determine the construction and operational impacts to onsite future residents and/or worksites and offsite residents/school from emissions of toxic air contaminants (TACs). This project is a multi-year construction project; i.e. construction starts in 2017 and ends in 2026. 6

a) The most common source of TACs from this type of project can be attributed to diesel exhaust that is emitted from both stationary and mobile sources.

b) The health impact of emissions from this project (construction + operational emissions) needs to be evaluated for the offsite residents to the north and south as well as the school to the west.

c) Phase 4, consisting of 178 multi-family dwelling units, will be operational in 2019. Phase 1, consisting of 142,000 square feet of commercial space, and Phase 5, the fire station, will be operational in 2020. As of 2020, onsite receptors should be included in the HRA.

d) All sources of potential emissions whether they are permitted, not permitted, or to be permitted in the future should be included in an HRA.

e) When evaluating truck idling emissions, the District assumes a 15 minute idling time unless measures to ensure that trucks will idle for only 5 minutes are included as a mitigation measure in the land use permit. The Airborne Toxic Control Measure (ATCM) for idling includes numerous exceptions to the 5-minute idling limitation.

f) Construction onsite truck travel and idling should be included in the HRA.

g) Diesel emissions from onsite construction equipment should be included in the HRA.

h) Commercial, shopping or office development may be a source of toxic air contaminants because of delivery truck travel, idling and transportation refrigeration units (TRUs).

6
CONT

i) The District expects retail stores that sell perishable food products have a fuel-fired emergency standby engine to provide power in case of electrical outage. The fuel-fired emergency standby engine's emissions should be evaluated as part of the HRA.

j) All project specific assumptions used in modeling that have the effect of reducing or mitigating project related impacts must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines §15126.4, subd.(a)(2)).

k) Prior to performing an HRA, the District recommends the project proponent contact the District to review the modeling approach.

The project would be considered to have a significant health risk if the HRA demonstrates that project related health impacts would exceed the District's significance threshold of 20 in a million for cancer and 1.0 for Acute and Chronic Hazard Indices.

l) The District recommends that all input files used to conduct the health risk assessment (HRA) be submitted in electronic format to the District. Providing the electronic input files used to develop the modeling outputs facilitates the District's confirmation of the HRA in a timely manner.

m) To comply with CEQA requirements for full disclosure, the District recommends that the modeling outputs be provided as appendices to the EIR. 6 CONT

More information on HRAs can be obtained by:

- E-mailing inquiries to: hramodeler@valleyair.org; or
- Visiting the District's website at: http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm

7. Underfired Charbroilers

Particulate Matter 2.5 microns or less in size (PM2.5) from under-fired charbroilers (UFCs) pose immediate health risk. Since the cooking of meat can release carcinogenic PM2.5 species like polycyclic aromatic hydrocarbons (PAH), controlling emissions from under-fired charbroilers will have a substantial positive impact on public health.

Charbroiling emissions occur in populated areas, near schools and residential neighborhoods, resulting in high exposure levels for sensitive Valley residents. The air quality impacts on neighborhoods near restaurants with UFCs can be significant on days when meteorological conditions are stable, when dispersion is limited and emissions are trapped near the surface within the surrounding neighborhoods. This potential for neighborhood-level concentration of emissions during evening or multi-day stagnation events raises environmental concerns.

In addition, the cooking emissions source category is one of the largest single contributors of directly emitted PM2.5 in the Valley. Photochemical modeling conducted for the 2012 PM2.5 Plan showed that reducing commercial charbroiling emissions is critical to achieving PM2.5 attainment in the Valley. 7

The District committed to amend Rule 4692 (Commercial Charbroiling) in 2016, with a 2017 compliance date, to add emission control requirements for UFCs, as committed to in the District's 2012 PM2.5 Plan. Installing charbroiler emissions control systems during construction of new facilities is likely to result in substantial economic benefit compared to costly retrofitting.

Therefore, the District strongly recommends that your agency require new restaurants that will operate UFCs to install emission control systems during the construction phase. To ease the financial burden for Valley businesses that wish to install control equipment before it is required, the District is offering incentive funding during the time leading up to the amendment to the rule. Restaurants with UFCs may be eligible to apply for funding to add emission control systems. Please contact the District at (559) 230-5858 for more information.

8. District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source

A gasoline dispensing facility (gas station) is subject to District permitting requirements.

The proposed gas station is subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review). As such, the District recommends the applicant contact the District's Small Business Assistance (SBA) office prior to starting construction regarding the requirements for an Authority to Construct (ATC) and to identify other District rules and regulations that apply to this project. SBA staff can be reached at (209) 557-6446. 8

In addition, please note that starting construction before receiving an ATC may result in a violation of District regulations and be subject to enforcement action.

9. District Rules and Regulations

The proposed project may be subject to the following District rules and regulations: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and Rule 4702 (Internal Combustion Engines). In the event that any portion of an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). The above list of rules is neither exhaustive nor exclusive. 9

More information regarding compliance with District rules and regulations can be obtained by:

- Visiting the District's website at http://www.valleyair.org/rules/1ruleslist.htm for a complete listing of all current District rules and regulation, or
- Visiting the District's website at http://www.valleyair.org/busind/comply/PM10/compliance_PM10.htm for information on controlling fugitive dust emissions.

The District recommends that a copy of the District's comments be provided to the project proponent.

If you have any questions or require further information, please contact Georgia Stewart at (559) 230-5937.

Sincerely,

Arnaud Marjollet
Director of Permit Services

Brian Clements
Program Manager

AM: gs

San Joaquin Valley Air Pollution Control District (SJVAPCD)

Response to SJVAPCD-1
The commenter states that the project-specific emissions of NO_x, ROG, and PM_{10} are not expected to exceed District significance thresholds of 10 tons/year ROG/VOC and 15 tons/year PM_{10} with mitigation incorporated.

The DEIR found that the proposed project would reduce NO_x, ROG, and PM_{10} to below the District's threshold through application of Mitigation Measures AIR-2a through AIR-2f, as found on pages 3.3-57 through 3.3-59 of the DEIR.

Response to SJVAPCD-2
The commenter states that the implementation of project design and of a Voluntary Emission Reduction Agreement (VERA) would provide mitigation of emissions. The commenter also states the requirement for the project proponent and the District to enter into a contractual agreement to implement the VERA.

The comment is noted. The proposed project is a Master Plan for an area and the exact building plans have not yet been developed. The DEIR was worded in such a way as to allow the project applicant to explore design elements that would reduce emissions before entering into a VERA, which would contractually obligate them to pay for the offset in emissions.

The commenter also expresses concerns on a lack of clarity as to how the City of Merced would require evidence related to project design and the way it would reduce operational-related ROG emissions. The commenter states that the mitigation measures must be enforceable through permit conditions, agreement, or other legally binding instruments.

Mitigation Measures AIR-2e requires that the SJVAPCD verify that the project's operational ROG emissions are reduced to below 10 tons per year. This mitigation measure provides the District with the authority to require proof of any emissions reduction achieved through changes to project design.

The commenter recommends the City revise Mitigation Measure Air-2e to require the project proponent mitigate operational-related ROG emissions through one method and explain how that method will be enforced.

Since the proposed project is a Master Plan, where the exact building plans have not yet been developed and since the District's preferred method to reduce emissions is through project design, it does not seem appropriate to limit the project applicant's options to meet the ROG emissions threshold from the project operations.

Response to SJVAPCD-3
The commenter states: "All project specific assumptions used in the analysis that have the effect of reducing or mitigating project-related impacts must be fully enforceable through permit conditions, agreements, or other legally binding instruments."

The DEIR provides Mitigation Measure AIR-2e, which requires the project applicant to either submit evidence to the District that demonstrates through project design features that the project's operational ROG emissions will be reduced to less than 10 tons per year or the applicant is required to enter into a VERA with the District that requires the applicant to pay an offset for the amount the project exceeds the ROG threshold. Mitigation Measures AIR-2e is a fully enforceable and legally binding instrument.

Response to SJVAPCD-4
The commenter states:

> At the federal level, the District is currently designated as extreme nonattainment for the 8-hour ozone standards; nonattainment for the $PM_{2.5}$ standards; and attainment for the 1-Hour ozone, PM_{10} and CO standards. At the state level, the District is currently designated as nonattainment for the 8-hour ozone, PM_{10}, and $PM_{2.5}$.

Table 3.3-3 in Section 3.3, Air Quality/Greenhouse Gas Emissions, shall be revised so that the ozone-one hour standard is designated as "Attainment" for the National Standard.

Response to SJVAPCD-5
The commenter notes the need for an ambient air quality analysis should the project's daily mitigated construction or operation emissions exceed the screening value of 100 pounds per day for criteria pollutants.

As detailed in the text after Table 3.3-13 (page 3.3-55 of the DEIR), Mitigation Measure AIR-2f would reduce all criteria pollutants emissions during construction to below the 100-pound-per-day threshold.

The commenter also mentions the potential use of the project's daily mitigated construction and operational emissions as a screening tool.

As detailed above, the DEIR utilized the 100-pound-per-day threshold to assess the construction-related local air quality impacts and the DEIR found that, with the implementation of Mitigation Measure AIR-2f, the impacts would be less than significant.

The commenter suggests that all project-related mobile source emissions within a 0.25-mile radius of the project should be included as part of the project. The comment is noted. Construction of the proposed project would not require the import or export of large quantities of dirt (haul truck). The worker trips were assessed to determine if they would change the results, and it was found that when their emissions are divided by 0.25/9.5 it equals 0.026, which does not increase mobile source emissions, as shown in Table 3.3-13.

Response to SJVAPCD-6
The commenter recommends a Health Risk Assessment (HRA) for the project-related impacts of emissions on future residents as well as other related impacts.

The DEIR provides a qualitative HRA that analyzes the construction-related health risks to the nearby residents from diesel emissions. Although construction activities may occur between 2017 and 2026, there are anticipated to be large gaps between phases and the latter construction activities would be required to meet more stringent state regulations that would reduce the risk from diesel emissions. As such, preparation of a quantitative HRA would not alter the findings presented in the DEIR and is therefore not necessary.

The DEIR provides a qualitative HRA analysis of both operations and construction activities and found that the proposed project did not meet CAPCOA's screening thresholds that would require the preparation of a quantitative HRA. As such, preparation of a quantitative HRA would not alter the findings presented in the DEIR and is therefore not necessary.

The proposed project consists of a mixed-use development that includes both residential and commercial uses. The *California Supreme Court Ruling for California Building Association v. BAAQMD*, filed on December 17, 2015, limited CEQA analyses from analyzing existing environmental impacts to future residents of a proposed project.

The DEIR identified all sources of TAC emissions that can be reasonably assumed to be part of the project and included diesel truck emissions, gas station emissions, and restaurant charbroiler emissions. All of the sources of emissions were assessed consistent with the CAPCOA screening distances to the nearby sensitive receptors and were found to result in less than significant impacts.

The DEIR identified the potential health risks from diesel emissions during operational activities and found that the number of trucks would be below the California Air Pollution Control Officers Association (CAPCOA) screening levels that require the preparation of a quantitative HRA and impacts would be less than significant.

It is too speculative at this time to try to assess which stores would utilize backup generators. If any store were to install a backup generator, a separate permit would be required. The health risks associated with the generator would be required to be analyzed at that time.

A qualitative HRA was found not to be required for this project, as it would not change the findings presented in the DEIR. Modeling outputs are provided in Appendix C.

Response to SJVAPCD-7
Comment noted. The project applicant will provide all prospective restaurants with information about the District's Unified Facilities Criteria (UFC) rules and incentive funding.

Response to SJVAPCD-8
The commenter states that the gas station is subject to specific requirements and suggests the applicant contact the District's Small Business Assistance (SBA) office before starting construction regarding the requirements.

The comment is noted. The project applicant will provide all prospective gas stations with information about the District's Rules 2010 and 2201 and about the SBA office's assistance to meet the District's requirements.

Response to SJVAPCD-9

The commenter lists District rules and regulations to which the project may be subjected.

The comment is noted. The project applicant will require that all contractors working on the proposed project adhere to all of the District's rules and regulations.

MERCED COUNTY

DEPARTMENT OF PUBLIC WORKS
Road Division

Dana S. Hertfelder
Director

345 West 7th Street
Merced, CA 95341
(209) 385-7601
(209) 722-7690
www.co.merced.ca.us

Equal Opportunity Employer

Date: July 15, 2016

To: Mark Hendrickson, Director
Community and Economic Development Department

From: Steven E. Rough, Supervising Engineer

Subject: Merced Gateway Master Plan Draft EIR Comments

M E M O R A N D U M

We have completed a cursory review of the transportation section of the Draft EIR for the Merced Gateway Master Plan. Although we may not fully agree with the methodology used in the analysis, we are limiting our comments to potential impacts the project may have on County roads.

1. The traffic analysis for the near- and mid-term assumes Campus Parkway has not been extended from its current terminus at Childs Avenue. In these scenarios, the traffic analysis seems to underestimate the volume of new trips that will travel on the Kibby Road access to the project site. The Kibby Road access, as defined in the memo, consists of trips generated from North Merced that choose to travel east on Yosemite Avenue or Olive Avenue to Kibby Road, then south on Kibby Road to Childs Avenue, then west on Childs Avenue to Campus Parkway, then to the project site. 1

   The Kibby Road access route is likely to have a shorter travel time to the project site for many residents than alternative routes through the City of Merced. The actual number of trips following this route may be difficult to determine. The consultant may be able to conduct a select-link analysis to identify trips traveling from North Merced to the project site. If we assume that 10% of the new trips take this route, that represents approximately 2,600 new trips on the Kibby Road access per day. Although it is unlikely that 2,600 new trips will result in any new level-of-service deficiencies along the Kibby Road access, it is likely that this increase in trips may result in an increase in traffic collisions along the Kibby Road access as well as the advanced deterioration of the roadway travel surface. 2

   The construction of Campus Parkway Segments 2 and 3 will eliminate any impacts this project is likely to have on the Kibby Road access. The Regional Transportation Impact Fee (RTIF) has been developed as a mechanism for developers to pay their fair share of significant regional transportation improvements such as Campus Parkway. It is our understanding that the City of Merced recently suspended collection of RTIF fees for 3

new development projects. If the RTIF fee is not collected for projects occurring as part of the Merced Gateway Master Plan, then these projects will not be contributing their fair share towards the construction of Campus Parkway.

As a result, we recommend that this project either be required to pay the RTIF fee or pay their fair share for the construction of Campus Parkway using another mechanism that has not yet been developed. 3 CONT

2. Other General Comments (not County-road related):

   a. Campus Parkway has been designed to accommodate construction of one additional through lane in each direction within the median. The mitigation measures indicate the need for a third lane in each direction but the limits of the third lane has not been clearly identified. 4

   b. The number of trips traveling from the north to Campus Parkway to the Gerard Avenue central driveway into the site seems to be underestimated. This may result in inadequate design at this intersection. 5

   c. If the City decides to eliminate the Coffee Street cul-de-sac, the City may want to evaluate construction of a roundabout at the intersection of Coffee Street and Parsons Avenue. The roundabout is likely to be more efficient than a traffic signal and provide traffic calming. Additional traffic calming features could also be incorporated on the segment of Coffee Street between Parsons Avenue and Gerard Avenue. The peak hour of the school and the peak hour of the land uses in the Merced Gateway project are not the same; as a result, capacity issues are less likely to impact Pioneer School. 6

Local Agencies

Merced County Department of Public Works (MCDPW)

Response to MCDPW-1
The commenter states: "The traffic analysis for the near-and mid-term assumes Campus Parkway has not been extended from its current terminus at Childs Avenues. In these scenarios, the traffic analysis seems to underestimate the volume of new trips that will travel on the Kibby Road access to the project site." The commenter then defines the Kibby Road access. The response is included in the Response to MCDPW-2, below.

Response to MCDPW-2
The commenter suggests that "select link" analysis using the MCAG regional traffic model may be a possible tool for identifying the paths of project trips on Kibby Road. The commenter then says it is unlikely that 2,600 new trips on the Kibby Road access will result in any new level-of-service deficiencies along the Kibby Road access, it is likely that this increase in trips may result in traffic collisions along the Kibby Road access as well as the advanced deterioration of the roadway travel surface.

The MCAG traffic model and select link tracking was used to identify the routes that are likely to be used by project trips under both short-term and long-term conditions. As noted in Table 16 of the traffic study and Table 3.11-8 of the DEIR, 4 to 5 percent of the project's trips are expected to travel east on Child Avenue and Gerard Avenue under short-term conditions towards Kibby Avenue. A major share of these trips would turn north on Kibby Road to reach SR-140 under short-term conditions before Campus Parkway is extended further north.

Response to MCDPW-3
The commenter states: "The construction of Campus Parkway Segments 2 and 3 will eliminate any impacts this project is likely to have on the Kibby Road access . . . . It is our understanding that the City of Merced recently suspended collection of RTIF fees for new development projects . . . we recommend that this project either be required to pay the RTIF fee or pay their fair share for the construction of Campus Parkway using another mechanism that has not yet been developed."

No evidence has been offered to suggest that the project's impacts to Kibby Road are significant, and, therefore, this suggested mitigation is not required. The State of California has recently committed $100,000,000 in funding to complete the Campus Parkway through Senate Bill 1.

Response to MCDPW-4
The commenter states: "Campus Parkway has been designed to accommodate construction of one additional through lane in each direction within the median. The mitigation measures indicate the need for a third lane in each direction but the limits of the third lane has not been clearly identified."

The comment asks for identification of the limits of a third travel lane in each direction on Campus Parkway. Under the proposed access scenario, the third lanes would be needed between the SB SR-99 ramps to the central access, and auxiliary lanes would be needed between the central access and the eastern driveways. Under the GP Circulation Element alternative the third lanes would be needed from the SB SR-99 ramps to Pluim Drive.

Response to MCDPW-5
The commenter states: "The number of trips traveling from the north to Campus Parkway to the Gerard Avenue central driveway into the site seems to be underestimated. This may result in inadequate design at this intersection." The comment suggests that more project trips will use Campus Parkway and Gerard Avenue to north to reach the site than has been anticipated and that additional mitigation will be required.

As noted in DEIR Table 3.11-8 under Year 2035 conditions, 21–23% of the project trips are expected to use Campus Parkway north of the Gerard Avenue, Childs Avenue to the east or Gerard Avenue to the east. These trips have been assumed to pass through the Campus Parkway/Gerard Avenue intersection which has been shown to operate within the City's minimum LOS standard, and no mitigation has been identified. No evidence has been offered to suggest that additional project trips will use this intersection, or to suggest that additional trips would have a significant impact that required mitigation.

Response to MCDPW-6
The commenter states: "If the City decides to eliminate the Coffee Street cul-de-sac, the City may want to evaluate construction of a roundabout at the intersection of Coffee Street and Parsons Avenue."

This action is not proposed by the project under consideration and therefore was not analyzed in the DEIR. The comment suggests that a roundabout could be installed at the Coffee Street/Parson Avenue intersection in lieu of a traffic signal. While a roundabout is not identified as a mitigation measure, the City of Merced could consider a roundabout as an alternative to a traffic signal, and while LOS analysis has not been performed, roundabouts can typically deliver similar or better LOS than traffic signals.

City of Merced Fire Department

Shawn Henry, Fire Chief

INTEROFFICE MEMORANDUM

TO: Bill King, Principal Planner

FROM: Shawn Henry, Fire Chief

DATE: August 29, 2016

SUBJECT: Merced Gateway EIR

The City of Merced Fire Department objects to a specific element in Appendix I: Traffic Study. We would like to have Coffee Street open to through traffic between Campus Parkway and Gerard Avenue. 1

Response times are a critical element when responding to emergency incidents. In the event an emergency is on Coffee Street south of Parsons Avenue, Campus Parkway near the intersection of Coffee Avenue or State Route 99 the fire departments response time to these locations will be extended by having to travel further East on Gerard Avenue to Campus Parkway or West to Alfarata Blvd., South to Parsons Avenue, East to Coffee, and then South on Coffee. 2

Traveling through the shopping center is not an option or a recommended practice for emergency vehicles due to the pedestrian and vehicle traffic associated with parking lots. The proposed Traffic Circulation Plan will have the majority of traffic flowing on Campus Parkway and Gerard Avenue as they navigate around the shopping center. This increase of traffic on Gerard Avenue is not recommended in front of the proposed fire station. The increase in traffic makes it difficult to exit quickly for emergency incidents. 3

We would prefer the extension of Coffee Street from Gerard Avenue be a continuous collector through to Campus Parkway. 4

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City of Merced Fire Department (MFD)

Response to MFD-1
The commenter states: "We would like to have Coffee Street open to through traffic between Campus Parkway and Gerard Avenue."

Comment noted.

Response to MFD-2
The commenter states: "Response times are a critical element when responding to emergency incidents. In the event an emergency is on Coffee Street south of Parsons Avenue, Campus Parkway near the intersection of Coffee Avenue or State Route 99 (SR-99) the fire department's response time to these locations will be extended by having to travel further East on Gerard Avenue to Campus Parkway or West to Alfarata Blvd., South to Parsons Avenue, East to Coffee, and then South on Coffee."

The proposed project does not decrease any current response times. The construction of the project will allow the construction of a new fire station to serve the project and the surrounding area, decreasing current response times to these sites.

Response to MFD-3
The commenter states: "Traveling through the shopping center is not an option or a recommended practice for emergency vehicles due to the pedestrian and vehicle traffic associated with parking lots. The proposed Traffic Circulation Plan will have the majority of traffic flowing on Campus Parkway and Gerard Avenue as they navigate around the shopping center. This increase of traffic on Gerard Avenue is not recommended in front of the proposed fire station. The increase in traffic makes it difficult to exit quickly for emergency incidents."

The future fire station will be sited to allow fire trucks to enter Gerard Avenue directly. The traffic on that section of Gerard was not determined to exceed the City's threshold for traffic flow.

Response to MFD-4
The commenter states: "We would prefer the extension of Coffee Street from Gerard Avenue be a continuous collector through to Campus Parkway."

The comment is noted. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

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WEAVER UNION SCHOOL DISTRICT

John Curry, Superintendent

3076 East Childs Avenue * Merced, California 95341 * (T) 209.723.7606 (F) 209.725.7128

Weaver Middle School * Pioneer Elementary School * Farmdale Elementary School

August 26, 2016

Mr. Bill King, Principal Plannèr
City of Merced
678 W. 18th St.
Merced, Ca. 95340

Re: Merced Gateway Project

Dear Mr. King,

This letter shall act as the official response from the Weaver Union School District regarding the EIR for the Merced Gateway Master Plan. We are submitting this to communicate our concerns with the project scope and findings as well as providing some suggestions or mitigations for issues we feel will have a significant impact on our ability to continue to operate our schools in a safe and efficient manner. We will indicate our concerns over air pollution and traffic, both during construction and after completion. Our focus is to continue to provide our community with safe and efficient routes to Pioneer Elementary School and Weaver Middle School. We would also like to point out that we are in support of the concept of the project and the potential benefits to our community. 1

Pioneer Elementary School was originally built for a capacity of up to 700 students. Growth has required us to add 22 additional portable classrooms to the campus. The additional 22 classrooms have helped us house and educate over 1050 students. The 22 additional classrooms have required 22 teachers who require safe parking on or near the site. If you were to analyze the parking situation at the site, you would find that Pioneer staff currently park on both the North-bound and South-bound side of Coffee Street, we have also created additional staff parking in the bus pick up area on the East side of the school campus. Currently there aren't enough parking spaces on the site for our staff. We are concerned that the improvements made to Coffee will reduce offsite parking significantly. 2

In addition to the concern over parking and increased commercial traffic, we also have a concern about the impact of additional students to the campus. There is a formula that schools use to predict additional enrollment based on new residential units. That formula indicates that this project would potentially increase our student population by another 70 - 90 students. That would require us to bring in 4 more portable classrooms and hire at least 4 more teachers. Along with the additional parking for staff, that would increase our pedestrian traffic at the Gerard/Coffee AWS by 70-90 students. These students will range in age from 4 years to 11 years old. The potential for students being struck by vehicles increases significantly. 3

With this in mind, we would request that the enhanced pedestrian crossing at Gerard and Coffee would include the flashing light beacon crosswalk that activates with the push of a button. This crosswalk 4

could be engineered to support safe and adequate traffic/pedestrian flow. We ask that the project include the safest enhancements available to ensure the safety of our students and staff. 4 CONT

The intersection at Gerard and Coffee is extremely busy with both vehicle and foot traffic during morning student drop off and afternoon student pick-up. Most vehicles must stop at that intersection twice per visit as there is currently no way to access Parsons Avenue. Parents must stop to turn into the drop off zone and then make a u-turn to leave stopping again at Coffee and Gerard. Over 1,050 students arrive daily on campus via school bus, private vehicle or on foot. Often vehicles are stopped and/or double-parked on Gerard Avenue creating unsafe conditions for both vehicle and foot traffic. The additional driveway entrance and exit proposed on Coffee Avenue to service the 178 unit residential complex will significantly increase the traffic to the AWS on Gerard and Coffee and will virtually create significant delays in traffic flow. It will also create potential safety hazards to foot traffic as the driveway creates an additional area in which students crossing could be struck by vehicles entering / exiting that driveway. We would respectfully recommend eliminating the driveway servicing the 178 unit residential complex on Coffee Avenue. We would suggest an alternative location for a driveway be found and suggest a pedestrian gate be installed for foot traffic. 5

With the additional traffic that has been confirmed by the EIR, we have two suggestions for mitigation. The first suggestion would be to enter into a Facility Joint Use Agreement with our District for the construction of a parking lot located at the site adjacent to Pioneer Elementary School just to the West (see attached rendering). The City of Merced Plan has the site identified for a park in the future. That park will require a parking lot. If we were to work together to build the parking lot first, then our parents could access the lot to park and walk their children to school either using the sidewalk on E. Gerard or through a walking gate in the fence connected to the two properties (school / city). This would reduce the amount of vehicle trips having to go through the AWS on Gerard and Coffee. A parent could avoid that stop completely (and remember that vehicles have to stop there twice), by parking in the new parking lot, dropping off the student, then exiting the lot and turning West on Parsons Avenue. 6

Our second suggestion or request would be for the City to put in a Right Turn Only exit from the South end of Coffee Street which is currently a cul-de-sac. What the District will do is to create a Student Drop Off/Pick up zone on the South-East corner of Pioneer Elementary School play field (see attached rendering). This would enable vehicle traffic to exit onto Parsons Avenue rather than returning to the AWS at Coffee and Gerard. It would essentially reduce the traffic at that AWS by 50%. We have already created a gate for access to the school from Parsons Avenue and have an adult on duty in the mornings and afternoon. If a Right Turn Only intersection is not possible, then we would ask the City to allow for a Drop off/ Pick up Zone on Parsons Avenue. 7

We are also requesting cooperation and collaboration during the construction. If road improvements or construction cause lane closures or detours, we would need to be given advanced notice so we can inform our families (impact on travel time for pick up / drop off students) as well as our Transportation Department (impact on travel time and bus routes). 8

We have concerns regarding air quality during construction and hope that the City will closely monitor this during the construction of the project. 9

In conclusion, while we support growth and opportunity in this area, the Merced Gateway Project will undoubtedly affect our ability to maintain a safe and efficient school if constructed as planned. Our hope is to work in partnership with the City of Merced and the Developer to find compromises that will significantly reduce the impact. We can grow together!

Sincerely,

John Curry, Superintendent
Weaver Union School District

JC:jrl

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Weaver Union School District (WUSD)

Response to WUSD-1
This comment is in support of the project. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

Response to WUSD-2
The commenter expresses concern regarding adequate parking.

The proposed Project's commercial uses shall be accessed from on-site parking lots and will incorporate passenger loading areas. The proposed Merced Gateway Master Plan also notes that a reduction in parking may be considered by the City with a joint parking agreement or parking reduction program. The project meets the parking requirements for all uses as required in the Merced Municipal Code.

Response to WUSD-3
The commenter expresses concern regarding the impact of additional students to the campus in regards to student capacity and pedestrian traffic.

The comment is noted. As noted in the DEIR, "City's General Plan EIR determined that growth of schools attributable to population growth anticipated in the General Plan would be accommodated through the development fees allocated to the school district from new development. The proposed project will generate fewer students than would otherwise occur under the General Plan buildout for this area." Mitigation Measures TRANS-1a through TRANS-1d will also increase safety with the use of enhanced pedestrian crossings and traffic signals throughout the project area. Traffic-related development fees shall also be paid for other road improvements required to meet City standards.

Response to WUSD-4
The commenter requests ". . . that the enhanced pedestrian crossing at Gerard and Coffee would include the flashing light beacon crosswalk that activates with the push of a button."

The comment is noted. Mitigation Measures TRANS-1a through TRANS 1d would increase safety of residents in the City. No impact to pedestrian safety at this crossing was identified.

Response to WUSD-5
The commenter recommends eliminating the driveway serving the residential complex on Coffee Avenue.

This driveway was analyzed in Section 3.11, Transportation of the DEIR and was not determined to present a hazard.

Response to WUSD-6
This comment concerns the project's impacts to parking and entering into a Facility Joint Use Agreement with the District.

The DEIR notes that a reduction in parking may be considered by the City with a joint parking agreement or parking reduction program. Since no comment on the environmental conclusions of

the EIR was provided, no further response is required. The project meets the parking requirements for all uses as required in the Merced Municipal Code.

Response to WUSD-7
This comment suggests the creation of a right-turn-only exit from the south end of Coffee Street.

Impacts to transportation were evaluated in Section 3.11, Transportation of the DEIR, and the traffic flow in this area did not require mitigation as is suggested.

Response to WUSD-8
The commenter states: "We are also requesting cooperation and collaboration during the construction. If road improvements or construction cause lane closures or detours, we would need to be given advance notice so we can inform our families as well as our Transportation Department."

Comment acknowledged. The City and the developer will work with the school district throughout the proposed project's construction phases to avoid construction-related traffic impacts. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

Response to WUSD-9
The commenter states: "We have concerns regarding air quality during construction and hope that the City will closely monitor this during the construction of the project."

Responsibility for monitoring and enforcing the air quality mitigation measures is designated in the Mitigation Monitoring and Reporting Program.

Merced County Farm Bureau

August 29, 2016

Mr. Bill King, Principal Planner
City of Merced
Planning Department
678 W. 18th Street
Merced, Ca 95340

Dear Mr. King,

Merced County Farm Bureau (MCFB) would like to submit comments to the official record regarding the City of Merced's (the "City") Environmental Impact Report (EIR) for the Merced Gateway Master Plan. MCFB is a non-profit organization that represents 1,200 farmers and ranchers on a variety of pertinent issues throughout the county. 1

As a leading economic driver within the City, our organization must remain vigilant when agriculture, and the valuable resources associated with it, are used for other means. We understand the need to bring more amenities and housing communities to the area; however we are concerned with the continued loss of productive agricultural land. According to the document, the City's General Plan EIR accounted for loss of this farmland through a Statement of Overriding Consideration; yet we still request actual mitigation to be performed. The property has been deemed to be "Farmland of Local Importance" by the California Department of Conservation's Farmland Mapping and Monitoring Program maps, it has scored relatively high on the Storie Index as being ranked Grade 1 (excellent) and Grade 2 (good). Land Capability Classification for the parcel are not ranked within the highest class; yet the limitations that are presented still allow the parcel to house productive row crops or pastures. 2

The EIR document makes reference to gaining agricultural land in 3.2 Agricultural Resources on page 3.2-1 in stating, "Although urbanization has increased, the City of Merced has gained agricultural land in the 2030 General Plan compared to the 2015 General Plan (City of Merced 2012)." We would like to ask for clarification on how agricultural land within the city boundaries has increased as the basis for this statement as it is not described. 3

OpenSpace Element *Implementing Action 2.1.c* of the Merced Vision 2030 General Plan is in place to "minimize conflict between agricultural and urban uses by requiring buffers, such as landscape areas, roadways, or creeks, to separate these uses." We commend this action being implemented in the General Plan and look to ensure that adequate buffers are developed as 77.5 percent of the surrounding area is designated as agriculture. It seems that all too often our community is portrayed as the criminal for cultural practices. While they are the true stewards of the land and engage in the best management practices, those that are newly established in agriculture communities can tend to criticize methods. 4

The parcel in question has not been farmed since 2005. With the property being left fallow, groundwater has been left untouched and as this project develops, a large amount of water resources will be consumed. Water is the most valuable commodity when considering business or development as any operation would be unable to sustain without it. The Sustainable Groundwater Management Act (SGMA) of 2014 is the most unprecedented water legislation to date. We encourage your continued effort to work with other local agencies in complying with the new regulation of bringing the Merced Subbasin into sustainability. We feel notice should be brought forward regarding a statement involving groundwater overdraft found on page 3.7-12 that reads, "Although groundwater levels have decreased, the City of Merced's ability to pump from the subbasin has not been adversely affected." As you understand the severity of SGMA, you must understand that the amount to pump may be restricted in years to come. There is indication that project buildout would require 150 acre-feet per year which would be offset by a purchase of 200 acre-feet per year of surface water from Merced Irrigation District (MID). We urge you to have a back-up plan in place as surface water is in constant fluctuation due to digression from state officials and is not a resource that can be thought of as an immediate use. 5

Please consider our requests to include mitigation for the proposed project and our concerns with available water. We appreciate the opportunity to comment and look forward to the outcome of these documents.

Sincerely,

Breanne Ramos
Executive Director

Organizations

Merced County Farm Bureau (MCFB)

Response to MCFB-1
The commenter represents the Merced County Farm Bureau.

Comment noted.

Response to MCFB-2
The commenter expresses concern about the loss of productive agricultural land.

The comment is noted. A detailed analysis of Agricultural Resources is provided in Section 3.2 of the DEIR, which concludes that the site would be considered an agricultural resource based on its characteristic as analyzed with the LESA Model; however, this is an impact that was evaluated previously in the Merced 2015 General Plan EIR and the Merced Vision 2030 General Plan EIR. The Merced Visons 2030 General Plan designates one portion of the site for "Medium to High Density Residential" and remaining portion as "Regional Community Commercial." This significant and unavoidable impact was addressed in the Statement of Overriding Considerations adopted by the City with its certification of the General Plan EIR.

Response to MCFB-3
The commenter states: "We would like to ask for clarification on how agricultural land within the City boundaries has increased as the basis for this statement as it is not described."

The gain in agricultural land within the City has resulted from annexation of areas containing agricultural uses.

Response to MCFB-4
The commenter recommends that an adequate buffer is developed between agricultural and urban uses. The comment is noted. Since no comment on the environmental conclusions of the EIR was provided, no further response is required.

Response to MCFB-5
The commenter expresses concern regarding water resources, specifically, the project's effects on groundwater and overdraft in the Merced Subbasin.

As noted in Section 3.7, Hydrology, the use of permeable paving will help to reduce runoff and replenish water supply within the site area. The Master Plan will also use water-restricting methods in order to reduce the use of potable water wherever possible. The City and the Merced Irrigation District have adopted a Groundwater Management Plan for the subbasin that sets forth strategies to optimize use of the groundwater resources to eliminate the overdraft. The DEIR cites the Water Supply Assessment prepared by Balance Hydrologics for this analysis, which found that "the City of Merced experienced a net decrease in water demand in 2014 and 2015 in response to mandatory water conservation measures issued by the State [thereby demonstrating] that the City has the ability to manage its municipal water supply such that it can provide adequate water supplies in periods of extended drought."

Although the Merced Subbasin is in a state of overdraft, the overdraft is not a limitation on the City's ability to draw water from the aquifer. Additionally, the project would implement measures to reduce demand and facilitate groundwater recharge.

July 30, 2016

Tera Mondo

420 Hydrangea Ct.

Merced CA 95341

(209)658-6373

Dear Mr. King,

This letter is in response to the City of Merced DEIR Gateway project. My family of six reside close to the project and we welcome the construction and all the aspects involved with this development. We bought our home seven years ago and my husband and I have discussed from the beginning of residency here how nice a commercial area would be right down the road. As a family we have discussed the noise that will be an outcome of this project and we are willing to sacrifice the sounds of construction for this outcome. 1

The opening of Coffee rd. at Pioneer Elementary School would alleviate the school congestion that is now a gridlock during drop off and pick up times at the school. I also believe the air quality issue that comes along with more traffic because of the Gateway center is not that much of an impact to air quality due to the the constant Highway 99 flow at the similar area. 2

I found that after reviewing the DEIR that it was very informative and I'm glad to learn of this information on this project that will bring job opportunities to our community and the members of our community will benefit from its presence in our area. 3

Sincerely,

Tera Mondo

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Individuals

Tera Mondo (MONDO)

Response to MONDO-1
The commenter expresses concern regarding noise but makes no comment regarding the CEQA analysis.

The comment is noted. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

Response to MONDO-2
The commenter notes the project would alleviate school congestion during drop off and pick up times. The commenter notes that traffic generation created by the project would not impact air quality.

The comments are noted. Since no comments on the environmental conclusions of the EIR were provided, no further responses are required (CEQA Guidelines, Section 15088).

Response to MONDO-3
General comment on quality of DEIR.

Comment noted.

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From: Bill Spriggs [mailto:billspriggs@sbcglobal.net]

Sent: Friday, August 26, 2016 9:44 AM

To: King, Bill <KingB@cityofmerced.org>

Subject: Merced Gateway Development

Dear Mr. King,

I have reviewed the Merced Gateway Development Master Plan and would complement the developer and city planning staff for a project the "raises the bar" for commercial development in Merced. I am impressed with the architectural and landscape design standards. I would also note that during my tenure on the city council we heard often from the Golden Valley Neighborhood Association about the lack of shopping opportunities in southeast Merced. This development will go a long way in addressing the concerns of the neighborhood. I support this project. 1

Sincerely,

Bill Spriggs

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Bill Spriggs (SPRIGGS)

Response to SPRIGGS-1
The commenter expresses support for the project.

The comment is acknowledged. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

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August 29, 2016

VIA E-MAIL & U.S. MAIL

Bill King, Principal Planner
CITY OF MERCED, PLANNING DIVISION
678 W. 18th Street
Merced, CA 95340

Re: Comments of Merced Gateway, LLC on Merced Gateway Master Plan Draft EIR

Dear Mr. King:

On behalf of Merced Gateway, LLC, I am writing to submit comments on the Draft Environmental Impact Report (the "DEIR") for the Merced Gateway Master Plan (the "Project"), which is located between Mission Avenue, Gerard Avenue, Coffee Street, and the Pluim Drive alignment in the City of Merced (the "Subject Property"). As you are aware, Merced Gateway, LLC owns properties immediately east of the Project (the "Neighboring Properties"), and currently plans to build a commercial development on that property.[1] The Neighboring Properties consist of two parcels (the "Northern Parcel" and the "Southern Parcel"), which are generally bisected by the Campus Parkway alignment. This comment letter also encloses several documents, including the Technical Memorandum prepared by John Rowland, P.E., T.E., of Peters Engineering Group (the "Peters Report"), which is enclosed as Exhibit "A," and several diagrams showing how the Neighboring Properties would be affected by the Project. (See Exs. "C"-"L.") 1

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[1] The Neighboring Property is sometimes referred to as the "BP Property" or the "Business Park Property" in the DEIR and the accompanying technical appendices.

Merced Gateway, LLC objects to the Project. The Project will result in direct and substantial impacts to the Neighboring Properties, which are wholly inconsistent with the update to the General Plan the City adopted in 2012. Just a few years later, the City now seeks to amend the General Plan in a way that (i) essentially prevents reasonable access to the Neighboring Properties for vehicles, bicylists, and pedestrians; (ii) causes significant additional environmental effects, and (iii) is inconsistent with the City's plan-level documents and sound planning practices. These impacts would be significantly reduced, if not avoided, through the adoption of the General Plan Circulation Element Alternative (the "Circulation Element Alternative"),[2] which the DEIR has been determined to be the "environmentally superior alternative" and consistent with all of the Project Objectives. 2 3

As an adjacent property owner, Merced Gateway, LLC supports the commercial development of the Subject Property. This is not a situation where a neighboring development is attempting to halt a project to stifle competition or stop development. The City, however, should not let the development of a single property undermine the orderly development of adjacent properties, and cause significant environmental effects that the DEIR finds are entirely avoidable. 4

For these reasons, the City should either (i) adopt the Circulation Element Alternative, or (ii) decline to certify the EIR, and require the applicant to redesign the Project in a manner consistent with the existing General Plan Circulation Element. 5

A. Because the DEIR Designates the Circulation Element Alternative as The "Environmentally Superior Alternative," and the Circulation Element Alternative Is Feasible, the City Must Approve the Circulation Element Alternative Instead of the Project

The requirement that an EIR identify and discuss alternatives to the project stems from the fundamental statutory policy that a lead agency should require the implementation of feasible alternatives or mitigation measures to reduce a project's significant environmental effects. (Pub. Resources Code, § 21002.) The Supreme Court has thus described the discussion of alternatives and mitigation as the "core of an EIR." (*Citizens of Goleta Valley v. Board of Supers*. (1990) 52 Cal.3d 553, 564.) To implement this policy, an EIR must identify feasible mitigation alternatives that could avoid or substantially lessen the project's significant environmental effects. (Pub. Resources Code, §§ 21002, 21002.1, subd. (a), 21100, subd. (b)(4), 21150.) Decisionmakers can approve an alternative to the project because they have "the flexibility to implement that portion of a project that satisfies their environmental concerns." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533; *Dusek v. Redev. Agency* (1985) 173 Cal.App.3d 1029, 1041.) 6

[2] The "Circulation Element Alternative" is also referred to in the DEIR and its appendixes as "Alternative 2" or "Scenario 2."

The DEIR discusses the Circulation Element Alternative as "Alternative 2." (See DEIR at 5-3.) This alternative was analyzed to determine whether traffic and related impacts "could be reduced . . . ." (*Id.*) As the DEIR itself concludes, the Circulation Element Alternative would have far fewer impacts than the Project. For example, the Circulation Element Alternative "would create fewer air quality and greenhouse gas emissions and thus would be considered to have fewer impacts than the proposed project." (DEIR at 5-4.) The DEIR also reveals that the Circulation Element Alternative "would have reduced traffic impacts relative to the proposed project." (DEIR at 5-7.)

The DEIR thus recognizes that the Circulation Element Alternative "is the environmentally superior alternative." (DEIR at 5-11.)[3] The DEIR also acknowledges that this "alternative would advance all of the project objectives." (*Id.* at 5-7.) Merced Gateway, LLC agrees with these conclusions.

6 CONT

Although the DEIR reaches the above conclusions, it appears that the applicant and the City still intend to proceed with the Project, as opposed to the Circulation Element Alternative.

This would be improper under CEQA. Because the DEIR identifies significant and unavoidable impacts resulting from the Project, the City cannot approve the Project without making several findings, including a finding that the environmentally superior alternatives identified in the DEIR are not "feasible." (See, e.g., Pub. Resources Code, § 21081, subd. (a)(1)-(3); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 620.) "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1.)

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Simply put, there is no evidence that the Circulation Element Alternative is infeasible. As explained above, the DEIR concedes that the Circulation Element Alternative "would advance all of the project objectives." (DEIR at 5-7.) The City likewise cannot credibly assert that the Circulation Element Alternative is inconsistent with its existing goals and policies, as the DEIR has determined that "the Circulation Element Alternative would not require amendment to the General Plan . . . ." (*Id.* at 5-11.) Further, the Circulation Element Alternative would actually result in fewer roadway improvements as mitigation; thus, there are no facilities

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[3] Although not recognized in the alternatives analysis, the Circulation Element Alternative would also have fewer impacts to land use, as explained below, *infra* § B(4), and as implicitly acknowledged in the DEIR. (DEIR at 5-11 ["[T]he Circulation Element Alternative would not require amendment to the General Plan . . . ."].) In addition, Table 5-1 of the Alternatives discussion erroneously overstates the level of service of the Circulation Element Alternative, as explained *infra*, §§ B(1)(a), C.)

or other required improvements the City can point to that would be "economically infeasible" to construct under the Circulation Element Alternative as compared to the Project.

8 CONT

In short, the City may not approve the Project. Rather, the only project that may be legally approved under the DEIR is the Circulation Element Alternative.

B. The Project Would Result in Several Significant Environmental Effects, Many of Which Are Not Discussed in the DEIR

The City also may not legally consider approval of the Project because the DEIR's analysis of several of the Project's impacts is flawed. Many of these flaws emanate directly from the design of the Project, and in particular the removal of (i) Pluim Drive as a collector and (ii) the Pluim Drive / Campus Parkway intersection. As a result of these issues, the DEIR must be revised and recirculated for public comment.

9

1. The DEIR'S Discussion of the Project's Traffic Impacts Is Flawed, Overstates the Environmental Impacts of the Circulation Element Alternative, and Fails to Discuss all of the Project's Significant Effects on the Local Roadway Network

a. The TIA and DEIR Contain Several Errors that Overstate the Impacts of the Circulation Element Alternative

Throughout the Traffic Impact Analysis (the "TIA") and the DEIR, there are several instances where the level of service for various intersections under the Circulation Element Alternative are misstated, and create a misleading impression that the level of service for those intersections under the Project and the Circulation Element Alternative will be the same. A review of the facts, however, shows that the level of service under the Circulation Element Alternative will be ***far better than*** the level of service under the Project. In other words, the TIA and the DEIR ***overstate*** the impacts of the Circulation Element Alternative. Examples of these errors include the following:

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- ***Mission Avenue/SR 99 SB Ramps***. Table 44 of the TIA (and the related table in the DEIR) show that, under Project conditions, the Mission Avenue/State Route 99 Southbound ramps will operate at LOS D. While this level of service may be acceptable for City roadways and intersections under the City's General Plan, Caltrans typically considers such conditions to be unacceptable. (See, e.g., Ex. "A" at 2; see also generally Ex. "B.") Under the conditions that would occur under the Circulation Element Alternative, a review of the spreadsheets accompanying the TIA reveals this intersection would operate at LOS B, which is substantially less congested that the conditions that would be caused by development under the Project. Both the TIA and the DEIR, however, inaccurately characterize the level of service occurring under the Circulation Element Alternative as LOS D, erroneously suggesting the conditions under the

Circulation Element Alternative would be the same as the Project. (See Ex. "A" at 2.) This error should be corrected, and the DEIR should be revised to clarify that the Circulation Element Alternative would avoid such significant impacts to Caltrans facilities, which would otherwise result in unacceptable levels of service under Caltrans' guidelines. 10 CONT

- ***Mission Avenue/SR 99 NB Ramps***. Table 44 of the TIA (and the corresponding tables in the DEIR) show that, under Project conditions, the Mission Avenue/State Route 99 Southbound ramps will operate at LOS D. Again, Caltrans typically considers such conditions to be unacceptable. (See, e.g., Ex. "A" at 2-3; see also generally Ex. "B.") Under the conditions that would occur under the Circulation Element Alternative, a review of the spreadsheets accompanying the TIA reveals this intersection would operate at LOS B, which is substantially less congested that the conditions that would be caused by development under the Project. As with the SB ramps, both the TIA and the DEIR inaccurately characterize the level of service occurring under the Circulation Element Alternative as LOS D. This error results in the inaccurate suggestion the conditions under the Circulation Element Alternative will be the same as the Project. Not so. (See Ex. "A" at 3.) This error should be corrected, and the DEIR should be revised to clarify that the Circulation Element Alternative would avoid such significant impacts to Caltrans facilities, which would otherwise result in unacceptable levels of service under Caltrans' guidelines. 11

- ***Campus Parkway / Coffee Street***. Table 45 of the TIA (and the corresponding tables in the DEIR) show that, under Project, the Campus Parkway / Coffee Street intersection is expected to operate at LOS F during p.m. peak hour conditions, even after mitigation. The data underlying the TIA reveals that, under the Circulation Element Alternative, the intersection will operate at LOS B. The TIA and the corresponding pages in the DEIR, however, erroneously state the intersection will operate at LOS C. This error should be corrected in both the TIA and the DEIR to show the public and the decisionmakers that the impacts of the Circulation Element Alternative will be less than erroneously stated in the TIA and DEIR. (See Ex. "A" at 4.) 12

b. Under the Project, the Southbound and Northbound Ramps Onto State Route 99 from Mission Avenue Will Operate Under Levels of Service that Are Unacceptable Under Caltrans' Policies

As explained above, under the Circulation Element Alternative, the Southbound and Northbound ramps onto State Route 99 will operate at LOS B, which is acceptable under any standard. In contrast, under Project conditions, both of the intersections will operate at LOS D. While this level of service may be acceptable for City roadways and intersections under the City's General Plan, Caltrans considers such conditions to be unacceptable. (See, e.g., Ex. "A" at 2-3; see also generally Ex. "B.") As a result, the Project would result in significant impacts to the Southbound and Northbound ramps onto State Route 99 that were not identified in the DEIR. These impacts would be avoided entirely by the Circulation Element Alternative. (See Ex. "A" at 2-4.) 13

c. The TIA and the DEIR Erroneously Conclude that the Project's Impacts to Various Intersections are Significant and Unavoidable

The fundamental purpose of an EIR is to identify ways in which a project's significant environmental effects can be mitigated. (See, e.g., Pub. Resources Code, §§ 21002.1, subd. (a), 21061.) "A gloomy forecast of environmental degredation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." (*Envt'l Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.) Thus, CEQA requires that an EIR must propose and describe feasible, practical, and effective mitigation measures to minimize significant environmental effects. (Pub. Resources Code, § 21002.1, subd. (a), 21100, subd. (B)(3); CEQA Guidelines, § 14126.4; *Napa Citizens for Honest Govt. v. Napa County Bd. of Supers.* (2001) 91 Cal.App.4th 342, 365.)

The TIA and the DEIR identify several intersections where the Project will result in impacts that are "significant and unavoidable," even after mitigation:

- Under the Project, the Mission Avenue / State Route 99 Southbound Ramps operate at LOS E during the p.m. peak hour. (See Ex. "A" at 2-3.) 14

- Under the Project, the Mission Avenue / State Route 99 Northbound Ramps operate at LOS E during the p.m. peak hour. (See *id.* at 3-4.) In addition, the intersection will result in LOS D, which is unacceptable under Caltrans' guidelines. (See *id.* at 2-3; see generally Ex. "B.")

- Under the Project, the Campus Parkway / Coffee Street intersection will operate at LOS E during the a.m. peak hour. The same intersection will operate at LOS F during the p.m. peak hour. (See *id.* at 4.)

A finding that the Project's impacts to the above intersections would be "significant and unavoidable" would be factually inaccurate, and belied by the record. First, each of the above facilities would operate with an acceptable level of service during the peak hours stated above under the Circulation Element Alternative. Because feasible mitigation exists to avoid these impacts altogether – *i.e.*, incorporation of the circulation patterns contemplated in the existing General Plan Circulation Element – the DEIR violates CEQA by acknowledging a significant impact, without requiring mitigation that would reduce the impact to a less than significant level. (Pub. Resources Code, § 21002.1, subd. (a), 21100, subd. (B)(3); CEQA Guidelines, § 14126.4.)

In addition to the fact that the roadway configuration contemplated under the Circulation Element Alternative would avoid the significant impacts identified above, these impacts could also be avoided through additional physical improvements. There is no showing in the DEIR that such physical improvements would be infeasible. (See, e.g., Ex. "A" at 2-4.) 15

As a result, the DEIR should be revised to identify implementation of the circulation contemplated in the existing General Plan as feasible mitigation. 15 CONT

d. The Project Would Have Additional Impacts to Traffic Due to its Limitation of Access to the Neighboring Properties

The DEIR for the Project is also inadequate under CEQA because it does not address or analyze the reasonably foreseeable impacts associated with its destruction of reasonable access and circulation for the Neighboring Properties. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [impact of potential future action must be analyzed where "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects."].) 16

Approval of the Project as designed would have severe consequences to the Neighboring Properties. By removing Pluim Drive as a collector, the Project would effectively remove most of the access points to the Neighboring Properties, and what access points remain on Campus Parkway would be reduced to right-in/right-out driveways. Diagrams depicting the Neighboring Properties' loss of access are attached as Exhibits "C" through "J." Despite these impacts to the Neighboring Properties, neither the TIA nor the DEIR purport to discuss the reasonably foreseeable ramifications of the Project's impacts to the Neighboring Properties in terms of circulation and access.

The Project Would Subject Motorists Using the Neighboring Properties to Inconvenient and Circuitous Pathways of Travel. As explained in the expert report prepared by John Rowland of Peters Engineering, the approval of the Project would result in the routing of trips from the Northern Parcel and the Southern Parcel into circuitous and inconvenient pathways that would increase the distribution of trips onto adjacent roadways. For example, under the existing General Plan, a vehicle traveling west on Campus Parkway would be able to make a left into the neighboring parcel to the south directly from Pluim Drive. (See Exhibit "I.") Under the Project, however, a vehicle would need to travel another quarter mile to the west, and make a U-turn at the Coffee Avenue / Mission Avenue intersection. After making a U-Turn, the vehicle will need to travel another quarter mile to enter the southern parcel. This route is very problematic. Not only does the route dramatically increase trip lengths by a half mile per trip, but also add an unnecessary U-turn movement onto the Coffee Avenue / Mission Avenue intersection, which would further degrade the intersection's level of service. Furthermore, because this intersection is only 700 feet from northbound State Route 99 ramp, the additional congestion has a danger of causing queuing into the northbound State Route 99 ramp, or even the mainline of the freeway itself. Because the TIA and the DEIR do not address how the Project (Scenario 1) would affect the circulation of the neighboring properties to the east, these significant issues remain entirely unaddressed. This circulation pattern is depicted on Exhibit "J." 17

In addition, vehicles, seeking to exit the Southern Parcel and travel northbound or southbound on State Route 99 would be required to first make a right hand turn onto Campus Parkway and attempt to safely merge into the left hand lane by the time they reach the Campus Parkway / Gerard Avenue intersection, a distance of 0.5 miles. After merging into the left hand, the motorist would need to make a U-turn on Campus Parkway and return in the opposite direction toward State Route 99. In total, this would result in another approximately 1.0 miles of travel for each vehicle traveling in that direction. (*Compare* Ex. "C" [showing turning movement under the existing Circulation Element] *with* Exs. "D," "E" [showing how the Project would re-route the same trip].) 18

Similar issues would occur with motorists seeking to enter the southern portion of the Northern Parcel from State Route 99. Instead of being able to make a left-hand turn into the Northern Parcel from Campus Parkway onto the Pluim Avenue alignment (as is contemplated under the General Plan), (see Ex. "F"), a motorist would need to continue along Campus Parkway until reaching the Campus Parkway / Gerard Avenue intersection, a distance of over 0.5 miles. The motorist would then need to either (i) make a U-turn and return over 0.5 miles in the opposite direction, or (ii) alternatively make a left onto Gerard Avenue (for approximately 0.25 miles), and then turn left into the Northern Parcel and proceed to the southern part of the property (another 0.25 miles). Again, this would result in another approximately 1.0 miles of travel for each vehicle traveling in that direction. This circulation pattern is depicted on Exhibit "G." (See also Ex. "H" [depicting another manner in which the same trip would be re-routed due to the Project].) 19

The TIS Does Not Evaluate How the Roadway Configuration Changes Under the Project Would Affect Circulation. As demonstrated above, motorists utilizing the Neighboring Property would be required to make lengthier trips and utilize a greater number of intersections. For instance, under both of the above scenarios, motorists would be required to traverse through several intersections as a result of the Project, while under the Circulation Element Alternative they would only need to traverse through one. Moreover, the circuitous pathways resulting from the Project would cause numerous additional U-turn movements at the Campus Parkway / Gerard Avenue intersection yet those movements are not analyzed in the TIS. As explained in the Peters Report, these additional turning movements would result in significant impacts that have not been disclosed or analyzed. (Exhibit "A" at 6-8.) The TIS should therefore be revised to analyze the impacts associated with the fact that the Project will cut off the Neighboring Properties' access to Campus Parkway from Pluim Avenue. 20

The TIS Does Not Analyze How the Roadway Configuration Changes Under the Project Would Affect Trip Lengths. As explained above, motorists traveling to and from the Neighboring Properties would be required to take longer trips than otherwise contemplated under the existing General Plan. For example, motorists existing the Southern Parcel traveling to State Route 99 would be required to travel an additional mile or more for each trip. Motorists seeking to enter the Northern Parcel from State Route 99 would also be required to travel at least a whole mile more. Multiplied over thousands of trips per day, the Project would directly cause hundreds 21

of thousands of additional vehicle miles traveled per year. Neither the TIS nor the DEIR evaluate these potential impacts, and must be revised. (See Exhibit "A" at 7-8.) 21 CONT

e. The Project's Heavy Reliance on Coffee Street Access Would Result in Severe Congestion Along Campus Parkway and State Route 99 that Has Not Been Analyzed

As explained in the enclosed report from Peters Engineering, the "proximity of Coffee Street to the freeway interchange is currently less than 700 feet." (Ex. "A" at 6.) As a result of this design, the Project will cause "severe congestion along Campus Parkway and at the State Route 99 interchange in the ultimate mitigated condition," and as a result of queuing, "the Project could result in impacts to the State Route 99 freeway mainline. These impacts are not investigated, disclosed, or mitigated in the TIA." (*Id.*) 22

f. The Traffic Mitigation Identified in the DEIR Is Legally Inadequate

CEQA requires that an EIR propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. (Pub. Resources Code, §§ 21102.1, subd. (a); 21100, subd. (b)(3).) The lead agency has the burden of demonstrating that the mitigation measure will be effective in remedying the environmental effect, (see, e.g., *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95), and may not rely upon mitigation measures that are so undefined that it is impossible to gauge their effectiveness. Lead agency also may not rely upon vague or incomplete mitigation measures as a means to avoid evaluating and disclosing project impacts. (*Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195.) 23

Mitigation Measure MM TRANS-1g does not meet this standard, and must be revised. That mitigation measure does not specifically outline the criteria and metric for determining the phasing of required mitigations. If the criteria and metrics are not disclosed or are applied correctly, there is a potential that significant impacts could occur without adequate mitigation. (See Exhibit "A" at 6.)

2. The Project Would Result in Numerous Safety and Access Issues for Pedestrians Seeking to Use the Project and the Neighboring Properties

The City's General Plan contains numerous policies designed to enhance pedestrian access, and to avoid pedestrians taking circuitous pathways to reach their destination. (See *infra*, §§ B(3)(b), E.) The Project, however, would remove the Pluim Drive / Campus Parkway intersection, and would remove Pluim Drive as a collector south of Gerard Avenue. 24

By doing this, the Project would "create unusual, circuitous pathways for pedestrians and bicyclists seeking to cross Campus Parkway." As explained in the Peters Report, "the Pluim Drive intersection contemplated in the General Plan provides a midway point between Gerard Avenue and Coffee Street for pedestrians and bicyclists to safely and conveniently cross Campus Parkway from one side of the Project (and the BP Property) to the other. Without such an intersection, pedestrians and bicyclists who are at the Pluim Drive alignment would need to travel 1/4 mile to the Coffee Street intersection, or 1/2 mile to the Gerard Avenue intersection, and the return on the other side of Campus Parkway in the same direction, resulting in pedestrians needing to walk up to an additional mile to reach their destination." (Ex. "A" at 8; see also Exs. "K," "L" [comparing pedestrian pathways under the existing Circulation Element and the Project].)

According to the Peters Report, this new configuration would greatly "discourage usage of the Project by pedestrians and bicyclists, and would conflict with several of the City's policies designed to encourage access by pedestrians and bicyclists." (See Ex. "A" at 8; see also General Plan Policy T-2.8 ["Improve planning for pedestrians."]; General Plan Implementing Action 2.8.a ["provide more flexible, more usable pedestrians access opportunities to land uses and land use combinations that are prospective pedestrian destinations . . . ."]; General Plan Implementing Action 2.8.c ["review land use and project proposals with the intent to avoid pedestrian barriers that prevent or create unnecessary circuitous access to community and commercial areas."].) The reconfiguration of the roadway network would also undermine numerous other General Plan Policies and Climate Action Plan Strategies, as explained *infra*, §§ B(3)(b), E. 24 CONT

Despite this, the DEIR does not address the impact associated with the removal of the Campus Parkway / Pluim Drive intersection on pedestrians. As a result, Section 3.11 (and in particular Impact TRANS-7) should be modified significant to analyze and mitigate this significant effect.

3. The Project Would Have Significant Air Quality Impacts

Californians experience the worst air quality in the nation, with annual health and economic impacts in at 8,800 deaths (3,000-15,000 probable range) and $71 billion ($36-$136 billion) per year.[4] This issue is particularly acute in the San Joaquin Valley, due to the surrounding mountains that "can block airflow that would" otherwise "help disperse pollutants . . . ." (DEIR at 3.3-1.) The San Joaquin Valley is classified as a "nonattainment" area for several pollutants of concern. (See *id.* at 3.3-5.) 25

[4] *See* Cayan 2006 and *Global Warming: Impacts to Public Health and Air Quality* (http://www.energy.ca.gov/2005publications/CEC-500-2005-197/CEC-500-2005-197-SF.PDF)

a. The DEIR Fails to Require Adequate Mitigation for the Project's Increase in ROG Emissions to a Level of Nearly Double the Applicable Threshold of Significance

The San Joaquin Valley Air Pollution Control District has developed threshold significance for various pollutants of concern, including reactive organic gases ("ROG"). The District's threshold for ROG is 10 tons per year ("TPY"). (DEIR at 3.3-47.)

The DEIR finds that, under buildout of Phases 1, 2, 4, and 5, the Project will result in 14.56 TPY of unmitigated ROG emissions, which will exceed the District's threshold of significance. (See DEIR at 3.3-52.) The DEIR also finds that under full build-out, the Project will result in 19.70 TPY of ROG emissions, which will exceed the District's threshold of significance. (See DEIR at 3.3-54.) The DEIR, however, asserts that "Mitigation Measure Air 2a requires the applicant to commit to either project design features or a VERA that would reduce ROG emissions to less than 10" TPY, after which these emissions will purportedly be 9.99 TPY, or 0.01 TPY under the threshold. (*Id.*) 26

Mitigation Measure MM AIR-2a, however, does not address this issue. (See DEIR 3.3-57.)

Mitigation Measure MM Air-2e contemplates that the Project must "demonstrate[] that the project's operational-related ROG emissions will be reduced below" 10 TPY, and that this "can be achieved by . . . project design" or execution of a Voluntary Emission Reduction Agreement (VERA) with the District to address these impacts. (DEIR at 3.3-58.)

There are several problems with this mitigation measure, assuming it is intended to address the impacts stated above. First, the VERA is contingent upon an agreement with the District to "substitute NOx emissions for ROG emissions reductions." (DEIR at 3.3-58.) In other words, even if the VERA is approved, it will result in payments for NOx reductions, as opposed to payments for ROG emissions. (*Id.*) There is no discussion or mention of how payments for NOx would result in a reduction in ROG emissions to less than 10 TPY. Regardless, it is not adequate mitigation because the utilization of the VERA for ROG emissions will be left up to the discretion of a public agency, and this approval may never occur. 27

As an alternative to the VERA, MM Air-2e also states the applicant could "achieve" the requested emissions reductions through "project design." (DEIR at 3.3-58.) First, there is no deadline in MM AIR-2a for the applicant to show how the emissions reductions will be achieved. (See DEIR at 3.3-58 [text of MM Air-2e].) As a result, the Project could be partially or completely built out before the applicant seeks such verification, at which time it will be too late to address the emissions reductions through "project design." In addition, most of the ROG emissions (*i.e.*, 9.77 TPY) result from emissions from mobile sources – *i.e.*, cars and trucks, (see, e.g., DEIR at 3.3-53) – which will visit the Project site regardless of design. The majority of the remaining sources of ROG are "area sources," which include "emissions from

consumer products, painting, and landscaping equipment," and total 9.82 TPY. (See DEIR at 3.3-54.) While "project design" could result in the modification of landscaping, it is unclear how consumer product emission and painting emissions could be reduced through "project design." Because the proposed mitigation measure does not describe the types of actions that could be taken, the mitigation measure is inadequate. (See, e.g., *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *Federation of Hillside & Cyn. Ass'n v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.) An agency likewise may not cede all responsibility for the development of future mitigation to the project proponent, which is appears to have done here. (*Calif. Clean Energy Comm. v. City of Woodland* (2014) Cal.App.4th 173, 194.) 27 CONT

Deferral of mitigation is also inappropriate where no reason is given as to why deferral is appropriate. (See, e.g., *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669.) In this case, MM Air-2e plainly contemplates that the applicant may seek to reduce ROG emissions through "project design." If this is feasible, there is no explanation as to why the project could not be designed ***at this time*** in a manner that would reduce ROG emissions to less than 10 TPY. As such, MM Air-2e is improper under CEQA. 28

b. The Project Would Directly Conflict With the Merced Climate Action Plan, Which Was Adopted for the <u>Purpose of Reducing Greenhouse Gas Emissions</u>

As explained in the DEIR, the City has adopted the Merced Climate Action Plan, which was designed to "implement the greenhouse gas emission reduction targets identified in AB 32." (DEIR at 3.3-74.) As part of the City's obligations under CEQA, the DEIR is required to address whether the Project would "conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases." (*Id.*) If the Project is inconsistent with the Climate Action Plan, the Project would have a significant effect on the environmental with respect to greenhouse gas emissions. (See, e.g., *id.*)

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The DEIR addresses several aspects of the Merced Climate Action Plan, but omits discussion of the fact that the Pluim Drive / Campus Parkway intersection will be removed. Because this intersection serves as a midpoint between Gerard Avenue and Coffee Street, the removal of this intersection will cause pedestrians and bicyclists to take lengthy and circuitous pathways to their destinations, thereby undermining travel by foot and by bike. (See, *supra*, § B(2); see Ex. "A" at 8.)

This is important for purposes of the City's climate change analysis because several of the policies articulated in the Merced Climate Action Plan expressly require the enhancement of access by pedestrians and bicyclists. Undermining such access would frustrate those goals:

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- The Air Quality analysis does not perform any analysis of – or event mention –the Strategies included in the Merced Climate Action Plan at page 4-20, *et seq*. These Strategies relate to "Pedestrian Planning and Projects," and seek to encourage the usage of Projects by pedestrians. The Project would undermine these Strategies by closing off the Pluim Drive / Campus Parkway intersection, and forcing pedestrians to take circuitous and unnecessarily long pathways to cross Campus Parkway.

- Strategy EM 1.5.1 of the Climate Action Plan, which references General Plan Policy T-2.2, Implementing Action 2.2(b), requires that the City avoid designs that require pedestrians to duplicate walking distance (double-back) to reach public transit routes. The Project, in contrast, would require pedestrians located around the Pluim alignment to "double-back" to reach their destinations across Campus Parkway.

- The DEIR at 3.3-76 discusses Strategy EM 1.5.3 and General Plan Policy T-2.7 by asserting the Project design "encourage[s] a safe and convenient pedestrian environment." (DEIR at 3.3-76.) Of course, this is not true for pedestrians located at the Pluim Drive alignment. (See generally Ex. "A" at 8.)

- Strategy EM 1.5.3 requires, among other things, that the City review land use and project proposals "to avoid pedestrian barriers that prevent or create unnecessarily circuitous access to community and commercial areas." Campus Parkway is such a barrier, and the Project would directly undermine this strategy. (See generally Ex. "A" at 8.)

- Strategy SC 2.5.4 seeks to encourage projects that increase pedestrian activity and mixed-uses. As explained above, however, the Project frustrates usage by pedestrians. (See generally Ex. "A" at 8.)

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CONT

- For the same reasons, the Project would also undermine Strategy SC 2.5.7, which encourages higher-density residential developments within walking distance (approx.. 1.4 mile) of commercial centers. The lengths the pedestrians would have to travel simply to cross the street at Campus Parkway, would be far greater than 1/4 mile.

- Strategy SC 2.5.13 seeks to enhance pedestrian access, and provides that "In no case shall trips which could be internal . . . be forced onto an arterial." But this is exactly what the Project does by removing the Campus Parkway / Pluim Drive interchange. Specifically, shopper located around the Pluim alignment on the south side of Campus Parkway is much more likely to travel the 2/3 to 1 mile by car than to reach a destination across the street than travel that same distance by foot.

- The Project also frustrates Strategy SC 2.5.13, which requires that commercial developments be designed to encourage pedestrian and bicycle access. Again, by removing the Pluim Drive / Campus Parkway intersection, the Project directly undermines this strategy.

- For the same reasons, the Project also undermines Strategy SC 2.5.15, which seeks to encourage pedestrian friendly designs. Further, the DEIR's statement that the Project "encourages people to walk, bicycle, or use public transit" is erroneous, and contradicted by the fact that the barrier created by Campus Parkway is anything but pedestrian-friendly. (See generally Ex. "A" at 8.)

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- Strategy SC 2.5.24 also encourages pedestrian-friendly designs that will be undermined by the removal of the Pluim Drive / Campus Parkway alignment.

In addition to the issues created by the Project's frustration of access by pedestrians and bicyclists, the Project will also undermine several other strategies contained in the Merced Climate Action Plan:

- The Project would also undermine Strategy SC 2.5.3. Specifically, the DEIR asserts in its discussion of this Strategy, that the Project would "maximize compatibility with the nearby land uses." (DEIR at 3.3-77.) This statement is inaccurate, as the Project would frustrate the access to and the orderly development of the Neighboring Property in a manner consistent with its land use designation.

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- Due to the Project's significant traffic effects, as explained above, the Project would not meet Strategy SC 2.5.3; while the Project is close to State Route 99, the Project would increase traffic at the State Route 99 intersections to a level Caltrans deems "significant," and there are numerous issues with respect to potential queuing into those intersections and potentially the freeway mainline. (See generally Ex. "A" at 8.)

- The Project would have significantly greater air quality impacts than the Circulation Element Alternative, which meets all of the Project Objectives. As such, the City cannot find that air quality impacts identified in the CEQA process are consistently and fairly mitigated, as required in Strategy AR 4.4-3.

c. The Air Quality Analysis Should Be Revised to Account For the Necessary Revisions to the TIA

As explained above, and in the Peters Report, the Project will cause significant additional impacts relating to access for the Neighboring Properties. Among other things, the Project will significantly increase trip lengths for the Neighboring Properties, and will redistribute trips in a manner that will overburden intersections such as Campus Parkway / Gerard Avenue and Mission Avenue / Coffee Street, particularly given the need for vehicles to make U-turns at those intersections. (See Ex. "A" at 6-8.) None of these effects are accounted for in the TIA or the DEIR in its traffic analysis. (See generally, *supra* § B(2).)

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The same is true for the DEIR's air quality and climate change analysis. There is no analysis of the increased emissions associated with the additional trip lengths and vehicle miles traveled, nor is there any analysis of the increased emissions that would be caused by increased congestion caused by the redistribution of vehicle trips caused by the changes in the configuration of the local roadway. Because these are direct and foreseeable consequences of the Project, they must be analyzed to determine whether the Project will result in significant air quality and climate change impacts. 32

4. The Project Would Have Significant Land Use Impacts

As part of the analysis under CEQA, environmental documents must analyze a project's land use impacts. (See generally CEQA Guidelines, Appendix "G.") The Project would thus have a significant impact as to land use if it conflicts "with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project . . . adopted for the purpose of avoiding or mitigating an environmental effect." Although the DEIR finds there would be no such conflict, that finding is contrary to the evidence: 33

- First, as explained *infra*, § E, the Project would conflict with several goals, policies, and implementation actions of the Merced General Plan.

- The Project would also conflict with the Merced Climate Action Plan, which was adopted to address greenhouse gas emissions and climate change, as explained *supra*, § B(3)(b). 34

- As explained in the Peters Report, the Project would result in impacts to Caltrans facilities that are worse than those allowed by Caltrans under its adopted Guidelines for traffic studies. (See Ex. "A" at 2-4; see generally Ex. "B.") 35

As a result of the foregoing, the Project would have significant land use impacts that are not addressed in the DEIR. 36

C. The DEIR's Discussion of Alternatives Should Be Revised

As explained above, the City cannot approve the Project. The DEIR finds the Circulation Element Alternative to be the "environmentally superior alternative," and there is no credible argument that this alternative is infeasible. 37

The fact that the Circulation Element Alternative is the "environmentally superior alternative" should be beyond doubt. However, if several errors in the Alternatives analysis were corrected, the analysis would even more clearly show the Circulation Element Alternative is superior from an environmental perspective. 38

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Although the DEIR states that the Circulation Element Alternative would have the same "Land Use" impacts than the Project, and would "yield a similar compatibility finding with the Merced General Plan," (see DEIR at 5-5), this assertion is erroneous. Rather, the Project seeks a General Plan Amendment, which would necessarily result in differences between the Project and the Merced General Plan. The Circulation Element Alternative, in contrast, would not require an amendment to the existing Merced General Plan. As a result, the Circulation Element Alternative – on its face – would have fewer land use impacts than the proposed Project. 38 CONT

The alternatives discussion also includes Table 5-1, which purports to discuss the differences between the Project and the Circulation Element Alternative. Table 5-1, however, includes levels of service for the Circulation Element Alternative that are erroneous and overstated, as explained *supra*, § B(1)(a). Table 5-1 should be corrected because it would more clearly demonstrate how much better congestion would be under the Circulation Element Alternative, as opposed to the Project. 39

The Alternatives analysis also does not discuss usage of the site by pedestrians and bicyclists. As explained *supra*, § B(2), the Circulation Element Alternative is also superior from this standpoint because the Project would cut off pedestrians and cyclists seeking to cross Campus Parkway, and force those pedestrians and bicyclists to take circuitous and inconvenient pathways to reach their destinations on the other side of Campus Parkway. By keeping the Pluim Drive / Campus Parkway intersection, the Circulation Element Alternative would avoid this issue entirely. The Alternatives analysis should therefore be revised to state the Circulation Element Alternative would be superior to the Project from the standpoint of pedestrian and bicycle access. 40

D. The EIR Is Inadequate Because it Does Not State the Reasons Why the Project is Being Proposed, Notwithstanding the Project's <u>Significant and Unavoidable Effects</u>

Section 15126.2 of the CEQA Guidelines is located in Article IX, which governs the "Contents of Environmental Impact Reports." Section 15126.2(b) requires that, "[w]here there are impacts that cannot be alleviated without imposing an alternative design," an EIR should describe "their implications and the reasons why the project is being proposed, notwithstanding their effect . . . ." (CEQA Guidelines, § 15126.2(b).) 41

The Project would result in significant and unavoidable impacts to traffic, pedestrian and bicycle access, air quality, and land use. The DEIR, however, does not contain any discussion of the implications of these significant and unavoidable effects, and also "the reasons why the project is being proposed, notwithstanding their effect . . . ." (CEQA Guidelines, § 15126.2(b).) The DEIR should therefore be revised to add the discussion required under Section 15126.2(b), and recirculated for public review. 42

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E. The Project Is Inconsistent with the Merced General Plan and the Merced Climate Action Plan

State planning and zoning law requires that all land-use decisions of general law cities must be consistent with the City's General Plan. (Govt. Code, § 65860, subd. (a); see also *Corona-Norco Unif. Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Corona-Norco*, *supra*, 17 Cal.App.4th at 994.) While perfect conformity may not be required, "a project ***must*** be compatible with the objectives and policies of the general plan." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 [emphasis added] [citing *Families Unafraid to Uphold Rural etc. County v. Board of Supers.* (1998) 62 Cal.App.4th 1332, 1336].) "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Endangered Habitats*, *supra*, 131 Cal.App.4th at 782 [citing *Families Unafraid*, *supra*, 62 Cal.App.4th at 1341-42].) The Project is inconsistent with the City's plan-level documents in several respects. 43

First, the Project contemplates that Pluim Drive would be removed as a collector, and that the Pluim Drive / Campus Parkway intersection would not be constructed. This would interfere significantly with the use of the Project by bicyclists and pedestrians. Specifically, pedestrians who are using either the southern part of the Project or the Southern Parcel owned by my clients, and who are near the Pluim Drive alignment, would not be able to cross Campus Parkway conveniently. Rather, to reach the other side of Campus Parkway, pedestrians and cyclists would need to walk 1/3 mile west to the Mission Avenue / Coffee Street intersection, or 1/2 mile north to the Campus Parkway / Gerard Avenue intersection, and return the same distance to reach their destination on the other side of the street. This would result in inconvenient, unnecessary, and circuitous pathways pedestrian and cyclists would need to travel to their destinations. Further, because the distance pedestrians and bicyclists would need to travel to reach their destination would be nearly an entire mile, this planning would frustrate alternative methods of transportation, and encourage increased use of vehicles by patrons of the Project site (and the Neighboring Properties), thereby increasing congestion and circulation issues. (See, e.g., Ex. "A" at 8.) This lack of access would directly undermine the following goals, policies, and implementation actions contained within the City's General Plan:

- General Plan Implementation Action 2.7.b, which provides that "Commercial centers shall be designed to provide direct vehicular and pedestrian access from surrounding neighborhoods." 44

- General Plan Implementation Action 2.7.a, which provides that "[c]ommercial developments shall be designed to encourage pedestrian, bicycle, and transmit access."

- General Plan Implementation Action 2.10.b, which seeks to ensure quality freeway-oriented development that addresses" "pedestrians/bicycle/transit access."

- The General Plan Guiding Principal adopted to "[p]romote convenient pedestrian and vehicular access to transit, commercial, recreation, and residential places."

- General Plan Goals, listed as part of L-3, which seeks to encourage "Self-sustaining, Mixed-Use, Pedestrian-Friendly Neighborhoods.

- General Plan Land Use Policy L-3.1 seeks to "Create land use patterns that will encourage people to walk, bicycle, or use public transit for an increased number of daily trips."

- General Plan Implementing Action 3.1.a, which seeks to encourage pedestrian r transit-friendly designs at suitable locations.

- General Plan Implementing Action 3.2.a, which requires the City to encourage owners of vacant lands to build in a manner that promotes pedestrian-oriented developments.

- General Plan Policy L-3.3, which seeks to promote site designs that encourage walking, cycling, and transit use.

- General Plan Implementing Action 3.3.a seeks to encourage "project designs which increase the convenience, safety and comfort of people using transit, walking or cycling." 44 CONT

- General Plan Implementing Action 3.3.b, which encourages "commercial site plans . . . to improve access by transit, bicycle, and walking."

- General Plan Implementing Action 1.6.f, which seeks to "[e]nsure to the extent feasible that pedestrian, bicycle and automobile connections are maintained in existing neighborhoods affected by transportation and other development projects."

- General Plan Goal T-2, which contemplates a "Comprehensive System of Safe and Convenient Pedestrian Facilities."

- General Plan Policy T-2.4, which seeks to "[e]ncourage the use of bicycles."

- General Plan Implementing Action 2.4.b, which seeks to "[c]ontinue to support whenever feasible local efforts to promote cycling."

- General Plan Policy T-2.5, which seeks to "[p]ovide convenient bicycle support facilities to encourage bicycle use."

- General Plan Policy T-2.6, which seeks to "[m]aintain and expand the community's existing bicycle circulation system."

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- General Plan Policy T-2.7, which seeks to "[m]aintain a pedestrian-friendly environment."

- General Plan Implementing Action 2.7.d, which seeks to "[w]ork to maintain safe ad convenient streetscapes for pedestrians."

- General Plan Implementing Action 2.7.i, which requires the City to "review and evaluate possible options for dealing with the issue of incomplete pedestrian access to development projects that will be major pedestrian destinations."

- General Plan Policy T-2.8, which seeks to "[i]mprove planning for pedestrians."

- General Plan Implementing Action 2.8.a, which seeks to "provide more flexible, more usable pedestrians access opportunities to land uses and land use combinations that are prospective pedestrian destinations . . . ."

- General Plan Implementing Action 2.8.c, which seeks to "review land use and project proposals with the intent to avoid pedestrian barriers that prevent or create unnecessary circuitous access to community and commercial areas."

44 CONT

The Project, however, is not just inconsistent with the General Plan due to the failure to adequately ensure convenient and safe access by pedestrians and bicyclists. Rather, there are several other aspects of the Project that would violate the General Plan. As demonstrated below, nearly all of these inconsistencies result from the removal of Pluim Drive as a collector, and the elimination of the Pluim Drive / Campus Parkway intersection:

- The Project is inconsistent with General Plan Policy L-2.1, which seeks to encourage further development of appropriate commercial and industrial uses throughout the City. Specifically, the Project would discourage, and directly undermine, development of the Neighboring Properties because it would eliminate effective access to the properties.

- General Plan Implementation Action 2.1.e specifically seeks to target South Merced as an area that needs more commercial retail and office development. Yet, due to its attempt to undermine development of the Neighboring Properties, the Project conflicts with this Implementation Action.

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- General Plan Implementing Action 2.4.a seeks to encourage Business Parks. However, the Project would undermine development of the adjacent Neighboring Property by cutting off meaningful access, which would frustrate the development of a business park.

- The Project also undermines Implementation Action 2.7.d, which provides that "Cross-access and shared driveways between adjacent commercial uses shall be provided as much as feasible." Despite this provision, the Project contemplates walling off the uses west of

the Pluim Drive alignment from those to the east of the alignment on both sides of Campus Parkway. This inconsistency could be eliminated through the utilization of Pluim Drive as a collector, as contemplated under the existing General Plan. 45 CONT

- General Plan Policy L-2.10 seeks to encourage well-planed freeway-oriented developments at the Mission Avenue/S.R. 99 interchange. The City emphasizes that it has a significant interest in ensuring these developments are "high quality," and that traffic impacts should be reviewed in a "careful manner" before making any land use decisions in the freeway corridor." As explained above, however, the Project would result in ***greater*** land use impacts than the existing General Plan. Also as explained above, the Project would undermine access for the Neighboring Properties, and frustrate their development. As a result, the Project would not result in a well-planned development, but rather a development with numerous significant negative unintended consequences for the surrounding area. 46

- The proposed Project violates Policy T-1.3, Implementing Action 1.3.j, by proposing driveways too close to the major intersection of Coffee Street and Campus Parkway, which is expected to suffer from severe congestion affecting even the freeway interchange. (See Exhibit "A" at 6-7.) 47

In addition, as explained above, the Project is inconsistent with the Merced Climate Action Plan. (See *supra*, § B(3)(b).) 48

Because the Project is inconsistent with several goals, policies, and implementation actions of the Merced General Plan and the Merced Climate Action Plan, the Project is vertically inconsistent with plan-level documents, and the City cannot approve the Project without violating State Planning and Zoning Law. 49

F. The Notice of Availability Is Legally Deficient Because it Attempts to <u>Curtail Public Input on the Environmental Impacts of the Project</u>

The July 11, 2016, Notice of Availability states: "Please note that the 45-day public comment period only applies to the DEIR, not the Merced Gateway Master Plan itself. Citizens may submit comments on the Master Plan itself until the public hearings conclude." (See July 11, 2016, Notice of Availability and Public Review at 2.) The Notice of Availability inaccurately suggests that a commenting party may not make comments on the DEIR ***after*** the close of the 45-day public comment period. This is inaccurate as a matter of law. Section 21177(a) of the Public Resources Code provides that a commenting party may raise "the alleged grounds for noncompliance with [CEQA] . . . during the public comment period" on the environmental document" "***or*** prior to the close of the public hearing on the project . . . ." (Pub. Resources Code, § 21177, subd. (a) [emphasis added].) In other words, commenting parties may continue to raise grounds for noncompliance with CEQA ***until*** the close of the public hearing on the Project. 50

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The problem with the Notice of Availability, in light of the inaccurate statement above, is that it could curtail members of the public from providing comments on the environmental document after the close of the public comment period, contrary to Section 21177(a). The Courts have rejected attempts by public agencies to curtail public comment on environmental documents in this manner, and specifically efforts to "segregate[] environmental review from project approval in contravention of [CEQA] Guidelines section 15202, subdivision (b)." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1200; see also *id.* at 1201 ["Apparently, [the City] did not realize that if a public hearing is conducted on the project approval, then new environmental objections could be made until the close of this hearing."].)

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Because the Notice of Availability contains inaccurate statements regarding public input, and inaccurately suggests that project approval is segregated from the environmental document, the Notice of Availability must be revised and the DEIR should be recirculated for public comment.

G. <u>The Project Would Result in a Taking</u>

The approval of the Project will foreclose reasonable access to Campus Parkway and Pluim Drive by the Neighboring Properties, which will increase the Neighboring Properties' trip lengths, and will redistribute the Neighboring Properties' trips in a circuitous nature, burdening several additional intersections in the process. In other words – through no action of Merced Gateway, LLC – the approval of the Project would increase the mitigation required for the Neighboring Properties to develop, and substantially impair access to and from the Neighboring Properties.

Merced Gateway, LLC has held the Neighboring Properties with the reasonable investment-backed expectation that it would be able to develop the Neighboring Properties with access consistent with that provided in the existing General Plan Circulation Element. The Project would directly interfere with this investment-backed expectation, frustrating the ability of Merced Gateway, LLC to develop the Neighboring Properties. In essence, the City would be inversely condemning Merced Gateway, LLC's property. If the City approves the Project as currently planned, Merced Gateway, LLC would be entitled compensation under the takings clause of the United States Constitution, (see, e.g., *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1016), and under California law. (See, e.g., *City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1472.)

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The approval of the Project would also result in an unlawful condition and/or exaction on the Neighboring Properties. Specifically, if the Project were approved, the mitigation required for the Neighboring Properties would increase substantially, due to increased trip lengths, redistributed trips that would overburden adjacent intersections, and landlocked pedestrians and bicyclists. These additional conditions/exactions would be unlawful. They also would not be the result of any existing regulation, (see *Munns v. Stenman* (1957) 152 Cal.App.2d

543), as the Project (i) requires amendment of the existing General Plan Circulation Element, and (ii) is inconsistent with numerous policies, goals, and implementation actions of the City's General Plan. (See, e.g., *supra*, § E; see also Govt. Code, §§ 65860, 65910.)

The additional conditions/exactions imposed on the Neighboring Properties would also be unlawful because there would not be an "essential nexus" between the condition/exaction and the state interest at issue, and there would be no "rough proportionality" between the condition/exaction and the projected impact of the development. (See, e.g., *Nollan v. Calif. Coastal Comm'n* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374.) Specifically, the increased burden that the Neighboring Properties would not be present if the City retained the circulation patterns under the existing General Plan Circulation Element. The increased burdens would have ***no*** rough proportionality to the impacts resulting from the development of the Neighboring Property, because ***those impacts would be caused by the Project described in the DEIR*** as opposed to any development on the Neighboring Property.

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For the same reasons, the Project would effectuate a regulatory taking because it would force the Neighboring Property to incur costs and regulatory burdens that should be borne by development as a whole, and in particular the Project. (See, e.g., *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104.)

In short, the City cannot approve the Project without interfering with Merced Gateway, LLC's constitutional rights, for which Merced Gateway, LLC would be entitled to "just compensation" and recovery of its attorneys' fees.

H. Conclusion

The DEIR finds that the Circulation Element Alternative is the "environmentally superior alternative," and that this alternative meets all of the Project objectives. The Project, in contrast, would not only cause significant environmental effects far above and beyond those that would occur under the existing Circulation Element, but would severely impact my client and its properties. The approval of the Project would also result in an unconstitutional taking by the City, for which Merced Gateway, LLC would require just compensation. As a result, Merced Gateway, LLC respectfully requests that the City deny the Project, and instead consider the Circulation Element Alternative for approval.

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Very truly yours,

John P. Kinsey

Enclosures

Wanger Jones Helsley PC (WJH.1)

Response to WJH.1-1
The commenter summarizes the proposed project.

Comment acknowledged. Since no comment on the environmental conclusions of the EIR was provided, no further response is required (CEQA Guidelines, Section 15088).

Response to WJH.1-2
The commenter questions the consistency of the proposed project with the General Plan as updated in 2012.

The proposed project requires a General Plan Amendment that would change the Circulation Element. The DEIR evaluated a development alternative that would build the project without amending the Circulation Element.

Response to WJH.1-3
The commenter states: "These impacts would be significantly reduced, if not avoided, through the adoption of the General Plan Circulation Element Alternative (the "Circulation Element Alternative"), which the DEIR has been determined to be the "environmentally superior alternative" and consistent with all of the Project Objectives."

The City is not required to adopt an alternative that has been determined to be the "environmentally superior alternative." Although this alternative has fewer significant traffic impacts, it would still have significant and unavoidable impacts at two intersections.

Response to WJH.1-4
The commenter states: "As an adjacent property owner, Merced Gateway, LLC supports the commercial development of the Subject Property . . . . The City, however, should not let the development of a single property undermine the orderly development of adjacent properties, and cause significant environmental effects that the DEIR finds are entirely avoidable."

The DEIR determined that the Circulation Element Alternative would also have significant environmental effects that would be unavoidable. The City may, under CEQA, approve a project that has significant and unavoidable impacts.

Response to WJH.1-5
The commenter states: "For these reasons, the City should either (i) adopt the Circulation Element Alternative, or (ii) decline to certify the EIR, and require the applicant to redesign the Project in a manner consistent with the existing General Plan Circulation Element."

The City is not required to adopt the Circulation Element alternative. As discussed in the Response to Comment 4, above, should a lead agency (the City) decide to approve a project despite one or more significant and unavoidable environmental impacts, it is permitted to do so by adopting a Statement of Overriding Considerations (CEQA Guidelines Section 15093).

Response to WJH.1-6

The commenter states: "Because the DEIR designates the Circulation Element Alternative as the 'Environmentally Superior Alternative,' and the Circulation Element Alternative is feasible, the City must approve the 'Circulation Element Alternative Instead of the Project.'" The commenter then summarizes CEQA case law requiring that an EIR must identify feasible alternatives or mitigation measures to reduce a project's significant effects. The commenter re-states that the Circulation Element Alternative would have fewer impacts than the proposed project, as described in the DEIR.

With regard to the contention that the City must adopt the Circulation Element Alternative, the key consideration is that alternatives in an EIR must be potentially feasible (CEQA Guidelines, Section 15126.6(a)).

Agency decision-makers ultimately decide what is "actually feasible" (*California Native Plant Society v. City of Santa Cruz* ("CNPS") (2009) 177 Cal. App. 4th 957, 981). Under CEQA, the concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509; CNPS, supra, 177 Cal. App. 4th at p. 1001; In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143, 1165, 1166). Moreover, "'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors" (*City of Del Mar v. City of San Diego* (1982) 133 Cal. App.3d 410, 417).

The City of Merced, as CEQA lead agency, has discretion to approve the project, deny the project, or instead decide to adopt one of the alternatives; however, the City is not legally required to adopt an alternative simply because it is the environmentally superior alternative. The alternatives analysis is presented in an EIR to allow for a comparison between a proposed project and other development scenarios, in order to allow for fully informed decision-making. Should a lead agency decide to approve a project despite one or more significant and unavoidable environmental impacts, it is permitted to do so by way of adopting a Statement of Overriding Considerations (CEQA Guidelines Section 15093). Therefore, the City is not required to adopt the Circulation Element Alternative; however, this alternative will be considered by the City Council in light of the EIR and all relevant evidence in the record. The DEIR has identified both an alternative that reduces some of the project's significant effects and mitigations that reduce some of the project's significant effects. As stated above, the City is not required under CEQA to adopt the environmentally superior alternative.

Response to WJH.1-7

The commenter states: "Although the DEIR reaches the above conclusions, it appears that the applicant and the City still intend to proceed with the Project, as opposed to the Circulation Element Alternative. This would be improper under CEQA. Because the DEIR identifies significant and unavoidable impacts resulting from the Project, the City cannot approve the Project without making several findings, including a finding that the environmentally superior alternatives identified in the DEIR are not "'feasible.' 'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

The City makes its findings at the time that the City Council certifies the EIR as complete and makes its decision whether or not to approve the project. This takes place at a public hearing. It is not improper under CEQA for a lead agency, after considering the impacts of the proposed project and a reasonable range of alternatives, to adopt a statement of overriding considerations, which may include, as the commenter points out, whether the alternatives would be feasible.

Response to WJH.1-8
The commenter states: ". . . there is no evidence that the Circulation Element Alternative is infeasible . . . the DEIR concedes that the Circulation Element Alternative 'would advance all of the project objectives.' . . . Further, the Circulation Element Alternative would actually result in fewer roadway improvements as mitigation; thus, there are no facilities or other required improvements the City can point to that would be 'economically infeasible' to construct under the Circulation Element Alternative as compared to the Project."

As stated above, agency decision-makers ultimately decide what is "actually feasible" (*California Native Plant Society v. City of Santa Cruz* ("CNPS") (2009) 177 Cal. App. 4th 957, 981). Under CEQA, the concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509; CNPS, supra, 177 Cal. App. 4th at p. 1001; In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal. 4th 1143, 1165, 1166). Moreover, "'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors" (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417).

Response to WJH.1-9
The commenter states: "The Project would result in several significant environmental effects, many of which are not discussed in the DEIR. The City also may not legally consider approval of the Project because the DEIR's analysis of several of the Project's impacts is flawed. Many of these flaws emanate directly from the design of the Project, and in particular the removal of (i) Pluim Drive as a collector and (ii) the Pluim Drive/Campus Parkway intersection. As a result of these issues, the DEIR must be revised and recirculated for public comment."

This comment does not identify which significant environmental effects are not discussed in the EIR, so no response is possible. The City believes it has identified all significant environmental effects in the DEIR, and does not find the removal of Pluim Drive as a collector to be a flaw in the CEQA analysis. It is not clear from the comment which CEQA issue is relevant to the Pluim Drive/Campus Parkway intersection. This intersection was not analyzed as part of the project because it does not exist in the proposed project. No issues are described that would require the recirculation of the DEIR.

Response to WJH.1-10
The commenter states: "Throughout the Traffic Impact Analysis (the 'TIA') and the DEIR, there are several instances where the level of service for various intersections under the Circulation Element Alternative are misstated, and create a misleading impression that the level of service for those intersections under the Project and the Circulation Element Alternative will be the same. A review of

the facts, however, shows that the level of service under the Circulation Element Alternative will be far better than the level of service under the Project. In other words, the TIA and the DEIR overstate the impacts of the Circulation Element Alternative. Examples of these errors include the following:

Mission Avenue/SR-99 SB Ramps. Table 44 of the TIA (and the related table in the DEIR) show that, under Project conditions, the Mission Avenue/SR-99 Southbound ramps will operate at LOS D. While this level of service may be acceptable for City roadways and intersections under the City's General Plan, Caltrans typically considers such conditions to be unacceptable (see, e.g., Ex. 'A' at 2; see also generally Ex. 'B'). Under the conditions that would occur under the Circulation Element Alternative, a review of the spreadsheets accompanying the TIA reveals this intersection would operate at LOS B, which is substantially less congested that the conditions that would be caused by development under the Project. Both the TIA and the DEIR, however, inaccurately characterize the level of service occurring under the Circulation Element Alternative as LOS D, erroneously suggesting the conditions under the Circulation Element Alternative would be the same as the Project (see Ex. 'A' at 2). This error should be corrected, and the DEIR should be revised to clarify that the Circulation Element Alternative would avoid such significant impacts to Caltrans facilities, which would otherwise result in unacceptable levels of service under Caltrans's guidelines."

Response: Review of Table 44 of the TIA reveals that a typographical error occurred in the presentation of Mitigated Cumulative AM Peak Hour LOS with the GP Circulation Alternative. The Mission Avenue/SB SR-99 Ramps intersection is presented as LOS D, but should be shown as LOS B. Because both LOS B and LOS D satisfy the minimum requirements of the City and Caltrans, this error has no bearing on the conclusions regarding adequacy of the identified mitigation measures. A revised Table 44 is included in the Errata to the EIR, as found in this Final EIR.

Response to WJH.1-11

The commenter states the following as an example of the level of service being misstated: "Mission Avenue/SR-99 NB Ramps. Table 44 of the TIA (and the corresponding tables in the DEIR) show that, under Project conditions, the Mission Avenue/SR-99 Southbound ramps will operate at LOS D. Again, Caltrans typically considers such conditions to be unacceptable (see, e.g., Ex. 'A' at 2; see also generally Ex. 'B'). Under the conditions that would occur under the Circulation Element Alternative, a review of the spreadsheets accompanying the TIA reveals this intersection would operate at LOS B, which is substantially less congested that the conditions that would be caused by development under the Project. As with the SB ramps, both the TIA and the DEIR inaccurately characterize the level of service occurring under the Circulation Element Alternative as LOS D. This error results in the inaccurate suggestion the conditions under the Circulation Element Alternative will be the same as the Project. Not so (see Ex. 'A' at 2). This error should be corrected, and the DEIR should be revised to clarify that the Circulation Element Alternative would avoid such significant impacts to Caltrans facilities, which would otherwise result in unacceptable levels of service under Caltrans' guidelines."

Response: As noted above, a typographical error was identified. The Mission Avenue/NB SR-99 ramps are shown as LOS D but should be presented as LOS B. Because both LOS B and LOS D satisfy the minimum requirements of the City and Caltrans, this error has no bearing on the conclusions

regarding adequacy of the identified mitigation measures. A revised Table 44 is included in the Errata to the FEIR, changing the EIR as requested.

Response to WJH.1-12
The commenter states: "Campus Parkway/Coffee Street. Table 45 of the TIA (and the corresponding tables in the DEIR) show that, under Project, the Campus Parkway/Coffee Street intersection is expected to operate at LOS F during PM peak-hour conditions, even after mitigation. The data underlying the TIA reveals that, under the Circulation Element Alternative, the intersection will operate at LOS B. The TIA and the corresponding pages in the DEIR, however, erroneously state the intersection will operate at LOS C. This error should be corrected in both the TIA and the DEIR to show the public and the decision-makers that the impacts of the Circulation Element Alternative will be less than erroneously stated in the TIA and DEIR (see Ex. 'A' at 4)."

Response: Review of Table 45 of the TIA reveals a typographical error occurred in the presentation of Mitigated Cumulative Pm Peak Hour LOS with the GP Circulation Alternative. The Campus Parkway/ Coffee Street intersection was shown as LOS C but should be presented as LOS B. Because both LOS B and LOS D satisfy the minimum requirements of the City and Caltrans, this error has no bearing on the conclusions regarding adequacy of the identified mitigation measures. A revised Table 45 is included in the Errata, changing the TIA and the EIR as requested.

Response to WJH.1-13
The commenter states: "Under the Project, the southbound and northbound ramps onto SR-99 from Mission Avenue will operate under levels of service that are unacceptable under Caltrans's policies."

While general Caltrans traffic study guidelines indicate that LOS C is the goal, specific LOS standards are identified on a facility-by-facility basis in response to identified conditions in consultation with local agencies. Caltrans comments on the DEIR, above, do not indicate that LOS D is unacceptable.

Response to WJH.1-14
The commenter states: "The TIA and the DEIR Erroneously Conclude that the Project's Impacts to Various Intersections are Significant and Unavoidable."

The DEIR identified improvements that could be implemented in the area of the SR-99/Mission Avenue/Campus Parkway intersection and in the area of the Campus Parkway/Coffee Street intersection. The identified improvements represent the maximum feasible mitigation within the context of the General Plan's ultimate plan for Campus Parkway (i.e., six lanes) and Coffee Street (four lanes) with maximum auxiliary turn lanes that can be accommodated within the available distance between intersections. Because of the interaction between closely spaced intersections, additional improvements away from this intersection would not appreciably change the forecast traffic conditions.

Response to WJH.1-15
The commenter states: "In addition to the fact that the roadway configuration contemplated under the Circulation Element Alternative would avoid the significant impacts identified above, these impacts could also be avoided through additional physical improvements. There is no showing in the DEIR that such physical improvements would be infeasible. (See, e.g., Ex. 'A' at 2-4.). As a result, the

DEIR should be revised to identify implementation of the circulation contemplated in the existing General Plan as feasible mitigation."

Response: The DEIR identified improvements that could be implemented in the area of the SR-99/ Mission Avenue/Campus Parkway intersection and in the area of the Campus Parkway/Coffee Street intersection. The identified improvements represent the maximum feasible mitigation within the context of the General Plan's ultimate plan for Campus Parkway (six lanes) and Coffee Street (two lanes) with maximum auxiliary turn lanes that can be accommodated within the available distance between intersections. Because of the interaction between closely spaced intersections, additional improvements away from this intersection would not appreciably change the forecast traffic conditions.

Response to WJH.1-16
The commenter states: "The Project Would Have Additional Impacts to Traffic Due to its Limitation of Access to the Neighboring Properties."

The DEIR and Traffic Study address the cumulative impact of the project and the GP Circulation Alternative within the context of long term traffic conditions that reflect the regional circulation system and access opportunities that will be available based on the significance criteria adopted by the City of Merced and Caltrans (i.e., LOS). The referenced diagrams illustrate possible travel patterns for a speculative retail commercial development on the neighboring BP sites. However, implementation of the proposed project does not eliminate access to the neighboring sites, and the comparisons offered by the comments and supporting materials are speculative and relate to "convenience," which is not an adopted significance criteria.

Response to WJH.1-17
The commenter states: "The Project Would Subject Motorists Using the Neighboring Properties to Inconvenient and Circuitous Pathways of Travel."

Implementation of the proposed project does not eliminate access to the neighboring sites, and the comparisons offered by the comments and supporting materials are speculative and relate to "convenience," which is not an adopted significance criteria. The neighboring sites are not developed and their future development pattern is speculative at this time.

Response to WJH.1-18
The commenter compares the length of vehicle trips from the proposed project to the State Route 99 on-ramps, and the length of trips from the same area under the Circulation Element alternative, and points out that those trips under the Circulation Element would be slightly shorter.

No CEQA issue is identified by the commenter. No response is necessary.

Response to WJH.1-19
The commenter compares the length of vehicle trips from the State Route 99 off-ramps to the proposed project, and the length of trips from the same area under the Circulation Element alternative, and points out that those trips under the Circulation Element would be slightly shorter.

No CEQA issue is identified by the commenter. No response is necessary.

Response to WJH.1-20
The commenter states: "The TIS Does Not Analyze How the Roadway Configuration Changes Under the Project Would Affect Circulation…The TIS should therefore be revised to analyze the impacts associated with the fact that the Project will cut off the Neighboring Properties' access to Campus Parkway from Pluim Avenue."

There are no current trips from the neighboring area, as it is undeveloped, so there is no impact to trip lengths from those areas. The fact that the proposed project does not construct Pluim Avenue does not cut off the neighboring properties' access to Campus Parkway. The DEIR compares the future traffic circulation of the proposed project with the future traffic circulation of the Circulation Element Alternative. Those potential impacts are discussed in the DEIR in Chapter 3-11.

Response to WJH.1-21
The commenter states: "The TIS Does Not Analyze How the Roadway Configuration Changes Under the Project Would Affect Trip Lengths . . . . Neither the TIS nor the DEIR evaluate these potential impacts, and must be revised."

There are no current trips from the neighboring area, as it is undeveloped, so there is no impact to trip lengths from those areas. The fact that the proposed project does not construct Pluim Avenue does not cut off the neighboring properties' access to Campus Parkway. The DEIR compares the future traffic circulation of the proposed project with the future traffic circulation of the Circulation Element Alternative. Those potential impacts are discussed in the DEIR in Section 3.11, Transportation.

Response to WJH.1-22
The commenter states: "The Project's Heavy Reliance on Coffee Street Access Would Result in Severe Congestion Along Campus Parkway and State Route 99 that Has Not Been Analyzed."

The DEIR and its TIA identify the LOS occurring on key intersection on Campus Parkway and at the SR-99 interchange based on the significance criteria employed by the City of Merced and Caltrans (i.e., LOS). The effects of intersection spacing, as suggested in the comment, are addressed in the methodology employed to determine intersection LOS. No further analysis is required.

Response to WJH.1-23
The commenter states: "The Traffic Mitigation Identified in the DEIR Is Legally Inadequate . . . . Mitigation Measure MM TRANS-1g does not meet [the] standard" of effectiveness.

An analysis of project phasing and improvements requirements is included as part of the conditions of approval. This is adequate for the lead agency to make the determination that the mitigation is effective.

Response to WJH.1-24
The commenter states: "The Project Would Result in Numerous Safety and Access Issues for Pedestrians Seeking to Use the Project and the Neighboring Properties."

The required improvements to the Campus Parkway/Coffee Street intersection will include a traffic signal and crosswalks that are controlled by applicable devices (i.e., push buttons and pedestrian indications. With this improvement, the proposed project does not impede pedestrian access between the project's uses north and south of Campus Parkway, and thus the impact on pedestrian safety is not significant.

Response to WJH.1-25
The commenter states: "The Project Would Have Significant Air Quality Impacts."

The comment is noted.

Response to WJH.1-26
The commenter states: "The DEIR fails to require adequate mitigation for the Project's Increase in ROG emissions to a level of nearly double the applicable threshold of significance. The San Joaquin Valley Air Pollution Control District has developed threshold significance for various pollutants of concern, including reactive organic gases ('ROG'). The District's threshold for ROG is 10 tons per year . . . . The DEIR, however, asserts that 'Mitigation Measure Air-2a requires the applicant to commit to either project design features or a VERA that would reduce ROG emissions to less than 10'. . . . Mitigation Measure MM AIR-2a, however, does not address this issue." The DEIR finds that, under buildout of Phases 1, 2, 4, and 5, the Project will result in 14.56 tons per year of unmitigated ROG emissions, which will exceed the District's threshold of significance. The DEIR also finds that under full build-out, the Project will result in 19.70 tons per year of ROG emissions, which will exceed the District's threshold of significance.

Response: Mitigation Measure AIR-2e requires that the applicant reduce ROG emissions to within the District's threshold of 10 tons per year. Mitigation Measure AIR-2e allows this to be achieved either through project design features that reduce ROG emissions or through participation in a VERA where the applicant would pay into a fund controlled by the District. The District would utilize the money for off-site mitigation to reduce ROG emissions. Mitigation Measure AIR-2e addresses the exceedance of ROG emissions and provides measures to reduce ROG emissions to less than significant levels.

Response to WJH.1-27
The commenter states: "Mitigation Measure MM Air-2e contemplates that the Project must 'demonstrate . . . that the project's operational-related ROG emissions will be reduced below' 10 TPY, and that this 'can be achieved by . . . project design' or execution of a Voluntary Emission Reduction Agreement (VERA) with the District to address these impacts. There are several problems with this mitigation measure, assuming it is intended to address the impacts stated above . . . even if the VERA is approved, it will result in payments for NO_x reductions, as opposed to payments for ROG emissions (Id). There is no discussion or mention of how payments for NO_x would result in a reduction in ROG emissions to less than 10 tons per year. Regardless, it is not adequate mitigation because the utilization of the VERA for ROG emissions will be left up to the discretion of a public agency, and this approval may never occur."

Response: ROG emissions by themselves are not harmful pollutants; however, when ROG and NO_x emissions mix in the atmosphere, they create ozone. Therefore, mitigation that reduces ROG or NO_x

are interchangeable. The VERA program is a contractual agreement between the applicant and the District and becomes a legally enforceable mechanism for achieving air quality mitigation.

Response to WJH.1-28
The commenter states: "Deferral of mitigation is also inappropriate where no reason is given as to why deferral is appropriate . . . . MM AIR-2e plainly contemplates that the applicant may seek to reduce ROG emissions through 'project design.' If this is feasible, there is no explanation as to why the project could not be designed at this time in a manner that would reduce ROG emissions to less than 10 tons per year. As such, MM AIR-2e is improper under CEQA."

Response: The DEIR analyzed a master plan for the proposed project and the tenants of the proposed structures have not yet been determined. Mitigation Measure AIR-2e was written in order to provide the project applicant some latitude if it was found that some tenants would create less emissions than was assumed in the DEIR. However, as detailed above, the project applicant will be required to demonstrate how the emissions reductions will be achieved prior to final construction.

Response to WJH.1-29
The commenter states: "The Project Would Directly Conflict With The Merced Climate Action Plan, Which Was Adopted for the Purpose Of Reducing Greenhouse Gas Emissions. As explained in the DEIR, the City has adopted the Merced Climate Action Plan, which was designed to 'implement the greenhouse gas emission reduction targets identified in AB 32. . . .' If the Project is inconsistent with the Climate Action Plan, the Project would have a significant effect on the environmental with respect to greenhouse gas emissions.

"The DEIR addresses several aspects of the Merced Climate Action Plan, but omits discussion of the fact that the Pluim Drive/Campus Parkway intersection will be removed. Because this intersection serves as a midpoint between Gerard Avenue and Coffee Street, the removal of this intersection will cause pedestrians and bicyclists to take lengthy and circuitous pathways to their destinations, thereby undermining travel by foot and by bike."

Response: The DEIR assessed all strategies provided in the Climate Action Plan (CAP) and detailed how the project would comply with each strategy in Table 3.3-19. The DEIR found that through implementation of Mitigation Measures AIR-7a through AIR-7d that the proposed project would be consistent with the strategies in the CAP.

The public will still have access to travel along what would have been the right-of-way for Pluim Drive to Campus Parkway via walking or bicycle riding, which would promote alternative forms of transportation. The proposed project would incorporate several project design features, including development of mixed land uses, and providing a transit station on-site that would promote a walkable community.

Response to WJH.1-30
The commenter states that "The Project will also undermine several other strategies contained in the Merced Climate Action Plan: the Project would frustrate the access to and the orderly development of the Neighboring Property in a manner consistent with its land use designation, the Project would increase traffic at the SR-99 intersections to a level Caltrans deems 'significant,' and

there are numerous issues with respect to potential queuing into those intersections and potentially the freeway mainline."

The commenter states: "The Project would have significantly greater air quality impacts than the Circulation Element Alternative, which meets all of the Project Objectives."

Response: The DEIR did not provide a quantitative analysis of the air quality impacts associated with the Circulation Element Alternative, since it was assumed it would result in similar emissions as the proposed project.

Response to WJH.1-31
The commenter states: "The Air Quality Analysis Should Be Revised to Account For the Necessary Revisions to the TIA. . . . [T]he Project will cause significant additional impacts relating to access for the neighboring properties. Among other things, the Project will significantly increase trip lengths for the neighboring properties, and will redistribute trips in a manner that will overburden intersections such as Campus Parkway/Gerard Avenue and Mission Avenue/Coffee Street, particularly given the need for vehicles to make U-turns at those intersections."

Response: The City, for the reasons outlined in response to comments on the TIA, finds no reason to revise the TIA.

Response to WJH.1-32
The commenter states: "There is no analysis of the increased emissions associated with the additional trip lengths and vehicle miles traveled, nor is there any analysis of the increased emissions that would be caused by increased congestion caused by the redistribution of vehicle trips caused by the changes in the configuration of the local roadway. Because these are direct and foreseeable consequences of the Project, they must be analyzed to determine whether the Project will result in significant air quality and climate change impacts."

The TIA does not find that any additional trip lengths would be appreciable to existing destinations or to the project site under the proposed project as conceptualized. All trips are accounted for by the trip generation and distribution compiled in the TIA.

Response to WJH.1-33
The commenter states: "The Project would thus have a significant impact as to land use if it conflicts 'with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project. . .adopted for the purpose of avoiding or mitigating an environmental effect.' [T]he Project would conflict with several goals, policies, and implementation actions of the Merced General Plan."

Response: The commenter does not provide analysis to determine that the project conflicts with the goals, policies, and implementation actions of the Merced General Plan.

Response to WJH.1-34
The commenter states: ". . . [t]he Project would also conflict with the Merced Climate Action Plan, which was adopted to address greenhouse gas emissions and climate change."

Response: The DEIR assessed all strategies provided in the Climate Action Plan (CAP) and detailed how the project would comply with each strategy in Table 3.3-19. The DEIR found that through implementation of Mitigation Measures AIR-7a through AIR-7d that the proposed project would be consistent with the strategies in the CAP.

Response to WJH.1-35
The commenter states: ". . . [the] Project would result in impacts to Caltrans facilities that are worse than those allowed by Caltrans under its adopted Guidelines for traffic studies."

The DEIR and its TIA identify the LOS occurring on key intersection on Campus Parkway and at the SR-99 interchange based on the significance criteria employed by the City of Merced and Caltrans (i.e., LOS). The effects of intersection spacing, as suggested in the comment, are addressed in the methodology employed to determine intersection LOS. No further analysis is required.

Response to WJH.1-36
The commenter states: "As a result of the foregoing, the Project would have significant land use impacts that are not addressed in the DEIR."

The commenter does not demonstrate that there are significant land use impacts. The City finds that the analysis of applicable programs and policies from the CAP and the City's General Plan were adequately evaluated in the DEIR.

Response to WJH.1-37
The commenter states: "The DEIR's discussion of alternatives should be revised . . . . [T]he City cannot approve the Project. The DEIR finds the Circulation Element Alternative to be the 'environmentally superior alternative,' and there is no credible argument that this alternative is infeasible. The fact that the Circulation Element Alternative is the 'environmentally superior alternative' should be beyond doubt."

With regard to the contention that the City must adopt the Circulation Element Alternative, the key consideration is that alternatives in an EIR must be potentially feasible (CEQA Guidelines, Section 15126.6(a)). Agency decision makers ultimately decide what is "actually feasible" (*California Native Plant Society v. City of Santa Cruz* ("CNPS") (2009) 177 Cal. App. 4th 957, 981). Under CEQA, the concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*Sierra Club v. County of Napa* (2004) 121 Cal. App. 4th 1490, 1506-1509; CNPS, supra, 177 Cal. App. 4th at p. 1001; In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal. 4th 1143, 1165, 1166). Moreover, "'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors" (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417).

Response to WJH.1-38
The commenter states: "However, if several errors in the Alternatives analysis were corrected, the analysis would even more clearly show the Circulation Element Alternative is superior from an environmental perspective . . . . The Circulation Element Alternative, in contrast, would not require

an amendment to the existing Merced General Plan. As a result, the Circulation Element Alternative—on its face—would have fewer land use impacts than the proposed Project."

The comment is acknowledged.

Response to WJH.1-39
The commenter states: "The alternatives discussion also includes Table 5-1, which purports to discuss the differences between the Project and the Circulation Element Alternative. Table 5-1, however, includes levels of service for the Circulation Element Alternative that are erroneous and overstated. . .Table 5-1 should be corrected because it would more clearly demonstrate how much better congestion would be under the Circulation Element Alternative, as opposed to the Project."

Table 5-1 has been corrected in the Errata, and the accompanying text has been revised to reflect the correct values.

Response to WJH.1-40
The commenter states: "The Alternatives analysis also does not discuss usage of the site by pedestrians and bicyclists . . . Circulation Element Alternative is also superior from this standpoint because the Project would cut off pedestrians and cyclists seeking to cross Campus Parkway, and force those pedestrians and bicyclists to take circuitous and inconvenient pathways to reach their destinations on the other side of Campus Parkway . . . The Alternatives analysis should therefore be revised to state the Circulation Element Alternative would be superior to the Project from the standpoint of pedestrian and bicycle access."

The Circulation Alternative provides fewer bikeways than those provided in the Merced Gateway General Plan. The Master Plan also provides a transit center within project that will expand access to pedestrians and bicyclists.

Response to WJH.1-41
The commenter states: "Section 15126.2 of the CEQA Guidelines is located in Article IX, which governs the "Contents of Environmental Impact Reports. Section 15126.2(b) requires that, '[w]here there are impacts that cannot be alleviated without imposing an alternative design,' an EIR should describe 'their implications and the reasons why the project is being proposed, notwithstanding their effect . . .'"

The comment is noted.

Response to WJH.1-42
The commenter states: "The Project would result in significant and unavoidable impacts to traffic, pedestrian and bicycle access, air quality, and land use. The DEIR, however, does not contain any discussion of the implications of these significant and unavoidable effects, and also 'the reasons why the project is being proposed, notwithstanding their effect . . .'"

The impacts listed in the comment that are presented in the DEIR are discussed in Sections 3.11, Transportation; 3.3, Air Quality and Greenhouse Gases; and 3.8, Land Use.

Response to WJH.1-43
The commenter states: "The Project Is Inconsistent with the Merced General Plan and the Merced Climate Action Plan. State planning and zoning law requires that all land-use decisions of general law cities must be consistent with the City's General Plan. A 'project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.'

"First, the Project contemplates that Pluim Drive would be removed as a collector, and that the Pluim Drive/Campus Parkway intersection would not be constructed. This would interfere significantly with the use of the Project by bicyclists and pedestrians. Specifically, pedestrians who are using either the southern part of the Project or the Southern Parcel owned by my clients, and who are near the Pluim Drive alignment, would not be able to cross Campus Parkway conveniently. Rather, to reach the other side of Campus Parkway, pedestrians and cyclists would need to walk one-third mile west to the Mission Avenue/Coffee Street intersection, or one-half mile north to the Campus Parkway/Gerard Avenue intersection, and return the same distance to reach their destination on the other side of the street. This would result in inconvenient, unnecessary, and circuitous pathways pedestrian and cyclists would need to travel to their destinations."

Response: The required improvements to the Campus Parkway/Coffee Street intersection will include a traffic signal and crosswalks that are controlled by applicable devices (i.e., push buttons and pedestrian indications). With this improvement, the proposed project does not impede pedestrian access between the project's uses north and south of Campus Parkway; thus, the impact on pedestrian safety is not significant.

Response to WJH.1-44
The commenter states: "Further, because the distance pedestrians and bicyclists would need to travel to reach their destination would be nearly an entire mile, this planning would frustrate alternative methods of transportation, and encourage increased use of vehicles by patrons of the Project site (and the Neighboring Properties), thereby increasing congestion and circulation issues (see, e.g., Ex. 'A' at 8). This lack of access would directly undermine the following goals, policies, and implementation actions contained within the City's General Plan."

The commenter goes on to list many General Plan goals, such as "General Plan Goals, listed as part of L-3, which seeks to encourage 'Self-sustaining, Mixed-Use, Pedestrian-Friendly Neighborhoods.' General Plan Land Use Policy L-3.1 seeks to 'Create land use patterns that will encourage people to walk, bicycle, or use public transit for an increased number of daily trips.' . . . General Plan Implementing Action 3.1.a, which seeks to encourage pedestrian and transit-friendly designs at suitable locations. General Plan Implementing Action 3.2.a, which requires the City to encourage owners of vacant lands to build in a manner that promotes pedestrian-oriented developments."

Response: Pedestrian and bicycle access, as well as a bus stop transit center, are provided to General Plan Circulation Element standards by the Merced Gateway Master Plan, as analyzed in the DEIR.

Response to WJH.1-45
The commenter states: "The Project, however, is not just inconsistent with the General Plan due to the failure to adequately ensure convenient and safe access by pedestrians and bicyclists. Rather,

there are several other aspects of the Project that would violate the General Plan. As demonstrated below, nearly all of these inconsistencies result from the removal of Pluim Drive as a collector, and the elimination of the Pluim Drive/Campus Parkway intersection:"

Response: The Pluim Drive/Campus Parkway intersection is not included in the City's Circulation Element under the definition of "expressway" and the envisioned intersections for Campus Parkway. The Circulation Element and the Master Plan both provide for pedestrian and bicycle facilities along Campus Parkway. There is an existing Class I bicycle facility along the north side of Campus Parkway within the proposed Master Plan area.

Response to WJH.1-46
The commenter states: ". . . the Project would result in greater land use impacts than the existing General Plan. Also as explained above, the Project would undermine access for the Neighboring Properties, and frustrate their development."

Response: The proposed project's land use impacts are fully described in Section 3.8 of the DEIR. The proposed project does not deny access to the neighboring properties. "Frustrate their development" does not correspond to a CEQA standard.

Response to WJH.1-47
The commenter states: "The proposed Project violates Policy T-1.3, Implementing Action 1.3.j, by proposing driveways too close to the major intersection of Coffee Street and Campus Parkway, which is expected to suffer from severe congestion affecting even the freeway interchange."

Response: Caltrans and the City of Merced collaboratively evaluated the issue of the issue of driveway spacing and determined that the proposed driveway locations are adequate with the addition of a second right-turn lane at the eastbound center driveway.

Response to WJH.1-48
The commenter states: "In addition, as explained above, the Project is inconsistent with the Merced Climate Action Plan."

Response: This comment was made previously by the commenter and is answered at comment WJH.1-34, above.

Response to WJH.1-49
The commenter states: "Because the Project is inconsistent with several goals, policies, and implementation actions of the Merced General Plan and the Merced Climate Action Plan, the Project is vertically inconsistent with plan-level documents, and the City cannot approve the Project without violating State Planning and Zoning Law."

Response: This is not a comment regarding the adequacy of the EIR. The comment is noted.

Response to WJH.1-50
The commenter states: "The Notice of Availability Is Legally Deficient Because it Attempts to Curtail Public Input on the Environmental Impacts of the Project."

The commenter states: "Section 21177(a) of the Public Resources Code provides that a commenting party may raise 'the alleged grounds for noncompliance with [CEQA] . . . during the public comment period' on the environmental document' 'or prior to the close of the public hearing on the project . . . (Pub. Resources Code, § 21177, subd. (a)).'"

Response: The Notice of Availability was not intended to curtail public comment, but simply cited the 45-day review period for the EIR as provided under CEQA. The case of Bakersfield Citizens for Local Control v. City of Bakersfield cited by the commenter recognizes that: ". . . environmental review is not supposed to be segregated from project approval. [P]ublic participation is an essential part of the CEQA process. Although public hearings are encouraged, they are not explicitly required by CEQA at any stage of the environmental review process (emphasis added). Public comments may be restricted to written communications. Yet, [p]ublic hearings on draft EIRs are sometimes required by agency statute, regulation, rule, ordinance, or the agency's written procedures for implementation of CEQA. If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing. Since project approval and certification of the EIR generally occur during the same hearing, the two events are sometimes treated as interchangeable" [internal citations omitted].

Response to WJH-51
The commenter states: "Section 21177(a) of the Public Resources Code provides that a commenting party may raise 'the alleged grounds for noncompliance with [CEQA] . . . during the public comment period' on the environmental document" '' "'or prior to the close of the public hearing on the project . . . (Pub. Resources Code, § 21177, subd. (a).).'"

Response: The City did not make an inaccurate statement in the Notice of Availability. The commenter is inferring that the public could draw a conclusion from the statement of a timeline that is statutory, as discussed in comment WJH.1-50, above.

Response to WJH.1-52
The commenter restates the findings of the DEIR re: the Circulation Element Alternative.

The commenter then states: "The approval of the Project would also result in an unconstitutional taking . . ."

The comment does not address the environmental analysis, and is so noted.

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CALIFORNIA GOLD
DEVELOPMENT CORP.

March 1, 2017

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

Re: Merced Gateway Master Plan

Dear Kim:

The project applicant requests that the project description be amended to Match Alternative 2 of the Circulation Element Alternative. After further discussion between the project applicant and the adjacent property owner, it was determined that the Pluim Drive extension would provide greater access for both property owners and advance and enhance all of the project objectives. We intend to commence construction of the Pluim Drive Extension no later than the issuance of the first building permit for phase 5 of the project. One half of the roadway will be located on the Merced Gateway, LLC property (adjacent land owner) and the other half on Gateway Park Development Partners, LLC property. Attached hereto is a revised site plan that includes the construction of the Pluim Drive extension. Please advise at your earliest convenience if additional information is needed to amend the project description. 1

Ronald M. Woodall, CEO
California Gold Development Corporation

Eric R Pluim

Eric Pluim, Managing General Partner
Pluim Family Partnership, LLC

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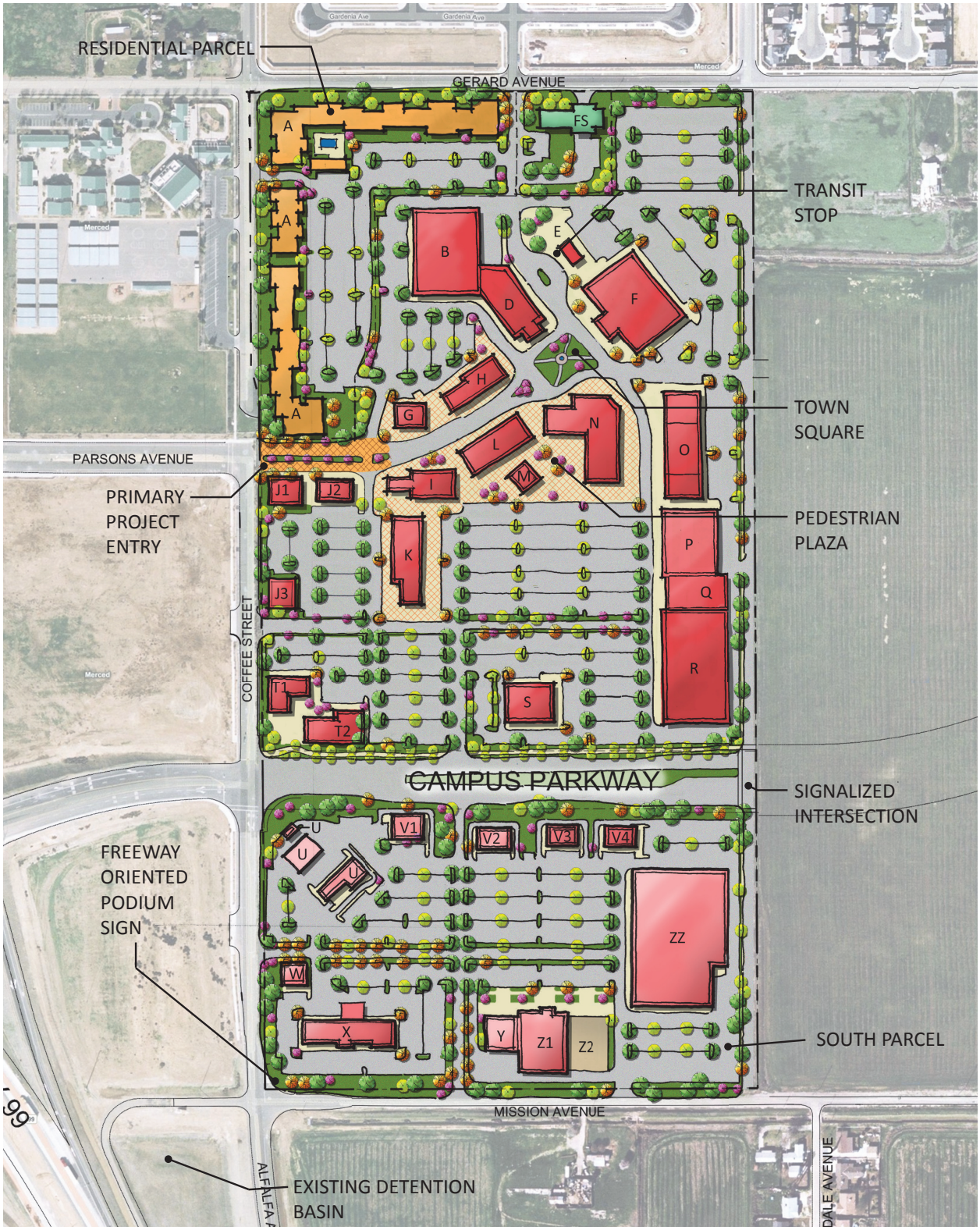

Merced Gateway Site Plan

NTS

March 8, 2017

rrm design group

California Gold Development Corporation (CGDC)-1

Response to CGDC-1

The commenter states, "The project applicant requests that the project description be amended to Match alternative 2 of the Circulation Element Alternative. After further discussion between the project applicant and the adjacent property owner, it was determined that the Pluim Drive extension would provide greater access for both property owners and advance and enhance all of the project objectives. We intend to commence construction of the Pluim Drive Extension no later than the issuance of the first building permit for phase 5 of the project."

Staff is recommending the approval of the Circulation Element Alternative with the additional mitigation measures required for the driveways off Campus Parkway as determined in the analysis of the proposed project. The mitigations are provided in Table 2-1 and in Exhibits 1 and 2.

Table 2-1: Mitigations for Cumulative Plus Project with Modified Circulation Element Alternative

#	Intersection	Improvement
		Modified General Plan Circulation Element Alternative
1	Childs Avenue/Parsons Avenue	Reconfigure EB through lane to one shared thru + left turn
3	Coffee Street/Gerard Avenue	Enhance Pedestrian Crossing
4	Gerard Avenue/Pluim Drive	Add EB and WB left-turn lanes
9	Coffee Street/Parsons Avenue	Traffic Signal
10	Mission Avenue/SB SR-99 ramps	Add 2nd SB left-turn lane and 3rd EB thru lane.
11	Mission Avenue/NB SR-99 ramps	Add 2nd NB right-turn lane Reconfigure #2 WB through lane to one shared "through + right turn", add 3rd EB through lane
12	Campus Parkway/Coffee Street	Add 2nd WB/EB left-turn lane Add 3rd WB and EB through lanes, add EB right-turn lane
14	Gerard Avenue/Central Access	Add EB and WB left-turn lanes
16	Campus Parkway/Midblock Access	Add second EB right-turn lane
17	Campus Parkway/Pluim Drive	Traffic Signal. Create dual left-turn lanes and separate right-turn lanes on all approaches
18	Mission Avenue/Pluim Drive	All-Way Stop
Source: K.D. Anderson and Associates, May 18, 2017.		

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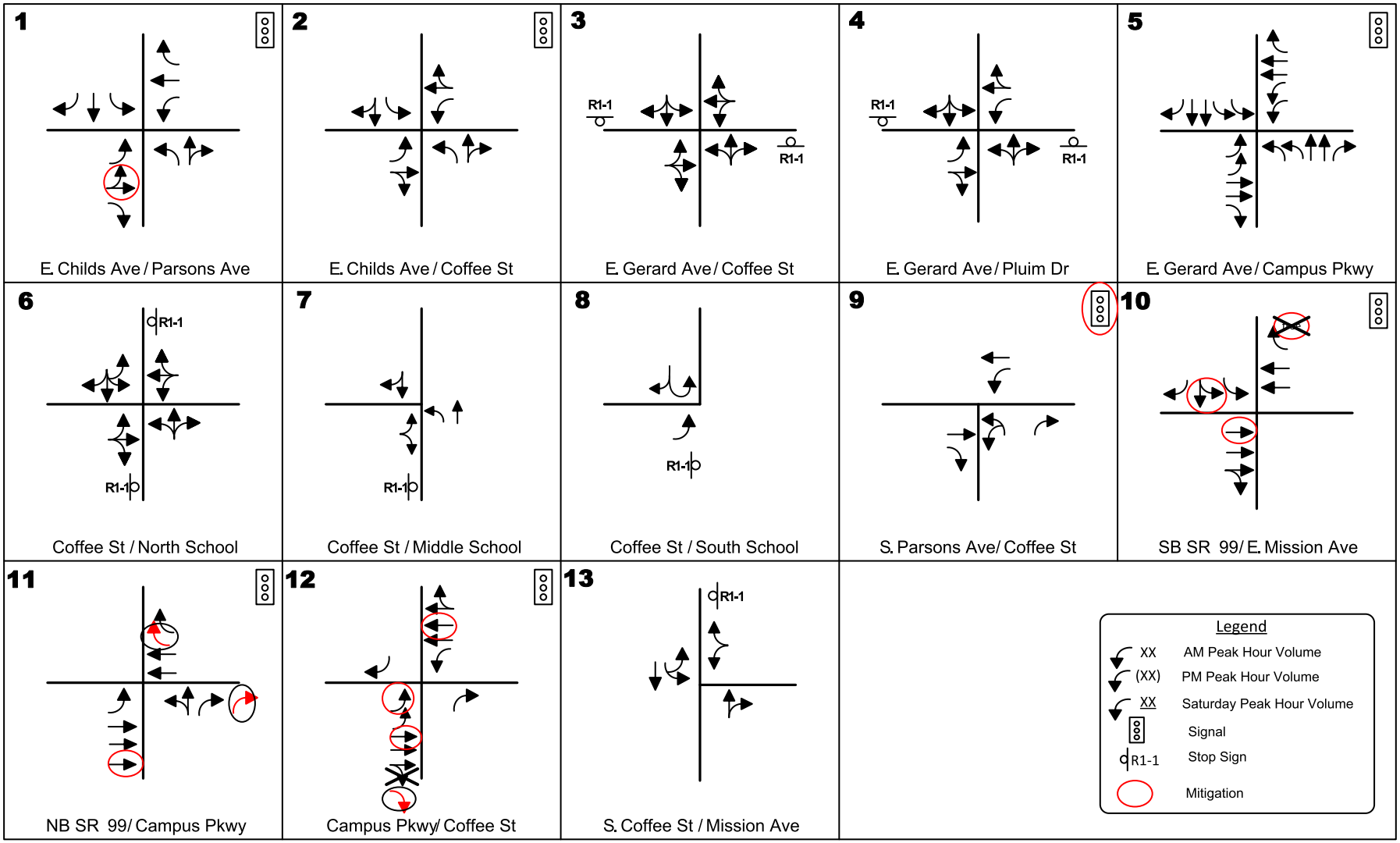

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 1
Mitigations Required for General Plan
Circulation Element in Response to Comment CGDC-1

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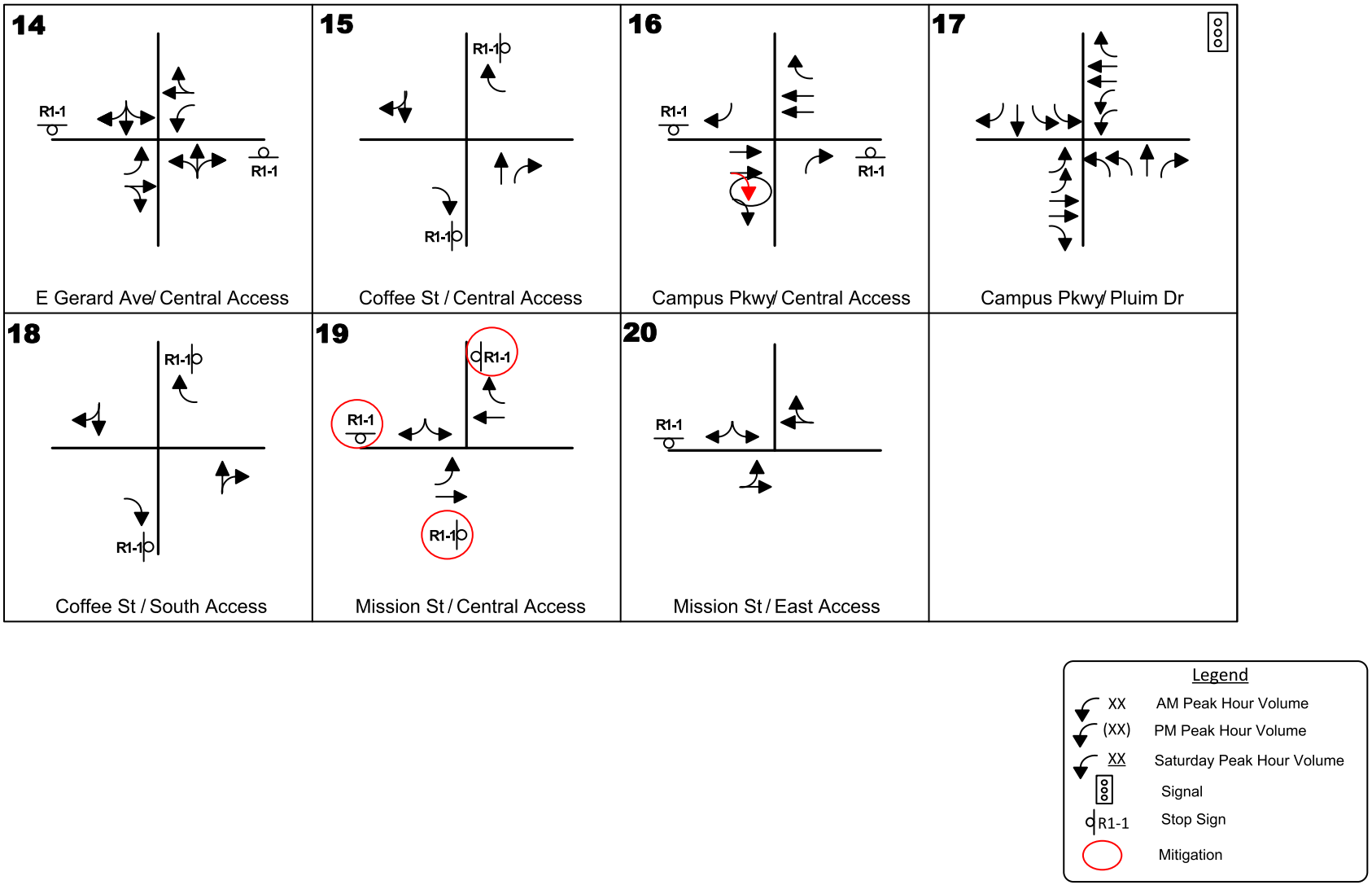

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 2
Mitigations Required for General Plan
Circulation Element in Response to Comment CGDC-1

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April 24, 2017

VIA EMAIL & UNITED STATES MAIL

Bill King, Principal Planner
CITY OF MERCED, PLANNING DIVISION
678 W. 18th Street
Merced, CA 95340

Re: Merced Gateway Master Plan Draft EIR
Resolution of August 29, 2016, Comments
Submitted by Merced Gateway, LLC

Dear Mr. King:

I am writing in reference to the August 29, 2016, comment letter I submitted on behalf of Merced Gateway, LLC concerning the proposed Merced Gateway Master Plan (the "Project"). I understand the applicant has recently submitted a revised site plan for the Project that conforms to the Circulation Element Alternative analyzed in the Draft Environmental Impact Report (the "DEIR") for the Project. I am writing to confirm that Merced Gateway, LLC has reached resolution with the applicant regarding the concerns stated in its August 29, 2016, comments on the DEIR. Specifically, so long as the City approves the Circulation Element Alternative, I am writing to confirm that (i) the concerns expressed in Merced Gateway, LLC's August 29, 2016, comment letter on the Project will be adequately addressed through such approval, and (ii) Merced Gateway, LLC supports the proposed Project, as modified. 1

Of course, if the City does not approve the Circulation Element Alternative or a Project that substantially conforms to the Circulation Element Alternative, Merced Gateway, LLC reserves all rights against the City and the applicant, including the right to file a legal proceeding challenging such action.

///

Should you have any questions regarding this letter or any other issue, please do not hesitate to contact me. 1 CONT

Very truly yours,

John P. Kinsey

cc: Mike Donohoe, Esq.
Jolie Houston, Esq.
Timothy Jones, Esq.

Wanger Jones Helsley PC (WJH.2)

Response to WJH.2-1

The commenter states ". . . that Merced Gateway, LLC has reached resolution with the applicant regarding the concerns stated in its August 29, 2016 comments on the EIR (WJH.1). Specifically, so long as the City approves the Circulation Element Alternative, I am writing to confirm that (i) the concerns expressed in Merced Gateway, LLC's August 29, 2016 comment letter (WJH.2) on the Project will be adequately addressed through such approval, and (ii) Merced Gateway, LLC supports the proposed Project, as modified."

Staff is recommending approval of the Circulation Element Alternative as now proposed by the project applicant.

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SECTION 3: ERRATA

The following are revisions to the Draft EIR for the Merced Gateway Master Plan. These revisions are minor modifications and clarifications to the document, and do not change the significance of any of the environmental issue conclusions within the Draft EIR. The revisions are listed by page number. All additions to the text are underlined (underlined) and all deletions from the text are stricken (~~stricken~~).

3.1 - Changes in Response to Specific Comments

Section 3.11—Transportation

Page 3.11-71

In response to comment CALTRANS-6, CALTRANS-7, WJH.1-10, WJH.1-11, and WJH.1-39, Mitigation Measure TRANS-1e is revised as follows:

MM TRANS-1e In accordance with the transportation improvement phasing plan identified in MM TRANS-1g, the project applicant shall improve the intersection of Mission Avenue/Northbound SR-99 Ramps (11). The intersection shall be improved by adding a third eastbound through lane and ~~converting the northbound right turn lane and westbound right turn lane to "free" right turn lanes~~ reconfiguring the westbound lanes to provide a combined through lane and second right-turn lane, and add a second northbound right-turn lane. In addition, a second eastbound right turn lane will be added at the project's mid-block driveway on Campus Parkway under the proposed project, and the eastbound share through/right turn at Coffee and Campus Parkway will be split into a separate through lane and separate right turn lane **(required for both the proposed project and the Circulation Element Alternative).**

Pages 3.11-37 through 3.11-133

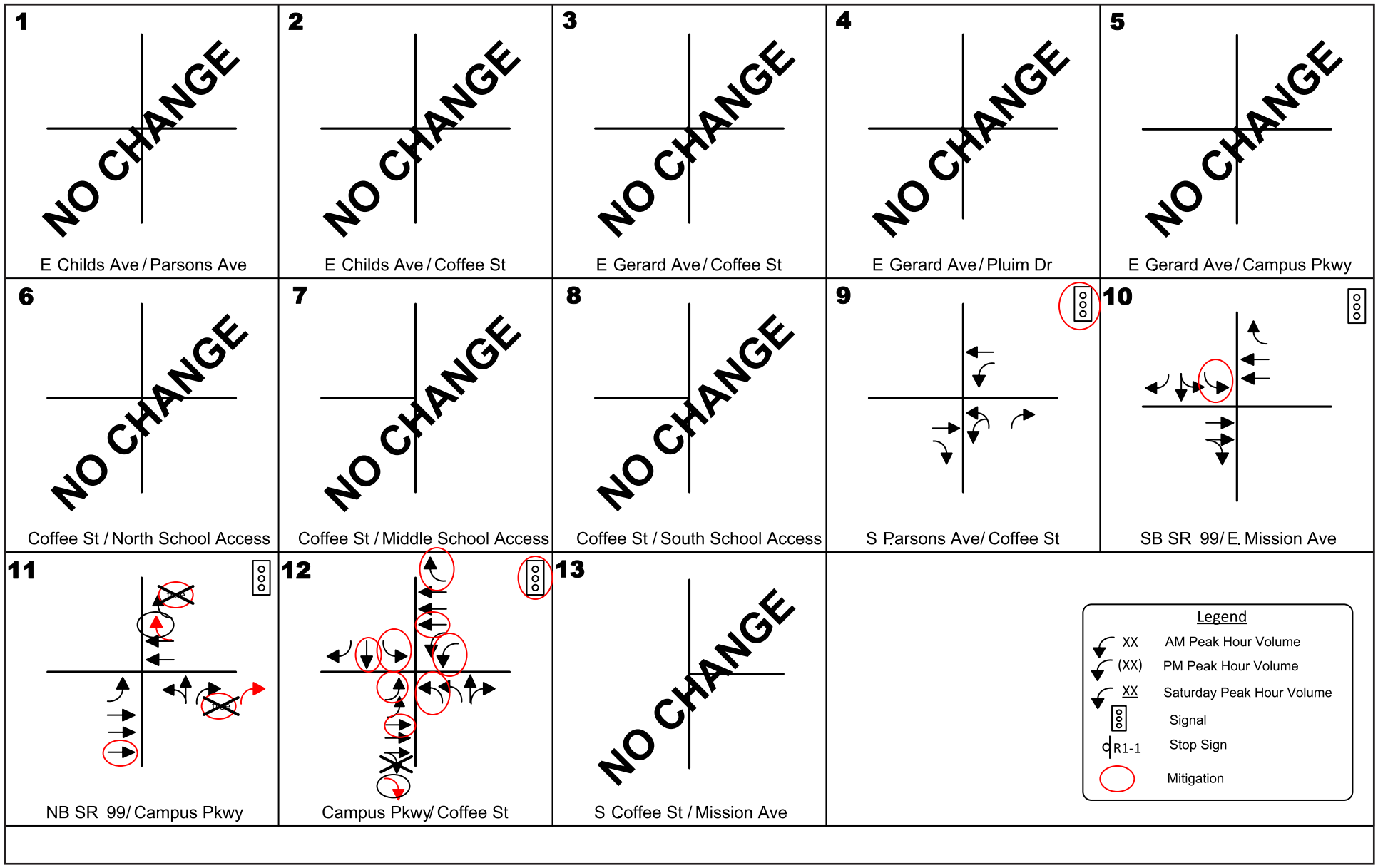
Exhibits 3.11-11, 3.11-12, 3.11-13, 3.11-18, 3.11-19, 3.11-24, 3.11-25, 3.11-26, and 3.11-27, and Tables 3.11-16, 3.11-28, 3.11-37, 3.11-38, and 3.11-39 from the DEIR (corresponding to Figures 22, 23, 24, 26, 27, 28, and 29 and revised Tables 37, 41, and 43 from the Traffic Study in Appendix I of the DEIR) are also changed to reflect the revised mitigation measures and the correction to the Mitigated Cumulative Year 2035 condition for Mission Avenue/State Route 99 northbound and southbound ramps, from LOS "D" to "B" in the AM Peak Hour, and the Mission Avenue/State Route 99 southbound ramps from LOS "C" to "B" in the PM peak hour. The revised pages of the EIR follow.

Page 3.11-99

In response to Comment CALTRANS-11, the text of Mitigation Measure MM TRANS-2 is revised as follows:

MM TRANS-2 In accordance with the transportation improvement phasing plan identified in MM TRANS-1g, the project applicant shall improve the intersection of Mission

Avenue/Southbound SR-99 Ramps (10) with a third eastbound through lane ~~and converting the westbound right turn lane to a "free" right turn,~~ and the segment of Mission Avenue between the ramps and Coffee shall be widened to 6 lanes total. The applicant shall be responsible for its proportional cost of the improvement.



Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-11
Mitigations Existing Plus Project / Access as Proposed Lane Configurations

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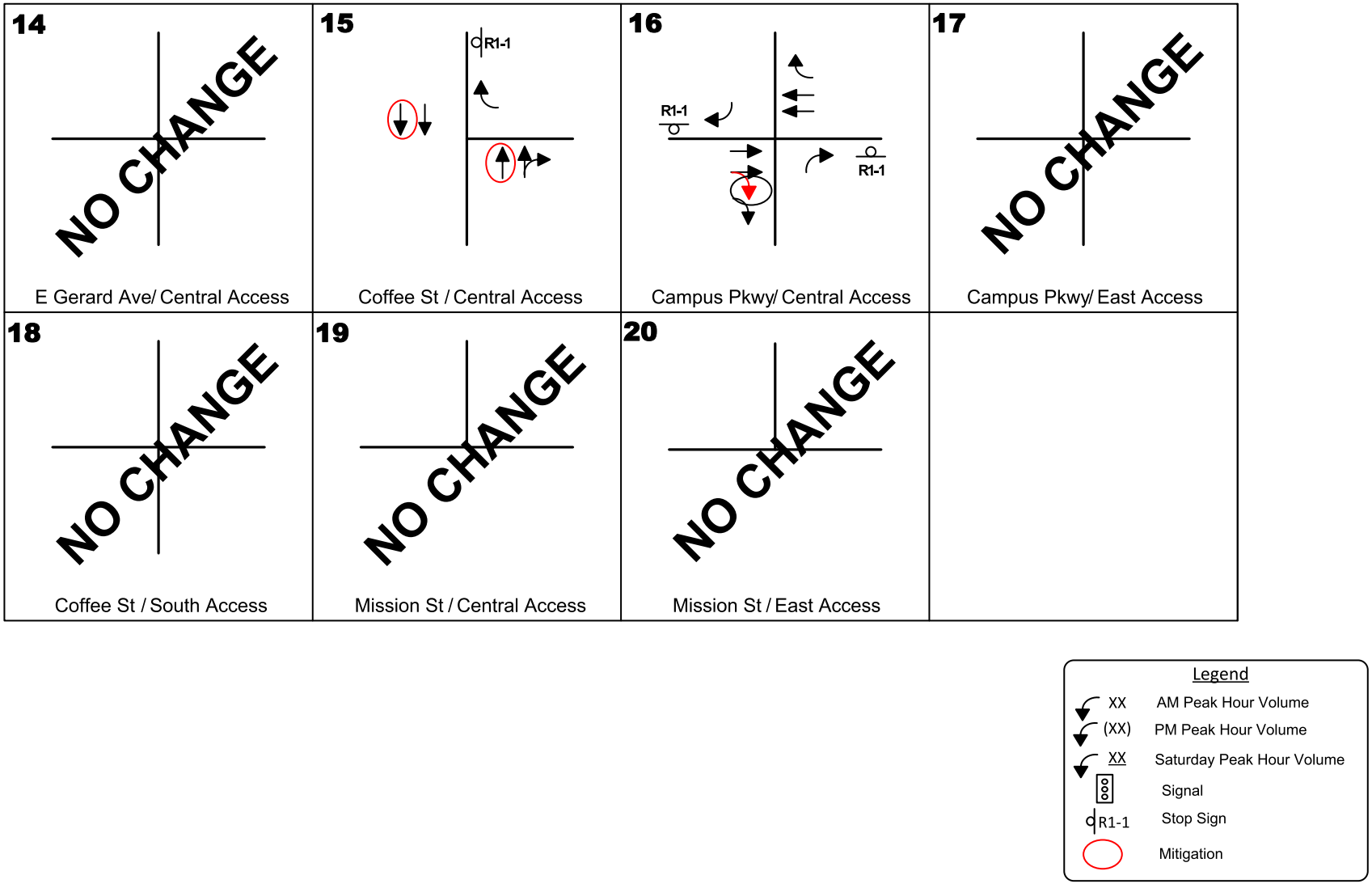

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-12
Mitigations Existing Plus Project / Access
as Proposed Traffic Volumes Lane Configurations

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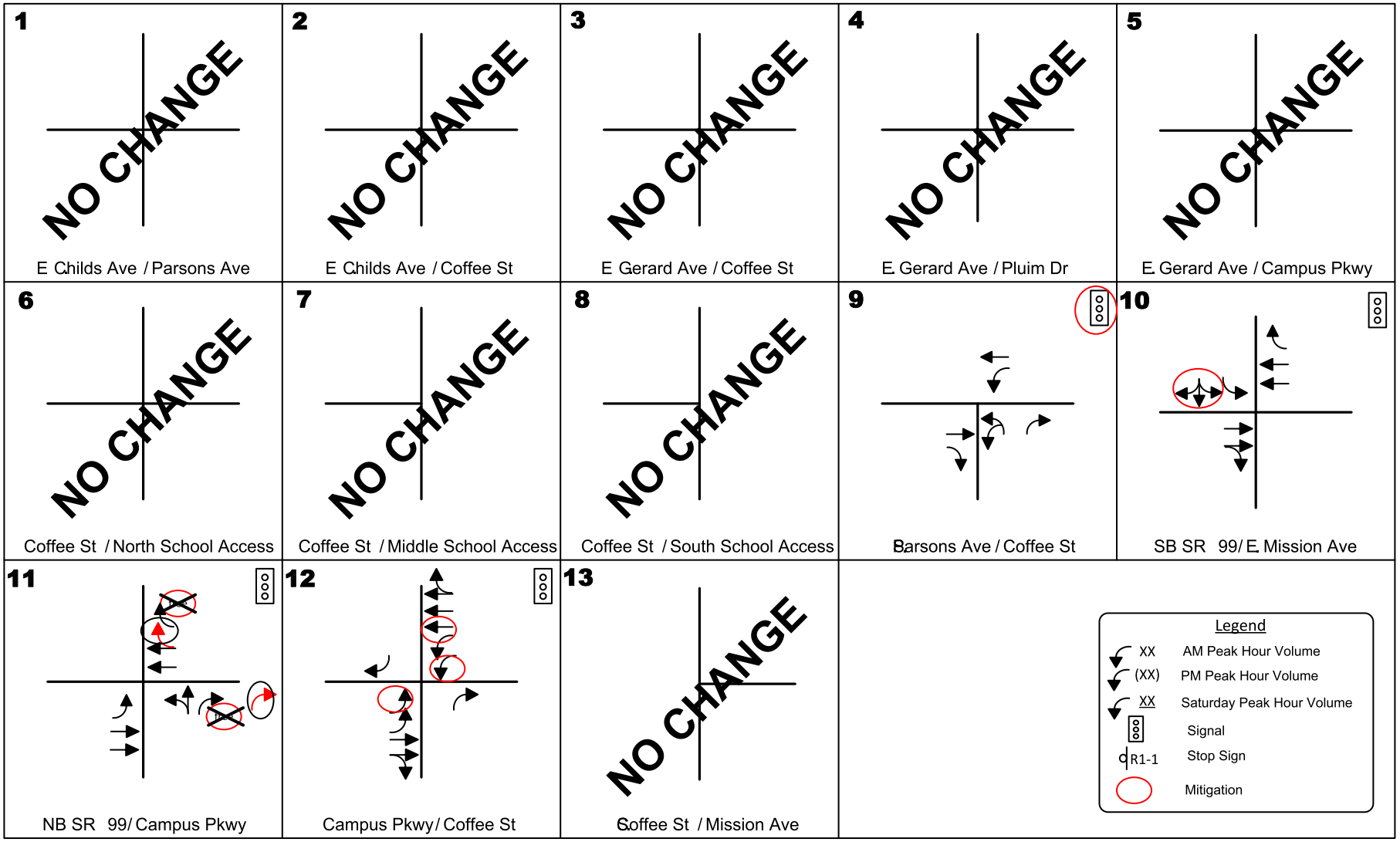

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-13
Mitigations Existing Plus Project with General Plan Streets Lane Configurations

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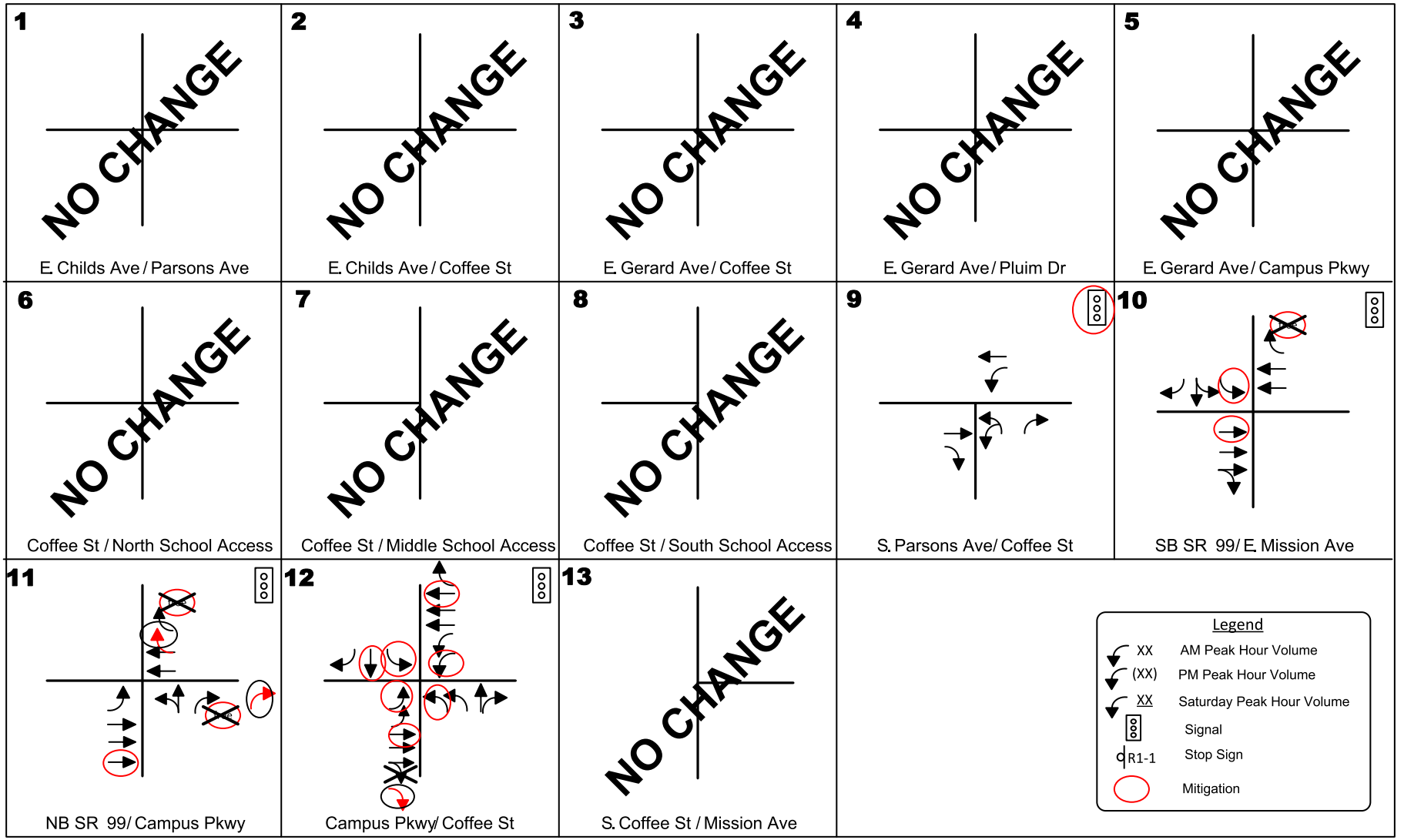

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-18
Mitigations Existing Plus Approved Projects (EPAP)
Plus Project / Access as Proposed Lane Configurations

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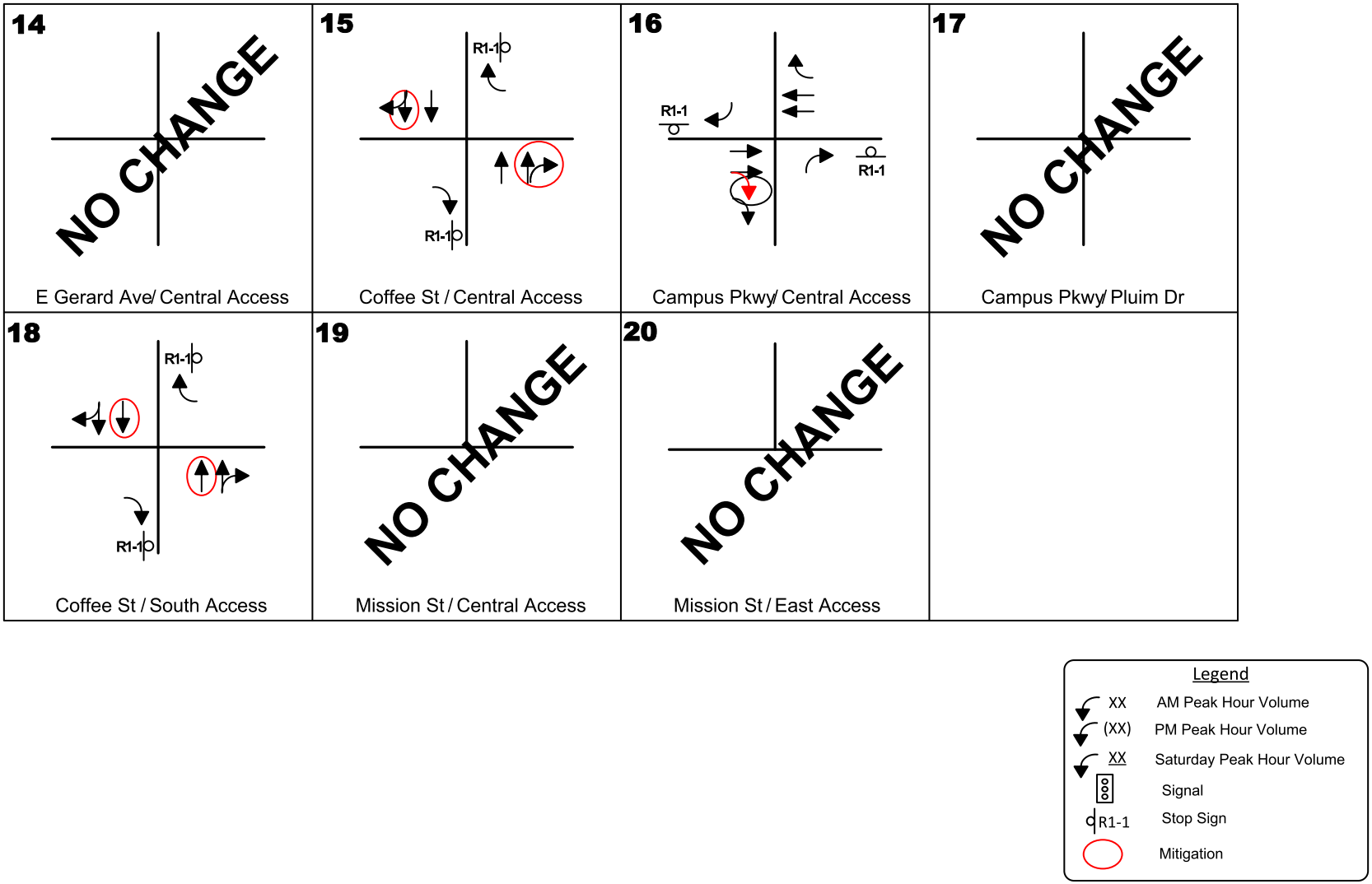

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-19
Mitigations Existing Plus Approved Projects (EPAP)
Plus Project / Access as Proposed Lane Configurations

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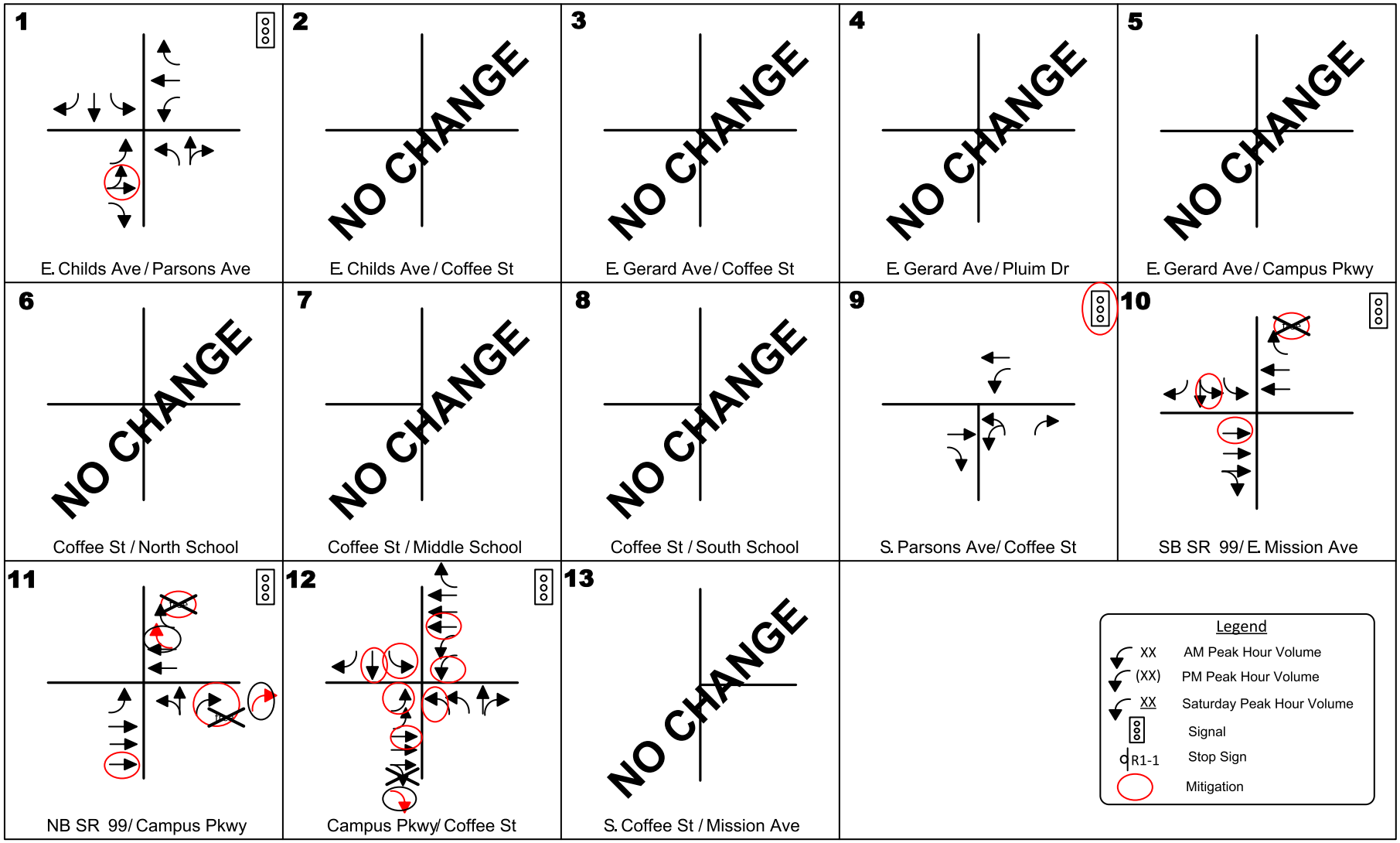

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-24

Mitigations Cumulative Plus Project / Access as Proposed Lane Configurations

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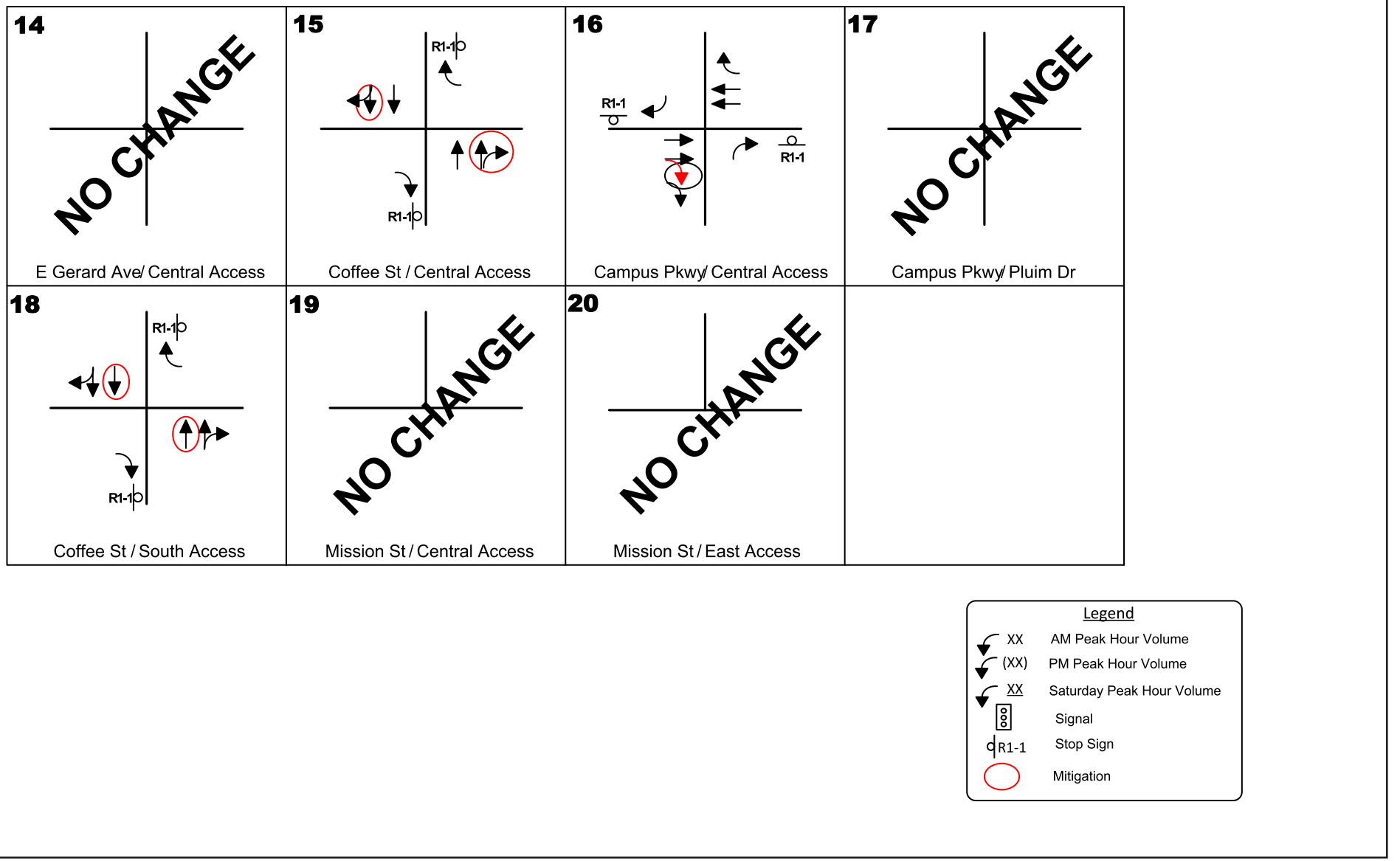

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-25
Mitigations Cumulative Plus Project / Access as Proposed Lane Configurations

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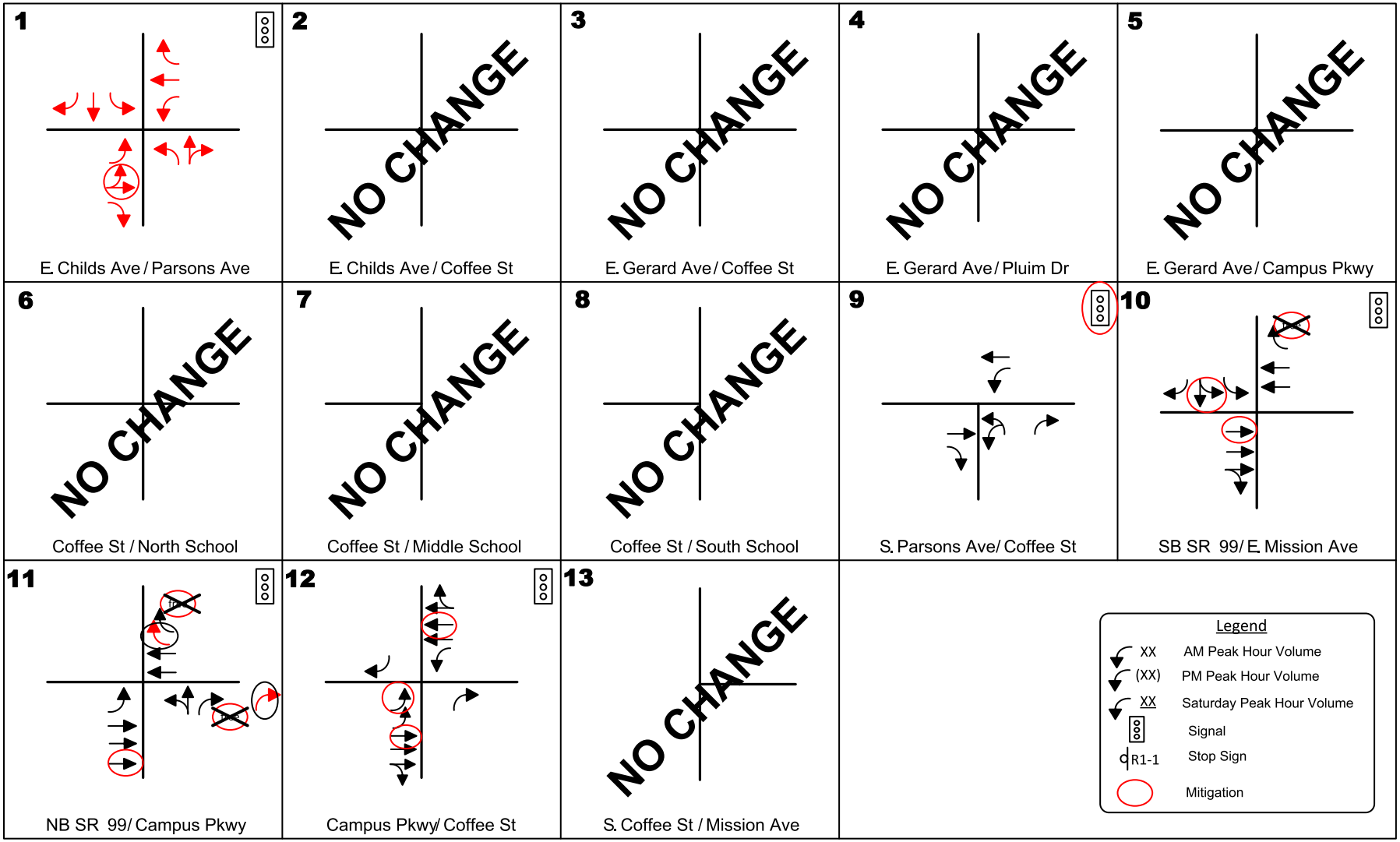

Source: KD Anderson & Associates, Inc. 2017

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Exhibit 3.11-26

Mitigations Cumulative Plus Project with General Plan Streets Lane Configurations

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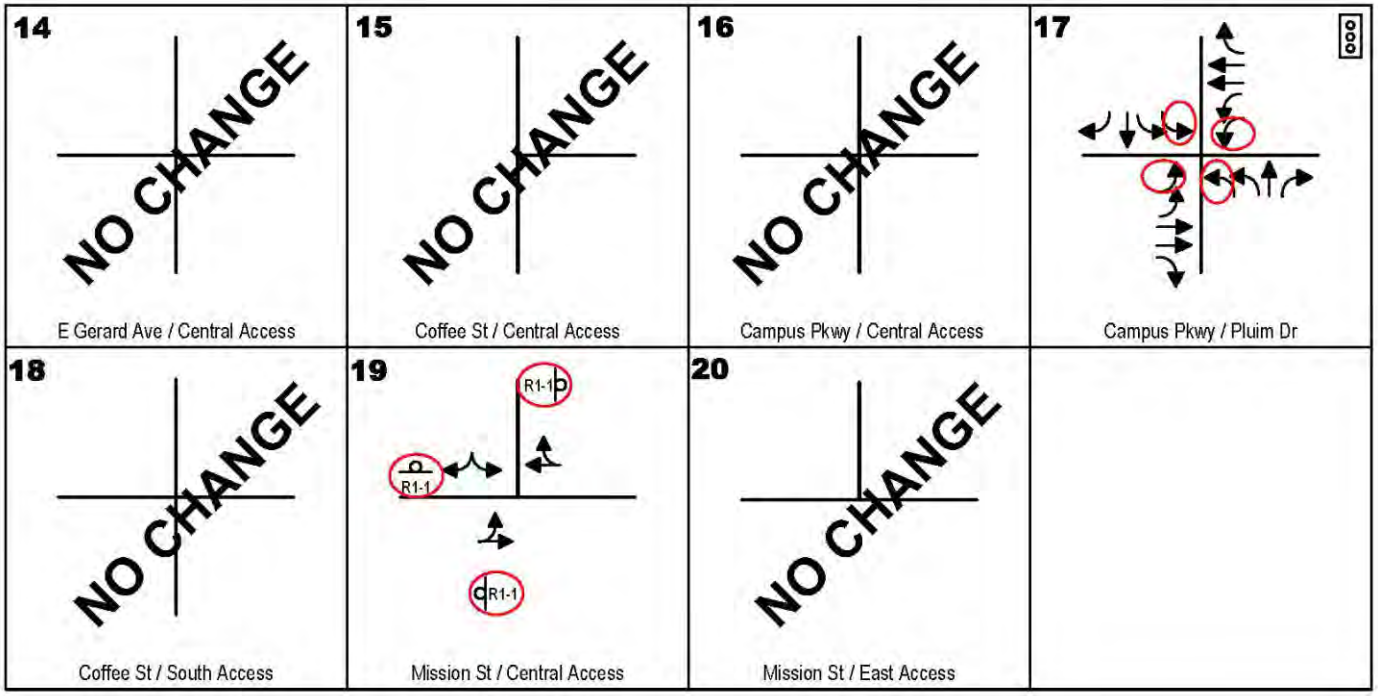

Source: KD Anderson & Associates, Inc. 2016

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Exhibit 3.11-27
Mitigations Cumulative Plus Project with General Plan Streets Lane Configurations

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Table 3.11-16: Mitigations for Existing Plus Project Conditions

#	Intersection	Improvements	
		Access As Proposed	General Plan Circulation Alternative
1	Childs Avenue/Parsons Avenue	None	**None**
2	Childs Avenue/Coffee Street	None	None
3	Gerard Avenue/Coffee Street	Enhance Pedestrian Crossing	Enhanced Pedestrian Crossing
4	Gerard Avenue/Pluim Drive	None	None
5	Gerard Avenue/Campus Parkway	None	None
6	Coffee Street/North School Access	None	None
7	Coffee Street/Central School Access	None	None
8	Coffee Street/South School Access	None	None
9	Coffee Street/Parsons Avenue	Traffic signal based on warrants	None
10	Mission Avenue/SB SR-99 ramps	Add 2nd SB left turn lane	Reconfigure SB right turn lane to allow left turns
11	Mission Avenue/NB SR-99 ramps	Add 3rd EB thru lane, reconfigure westbound lanes to provide a combined thru lane and second right-turn lane, and add second northbound right-turn lane. ~~and make NB right turn lane and WB right turn lane "free"~~	~~Make NB right turn lane and WB right turn lane "free"~~Reconfigure westbound lanes to provide combined thru lane and second right-turn lane, and add second northbound right-turn lane
12	Campus Pkwy/Coffee Street	Traffic signal and add third EB Thru lane, 2nd EB and WB left turn lanes; 3rd WB thru lane and WB right turn lane; 2nd NB left turn lane; separate SB left turn and thru lanes, with overlap phase on SB right turn. Widen Coffee Street north and south of Campus Pkwy to provide two receiving lanes for left turns from Campus Pkwy.	Add Traffic Signal, 2nd EB left turn lane; 3rd WB thru lane. Widen Coffee Street north of Campus Parkway to provide two receiving lanes for left turns.
13	Coffee Street/E. Mission Avenue	None	None
14	Gerard Avenue/Project Access	None	None
15	Coffee Street/Central Access	None	None

Table 3.11-16 (cont.): Mitigations for Existing Plus Project Conditions

#	Intersection	Improvements	
		Access As Proposed	General Plan Circulation Alternative
16	Campus Parkway/Central Access	~~None~~Add second eastbound right-turn lane	—
17	Campus Parkway/Pluim Drive	None	Add traffic signal and 2nd EB left turn lane; add second NB left turn lane;
18	Coffee Street/South Access	None	None
19	Mission Avenue/Central Access	None	All-Way Stop
20	Mission Avenue/Pluim Drive	None	None
—	Coffee Road from Parsons Avenue to Campus Parkway	4 lane section	None

Table 3.11-28: Mitigations for EPAP Plus Project Conditions

#	Intersection	Improvements	
		Existing Plus Approved Projects	EPAP Plus Merced Gateway
1	Childs Avenue/Parsons Avenue	None	None
2	Childs Avenue/Coffee Street	None	None
3	Gerard Avenue/Coffee Street	None	None
4	Gerard Avenue/Pluim Drive	None	None
5	Gerard Avenue/Campus Parkway	None	None
6	Coffee Street/North School Access	None	None
7	Coffee Street/Central School Access	None	None
8	Coffee Street/South School Access	None	None

Table 3.11-28 (cont.): Mitigations for EPAP Plus Project Conditions

#	Intersection	Improvements	
		Existing Plus Approved Projects	EPAP Plus Merced Gateway
9	Coffee Street/Parsons Avenue	None	Traffic signal
10	Mission Avenue/SB SR-99 ramps	None	Add 2nd SB left turn lane, 3rd EB thru lane and "free" WB right turn lane
11	Mission Avenue/NB SR-99 ramps	None	Add 3rd EB thru lane ~~and make NB right turn lane and WB right turn lane "free"~~ and reconfigure westbound lanes to provide combined thru lane and second right-turn lane, and add second northbound right-turn lane
12	Campus Parkway/Coffee Street	Signal based on warrants	Traffic signal and add third EB Thru lane, 2nd EB left turn lane; 3rd WB thru lane and WB right turn lane; 2nd NB left turn lane; separate SB left turn and thru lanes, with a separate SB right turn. Widen Coffee Street north and south of the intersection to provide two receiving lanes for left turns
13	Coffee Street/E. Mission Avenue	None	Accommodate SB to NB U-turns
14	Gerard Avenue/Project Access	None	None
15	Coffee Street/Central Access	None	None
16	Campus Parkway/Central Access	None	~~None~~Add second eastbound right-turn lane
17	Campus Parkway/Pluim Drive	None	None
18	Coffee Street/South Access	None	None
19	Mission Avenue/Central Access	None	None
20	Mission Avenue/Pluim Drive	None	None
—	Campus Parkway from SR 99 to Coffee	None	Six lane section
—	Coffee Street from Parsons Avenue to Campus Parkway	None	Four lane section
—	Coffee Street: Campus Parkway to Mission Avenue	None	Four lane section

Table 3.11-37: Mitigations for Cumulative Plus Project Conditions

#	Intersection	Improvements	
		Cumulative Plus Merced Gateway Access as Proposed	Cumulative Plus Merced Gateway General Plan Access
1	Childs Avenue/Parsons Avenue	Reconfigure EB through lane to thru plus left turn	Reconfigure EB through lane to thru plus left turn
2	Childs Avenue/Coffee Street	None	None
3	Gerard Avenue/Coffee Street	None	None
4	Gerard Avenue/Pluim Drive	None	None
5	Gerard Avenue/Campus Parkway	None	None
6	Coffee Street/North School Access	None	None
7	Coffee Street/Central School Access	None	None
8	Coffee Street/South School Access	None	None
9	Coffee Street/Parsons Avenue	Traffic signal.	Traffic Signal
10	Mission Avenue/SB SR-99 ramps	Add 2nd SB left turn lane, 3rd EB thru lane and "free" WB right turn lane	Add 2nd SB left turn lane and 3rd EB thru lane and "free" WB right turn lane
11	Mission Avenue/NB SR-99 ramps	Add 3rd EB thru lane ~~and make NB right turn lane and WB right turn lane "free"~~ and reconfigure westbound lanes to provide combined thru lane and second right-turn lane, and add second northbound right-turn lane	Add 3rd EB thru lane ~~and make NB right turn lane and WB right turn lane "free"~~ and reconfigure westbound lanes to provide combined thru lane and second right-turn lane, and add second northbound right-turn lane
12	Campus Parkway/Coffee Street	Traffic signal and add third EB Thru lane, 2nd EB left turn lane; 3rd WB thru lane and WB right turn lane; 2nd NB left turn lane; separate SB left turn and thru lanes, with a separate SB right turn. Widen Coffee Street to receive dual left turn lanes	Traffic signal and add third EB Thru lane, 2nd EB left turn lane; 3rd WB thru lane, with overlap phase on SB right turn. Widen Coffee Street to receive dual left turn lanes.
13	Coffee Street/E. Mission Avenue	Accommodate SB to NB U-turns	None
14	Gerard Avenue/Project Access	None	None
15	Coffee Street/Central Access	None	None

Table 3.11-37 (cont.): Mitigations for Cumulative Plus Project Conditions

#	Intersection	Improvements	
		Cumulative Plus Merced Gateway Access as Proposed	Cumulative Plus Merced Gateway General Plan Access
16	Campus Parkway/Central Access	~~None~~Add second eastbound right-turn lane	None
17	Campus Parkway/Pluim Drive	None	Add 2nd EB left turn lane, 2nd WB left turn lane, 2nd NB left turn lane and 2nd SB left turn lane
18	Coffee Street/South Access	None	None
19	Mission Avenue/Central Access	None	None
20	Mission Avenue/Pluim Drive	None	None
—	Coffee Street from Parsons Avenue to Campus Parkway	Four lane section	None
—	Mission Avenue (Campus Parkway) between SR 99 ramps and Coffee Street.	Six lane section	Six lane section
—	Coffee Street from Campus Parkway to Mission Avenue	Four lane section	—
—	Parsons Avenue from Coffee Street to the project's eastern boundary	Provide adequate truck turning radii and roadway structural section	None

Table 3.11-38: Mitigated Cumulative (Year 2035) Plus Project Conditions—AM Peak Hour

#	Intersection	Control	AM Peak Hour			
			Cumulative Plus Project Proposed Circulation		Cumulative Plus Project GP Circulation	
			Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS
1	Childs Avenue/Parsons Avenue	Signal	42	D	43	D
2	Childs Avenue/Coffee Street	Signal	15	C	17	B
3	Gerard Avenue/Coffee Street	AWS	18	C	14	B
4	Gerard Avenue/Pluim Drive SB approach NB approach EB left turn WB left turn	NB/SB Stop	 8 7 2 4	 A A A A	 8 8 2 3	 A A A A
5	Gerard Avenue/Campus Parkway	Signal	23	C	21	C
6	Coffee Street/North School Access EB approach WB approach NB left turn SB left turn	EB/WB Stop	 0 4 0 3	 — A — A	 0 4 0 3	 — A — A
7	Coffee Street/Central School Access EB approach NB left turn	EB Stop	 5 0	 A —	 5 0	 A —
8	Coffee Street/South School Access EB approach	EB Stop	5	A	5	A
9	Coffee Street/Parsons Avenue	AWS	—	—	8	A
		Signal	8	A	—	—
10	Mission Avenue/SB SR-99 ramps	Signal	53	D	18	~~D~~ B
11	Mission Avenue/NB SR-99 ramps	Signal	49	D	18	~~D~~ B
12	Campus Parkway/Coffee Street	Signal	**60**	**E**	14	B
13	Coffee Street/E. Mission Avenue WB approach SB left turn	WB Stop	 4 3	 A A	 6 3	 A A
14	Gerard Avenue/Project Access NB approach SB approach EB left turn WB left turn	NB/SB Stop	 6 8 6 3	 A A A A	 7 8 5 2	 A A A A
15	Coffee Street/Central Access EB approach WB approach	EB/WB Stop	 5 5	 A A	 3 4	 A A

Table 3.11-38 (cont.): Mitigated Cumulative (Year 2035) Plus Project Conditions—AM Peak Hour

#	Intersection	Control	AM Peak Hour			
			Cumulative Plus Project Proposed Circulation		Cumulative Plus Project GP Circulation	
			Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS
16	Campus Parkway/Central Access NB approach SB approach	NB/SB Stop	 2 9	 A A	—	
17	Campus Parkway/Pluim Drive NB approach SB approach	NB/SB Stop	2 5	A A	—	
		Signal	—		36	D
18	Coffee Street/South Access EB approach WB approach	EB/WB Stop	 5 9	 A A	 5 2	 A A
19	Mission Avenue/Central Access SB approach EB left turn	SB Stop	 1 3	 A A	 1 3	 A A
20	Mission Avenue/Pluim Drive SB approach EB left turn	SB Stop	 3 2	 A A	 1 3	 A A

Table 3.11-39: Mitigated Cumulative Year 2035 Plus Project Conditions—PM Peak Hour

#	Intersection	Control	PM Peak Hour			
			Cumulative Plus Project		Cumulative Plus Project GP Circulation	
			Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS
1	Childs Avenue/Parsons Avenue	Signal	38	D	45	D
2	Childs Avenue/Coffee Street	Signal	10	A	10	A
3	Gerard Avenue/Coffee Street	AWS	—	—	10	A
4	Gerard Avenue/Pluim Drive NB approach SB approach EB left turn WB left turn	NB/SB Stop	 7 7 2 3	 A A A A	 7 7 2 2	 A A A A
5	Gerard Avenue/Campus Parkway	Signal	27	C	26	C

Table 3.11-39 (cont.): Mitigated Cumulative Year 2035 Plus Project Conditions—PM Peak Hour

#	Intersection	Control	PM Peak Hour			
			Cumulative Plus Project		Cumulative Plus Project GP Circulation	
			Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS
6	Coffee Street/North School Access EB approach WB approach NB left turn SB left turn	EB/SB Stop	 4 2 0 2	 A A — A	 4 1 0 2	 A A — A
7	Coffee Street/Central School Access EB approach NB left turn	EB Stop	 4 0	 A —	 4 0	 A —
8	Coffee Street/South School Access EB approach	EB Stop	 4	 A	 5	 A
9	Coffee Street/Parsons Avenue	AWS	—	—	17	~~C~~ B
		Signal	13	B	—	—
10	Mission Avenue/SB SR-99 ramps	Signal	**79**	**E**	26	C
11	Mission Avenue/NB SR-99 ramps	Signal	**70**	**E**	25	C
12	Campus Parkway/Coffee Street	Signal	**90**	**F**	17	C
13	Coffee Street/E. Mission Avenue WB approach SB left turn	WB Stop	 5 3	 A A	 8 3	 A B
14	Gerard Avenue/Project Access NB approach SB approach EB left turn WB left turn	NB/SB Stop	 9 6 5 3	 A A A A	 6 6 4 2	 A A A A
15	Coffee Street/Central Access EB approach WB approach	WB Stop	 7 6	 A A	 6 9	 C A
16	Campus Parkway/Central Access NB approach SB approach	NB/SB Stop	 2 50	 A D	—	—
17	Campus Parkway/Pluim Drive NB approach SB approach	NB/SB Stop	 3 7	 A A	—	
	—	Signal	—		26	C

Table 3.11-39 (cont.): Mitigated Cumulative Year 2035 Plus Project Conditions—PM Peak Hour

#	Intersection	Control	PM Peak Hour			
			Cumulative Plus Project		Cumulative Plus Project GP Circulation	
			Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS
18	Coffee Street/South Access EB approach WB approach	EB/WB Stop	5 **76**	A **F**	5 2	A A
19	Mission Avenue/Central Access SB approach EB left turn	SB Stop	1 3	A A	15 3	B A
20	Mission Avenue/Pluim Dr SB approach EB left turn	SB Stop	0 5	A A	1 3	A A

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