



ADMINISTRATIVE REPORT

AGENDA

ITEM:

MTG

DATE:

K-1

9-21-09

TO: John M. Bramble, City Manager
FROM: Kim Espinosa, Planning Manager
DATE: September 21, 2009

SUBJECT: General Plan Amendment #06-01; Vacation/Abandonment Application #06-01; Site Plan Review Application #260; and Certification of Environmental Impact Report #06-01, concerning the proposed Wal-Mart Distribution Center, generally located at the northwest corner of Gerard Avenue and Tower Road (hereinafter referred to as the "Project"), initiated by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owner(s) and an Appeal of Portions of the Planning Commission's actions, filed by the Merced Alliance for Responsible Growth.

RECOMMENDATION

Adopt a motion:

- A) Approving Resolution #____--A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING AND CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE WAL-MART DISTRIBUTION CENTER, MAKING FINDINGS AND DETERMINATIONS, ADOPTING A STATEMENT OF FACTS AND OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING PROGRAM (Attachment 9, Pages 97 to 236); and,
- B) Approving Resolution #____--A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, DENYING THE APPEAL OF THE MERCED ALLIANCE FOR RESPONSIBLE GROWTH OF THE PLANNING COMMISSION'S ACTIONS ON THE SITE PLAN REVIEW APPLICATION AND THE GENERAL PLAN FINDING FOR THE WAL-MART REGIONAL DISTRIBUTION CENTER (Attachment 10, Pages 237 to 241); and,
- C) Approving Resolution #____--A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE GENERAL PLAN BY ADOPTING GENERAL PLAN AMENDMENT #06-01, APPROVING THE SITE PLAN REVIEW APPLICATION, AND

APPROVING THE DEVELOPER AGREEMENT FOR THE WAL-MART DISTRIBUTION CENTER (Attachment 11, Pages 242 to 246 for the Resolution and Attachment 13, Pages 252 to 269 for the Developer Agreement); and,

- D) Approving Resolution # ____ --A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ORDERING THE VACATION OF A PORTION OF A CERTAIN PUBLIC RIGHT-OF-WAY (KIBBY ROAD) (VACATION #06-01) (Attachment 12, Pages 247 to 251).

POSSIBLE CITY COUNCIL ACTIONS

- 1) Approve, as recommended by Planning Commission and staff; or,
- 2) Approve, subject to modifications as conditioned by Council; or,
- 3) Deny the request completely; or,
- 4) Refer back to staff for reconsideration of specific items as requested by Council; or,
- 5) Continue item to a future Council meeting (date and time to be specified in City Council motion).

AUTHORITY/CODE SECTIONS

Under California Government Code Section 65358(a), a legislative body may amend, after a public hearing, all or part of an adopted General Plan if the body deems the amendment to be in the public's interest. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced Municipal Code (Zoning) regulates the use of land within the "Heavy Industrial" (20.36) zone and procedures for Site Plan Review (20.68).

Section 8320 et seq. of the Streets and Highways Code of the State of California authorizes the City Council to vacate a street, highway, or public service easement, after the public hearing is conducted. The vacation shall be made by adoption of a resolution. The City of Merced Administrative Policies and Procedures No. A-6 provides the direction to staff for processing abandonment (vacation) requests, and City Council Resolution #76-80 establishes a policy concerning costs associated with the abandonment.

DISCUSSION

Proposed Project

The proposed Wal-Mart Distribution Center is located on approximately 230 acres, bounded by Childs Avenue on the north, Tower Road on the east, Gerard

Avenue on the south, and a property line parallel to and approximately 1,316 feet east of the Doane-Hartley Lateral on the west (Attachment 1, Page 1). The Center is a 1.1 million-square-foot distribution/warehouse building plus related buildings, surface parking, and infrastructure for the distribution of consumer products (Attachment 2, Pages 2 and 3). The facility will operate 24 hours per day and will employ up to 1,200 full-time employees. At build-out, the facility will generate approximately 900 truck trips per day (450 trucks in and 450 trucks out) in fairly uniform intervals throughout the day.

The proposed Wal-Mart Distribution Center includes consideration of a general plan amendment and vacation/abandonment application for a change in the General Plan Circulation Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues; a site plan review application to approve the construction of a regional distribution center and associated facilities; and the certification of an environmental impact report regarding the Project. Since the project was announced in 2006, significant public discussion has already taken place, and the City has received hundreds of letters and emails about the Project, both in support and in opposition to the Project.

Public Hearing

In anticipation of significant numbers of individuals wishing to testify about the Project, the City Council has approved a schedule for the City Council public hearing on the project to be heard over multiple days as follows. On **Monday, September 21, 2009**, during the regular City Council meeting, the public hearing will be opened and limited public testimony will be heard, with only the presentation by City staff, testimony from the applicant (limited to 15 minutes, including rebuttal time), and testimony from the spokesperson for the organized opposition (limited to 15 minutes, including rebuttal time). In addition, testimony will be heard from the representative of the Merced Alliance for Responsible Growth (MARG) regarding their appeal of certain Planning Commission actions (limited to 15 minutes, including rebuttal time) and the Respondent/Project Applicant (limited to 15 minutes, including rebuttal time). The public hearing will then be continued to **Wednesday, September 23, 2009, at 6:30 p.m. until no later than 9:30 p.m.**, at which time testimony from all speakers and other evidence will be taken; and then continued to **Saturday, September 26, 2009**, during which time testimony from all speakers will be taken, from 9:00 a.m. until 12:00 p.m., and from 1:00 p.m. until 5:00 p.m., **as necessary**, if speaker cards are turned in by 12:00 p.m. The public testimony portion of the public hearing will

then be closed on Saturday after the last public speaker (and rebuttal time for the applicants and spokesperson for the opposition) and the gathering of evidence concluded. Thereafter, the public hearing will be continued to **Monday, September 28, 2009, at 7:00 p.m.**, for staff response and City Council discussion, deliberation, and decision.

Those individuals wishing to address the City Council on these matters must submit "Request to Speak" forms. Those forms will be accepted starting on Monday, September 21, 2009, by the City Clerk in the City Council Chambers starting at 6:30 p.m. and will again be accepted at the above hearing on Wednesday, September 23, 2009, and on Saturday, September 26, 2009, until 12:00 p.m. **Speaker cards may only be turned in at the public hearing and will be not be accepted after 12:00 p.m. on Saturday, September 26, 2009.** The public testimony portion of the public hearing will be closed after the last speaker and no further testimony or other evidence (including documentary) will be taken by the City Council, so that the City Council has adequate time to consider all testimony and evidence submitted.

Using the "Request to Speak" card system, individuals will be called up to testify in groups of 3 or 5 in the order in which their speaker cards were submitted. Each speaker will be limited to 3 minutes each if there are more than 3 speakers or 5 minutes each if there are less. Those individuals in the Sam Pipes Room will need to come up to the City Council Chambers in order to testify. Individuals will only be allowed to address the Council once during the public hearing, not once per meeting.

If the City Council Chambers are full, the "overflow" audience may listen to the public hearing in the Sam Pipes Room on the 1st floor of the Civic Center. Translation services will be available upon request to those who have made arrangements with City staff ahead of time. These services will allow non-English speakers to hear the public testimony via headsets in Spanish or Hmong, but any person intending to testify before the City Council must bring his/her own translator, as public testimony will only be taken in English.

GENERAL PLAN AMENDMENT #06-01

The proposed project complies with the General Plan designation of Industrial (IND), which provides for "the full range of industrial uses" including manufacturing, wholesale, and storage activities, such as warehouse/distribution facilities, and other similar activities. No change in General Plan land use designation is needed for this project. The proposed project also complies with the zoning designation of Heavy Industrial (I-H) as defined in Merced Municipal

Code Section 20.36, which allows as a principally-permitted use "any manufacturing, processing, assembling, research, wholesale, or storage uses" and also allows "truck depots."

The western portion of the Project site (west of the Kibby Road right-of-way) was designated as "Industrial" at least as far back as the General Plan adopted in 1980, almost 30 years ago, and was annexed in 1978 with a "Heavy Industrial" zoning designation. The eastern portion of the project site (east of the Kibby Road right-of-way) was designated as "Industrial" in the General Plan adopted in 1997, over 12 years ago, and annexed to the City in 1999 with a "Heavy Industrial" zoning designation.

General Plan Amendment #06-01 is proposed as part of this Project in order to allow the abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues. Kibby Road is designated on the General Plan Circulation Map as a "Collector" from Highway 140 to Mission Avenue within the City's growth boundary. Kibby Road also continues outside of the City's growth boundary, running north of Highway 140 to Yosemite Avenue and south of Mission Avenue to Vassar Avenue. Kibby Road, however, is only constructed from Highway 140 to Childs Avenue within the City limits with right-of-way only existing between Childs and Mission Avenues.

In order to accommodate the proposed site design and the configuration of the proposed distribution center buildings, the abandonment of the Kibby Road right-of-way is proposed. When Kibby Road was designated as a Collector from Childs to Gerard, it was assumed that heavy industrial uses would be developed on either side of Kibby Road as separate business entities. Since the Project encompasses 230 acres on both sides of the Kibby Road right-of-way and will involve internal circulation, Kibby Road is no longer necessary between Childs and Gerard to serve the Project site. It should also be noted that Kibby Road was designated as a Collector prior to the designation of the Campus Parkway (just east of the Doane-Hartley Lateral) as an "Expressway" which will carry significant regional and local traffic. The Campus Parkway is currently under construction from Highway 99 to Childs Avenue and will be completed in 2010. (Funding and construction schedules for the Campus Parkway north of Childs have not yet been determined, but there are currently no planned truck trips from or to the proposed distribution center going north of Childs on the Campus Parkway.)

Besides the Campus Parkway, traffic will also be able to continue to use Tower Road between Childs and Gerard and the proposed Project will be required to make improvements to Tower Road to bring it up to City local street standards (see Condition #15 of the Project Conditions at Attachment 13, Exhibit B, Pages

261 to 266). Improvements will also be required to Gerard and Childs Avenues (Conditions #15 and #16—Attachment 13, Exhibit B). In conclusion, with construction of the Campus Parkway and improvements to Childs, Gerard, and Tower Roads, adequate circulation will be available to serve the Project site and the rest of the adjacent Heavy Industrial area, and Kibby Road will no longer be needed as a Collector or local road between Childs and Gerard Avenues. Therefore, General Plan Amendment #06-01 is justified and is recommended by the Planning Commission and City staff.

KIBBY ROAD RIGHT-OF-WAY ABANDONMENT #06-01

If General Plan Amendment #06-01 is approved, then Vacation/Abandonment Application #06-01 should also be considered. On August 17, 2009, the City Council adopted Resolution #2009-57 declaring its intent to vacate the right-of-way and setting a public hearing for September 21, 2009 (such hearing may be continued or postponed), on the application in accordance with provisions of the Streets and Highways Code of the State of California. The City Engineer posted notices on the portion of right-of-way to be abandoned on August 25, 2009 (at least 2 weeks before the public hearing) and the Resolution was also published in the newspaper. Utilities which may have utilities within the right-of-way were also notified by letter on August 18, 2009, including PG&E, AT&T, Comcast, 360 Network, Time Warner-Telecom, Merced Irrigation District, and the City of Merced. None of the utilities expressed any concerns with the abandonment, which will include the reservation of an easement over the right-of-way for public utility purposes until those utilities have been relocated to the satisfaction of the City Engineer. PG&E did submit information regarding coordination of construction activities in proximity to their electric transmission tower lines located in the eastern portion of the site parallel with Tower Road (outside the Kibby Road right-of-way). On August 24, 2009, the Planning Commission adopted a finding that the Abandonment is consistent with the General Plan contingent on General Plan Amendment #06-01 being approved by the City Council. Given the above, the Abandonment of the Kibby Road right-of-way from Childs to Gerard Avenues is justified, recommended by the Planning Commission and City staff, and conforms to the General Plan as amended.

SITE PLAN REVIEW APPLICATION #260

Site Design

The proposed project site plan (Attachment 2) depicts a regional warehouse/distribution center and support facilities, located on 230 acres at the

northwest corner of Gerard Avenue and Tower Road. The proposed support facilities consist of offices, a cafeteria, and aerosol storage (all located within the warehouse building), as well as a truck gate, a truck maintenance garage, a truck fueling station, a fire pump house, and parking lots for trucks, trailers, and employees. The underlying purpose of the project is storage and distribution of non-grocery goods to Wal-Mart retail stores located throughout the region. A detailed description of the all the buildings proposed onsite can be seen in Findings G, H, and I of the Planning Commission Staff Report at Attachment 8, Pages 44 to 96).

The site would be served via two driveways connected to Gerard Avenue. One driveway would be dedicated to employee traffic and the other driveway would be dedicated to tractor trailer traffic. The tractor trailer driveway and parking area would be secured by the truck gate and by a 6-foot-high chain-link fence. The site would have up to approximately 850 employee parking spaces, 1,600 tractor trailer parking spaces, 300 tractor (without trailer) parking spaces, and 300 dock doors. There would be approximately 70 acres of pavement, in addition to the area covered by buildings.

Building Design

The proposed building elevations can be seen at Attachment C of the Planning Commission Staff Report at Attachment 8, Pages 44 to 96. All buildings would be single-story and constructed of pre-engineered steel components with metal panels. Maximum building height is proposed to be 40 feet above the finished floor level. On three sides of the building the finished floor would be 4 feet above finished grade. The main office floor would be at finished grade level. Condition #27 (Exhibit B of Attachment 13, Pages 261 to 266) requires upgrades to the building facades, including color bands, alternating/mixed siding materials and patterns, and cosmetic "pop-outs" (not adding additional internal floor area), in order to upgrade the appearance of the facility. Condition #27 also requires upgrades to the portion of the building facing the employee parking area. Condition #28 addresses project signage and Condition #26 prohibits the use of barbed wire fences along the project perimeter.

Landscaping

Mitigation Measure 4.13-2 and Project Condition #25 will require extensive landscaping on and around the Project site. This landscaping will consist of street trees (planted every 40 feet) as well as a 15-foot wide landscape strip with trees planted every 30 feet, shrubs, and turf along the entire Project perimeter which abut public streets (Childs, Gerard, and Tower). Parking lot trees will be planted

at one tree for each 6 spaces in the employee and visitor parking areas. Parking lot trees shall not be required in the truck or trailer parking areas due to concerns about the trucks maneuvering around the trees and/or possible damage to the trees. Trees will be planted, however, around the perimeter of the truck and trailer parking areas to the maximum extent feasible. The existing almond trees on site shall be preserved in any areas of the site that are left undeveloped by buildings, parking areas, driveways, drainage basins, etc.

Traffic/Circulation

According to the traffic analysis in the Draft EIR (DEIR), the proposed project would generate approximately 2,400 net new daily trips with 143 net new AM peak hour trips (87 inbound, 56 outbound) and 328 net new PM peak hour trips (45 inbound, 283 outbound trips). The traffic analysis is contained in Section 4.11 of the DEIR, and Table 4.11-12 on page 4.11-21 outlines the Project's trip generation and Table 4.11-13 on pages 4.11-21 and 4.11-22 outlines the Project's trip distribution. This increased traffic from the project will result in the impacts requiring improvements to seven intersections (Highway 140 & Parsons; Highway 140 & Baker; Highway 140 & Kibby; Childs & Highway 99 Northbound off-ramp; Childs & Highway 99 Southbound off-ramp; Childs & Parsons; and Mission Ave & Highway 99 Northbound off-ramp) and two roadway segments (Highway 140 between Santa Fe Ave and Kibby; and Tower Road between Highway 140 and Gerard Ave). See Project Condition #18 (Attachment 13, Exhibit B, Pages 261 to 266) and Mitigation Measures 6-9 through 6-11 on pages MMP-46 through MMP-47 of the Mitigation Monitoring Program at Attachment 9, Exhibit 1A, Pages 183 to 236. Project Conditions #15 and #16 and the Merced Municipal Code also require the Project to make improvements to Childs Avenue, Gerard Avenue, and Tower Road.

With the implementation of the mitigation measures summarized above and described in detail in Attachment 9, Exhibit 1A (Pages 183 to 236) and the project conditions, all traffic-related environmental impacts will be reduced to less than significant levels.

Employment

In the Draft EIR, the Project was assumed to employ approximately 1,200 employees once fully operational in approximately 3 years after opening. 1,050 would be employees at the distribution center, and there would be an additional 150 employees that would be drivers not hired at the facility that would only be on the premises for a limited period of time. The facility would operate 24 hours per day continuously throughout the year.

Fees

If approved, the Project will be required by the Merced Municipal Code to pay various fees and charges prior to construction. These fees include the City's Public Facilities Impact Fees, Regional Transportation Impact Fees, school fees, wastewater and water connection fees, building permit fees, etc., in addition to monthly charges for wastewater, water, refuse, and other services once the facility is in operation. A detailed estimate of all fees has not yet been prepared since the fees are subject to change over time and may be different at the time of construction, which may be a few years in the future. To provide the general scope of the fees involved for the project, an estimate of some of the fees, based on the 2009 rates, has been calculated as shown below.

City Public Facilities Impact Fees: Using 2009 rates of \$3,812 per 1,000 square feet for a 1.1 million square-foot warehouse (a "Light Industrial" use), the City Public Facilities Impact Fees would be approximately \$4.19 million. These impact fees would be used to pay for Project impacts on City roadways (including traffic signals, bridges, etc.), fire and police facilities, and parks and bikeways. City impact fee projects in the Project vicinity include Childs Avenue, Mission Avenue, and a new fire station in the vicinity of Gerard and Coffee.

Regional Transportation Impact Fees: Using 2009 rates of \$1,409 per 1,000 square feet for a 1.1 million square-foot warehouse (a "Heavy Industrial" use), the Regional Transportation Impact Fees would be approximately \$1.5 million. These impact fees would be used to pay for Project impacts on regional roadways, including Mission Avenue, Highway 140, and the Campus Parkway in the Project vicinity.

Neighborhood Impact/Interface

Residences: There are three residences in close proximity to the Project site within areas zoned for agriculture (A-1) or industrial (I-H) uses. These residences include a farm house located across Gerard Avenue approximately 400 feet from the southwest corner of the project site, a farm house located over 700 feet from the project's southeast corner, and a farmhouse located over 800 feet east of the Project site (across the PG&E easement and Tower Road). Noise impacts on these homes are discussed in detail in Section 4.8 of the Draft EIR and in Table 4.8-9 on page 4.8-19 of the DEIR. Mitigation Measure 4.8-3 addresses the installation of sound attenuation barriers for these residences to address the Project's impacts on those residences.

The nearest residential zoning lies approximately 1,250 feet west of the Project's western boundary, west of the Doane-Hartley Lateral and the Campus Parkway

(under construction). This area was annexed to the City in 1998. Two approved subdivisions are located within an area bounded by Gerard Avenue to the south, the Doane-Hartley Lateral to the east, Childs Avenue to the north, and Coffee Road to the west, with a R-1-5 zone. The Sandcastle Subdivision consists of 334 single-family residential lots, a park, and a portion of a school site (see below), and was approved by the City in 2003. Permits were issued for approximately 196 of those homes. The Crossing at River Oaks Subdivision consists of 277 approved single-family lots, a vacant 5.5-acre multi-family site, a vacant 5-acre commercial site, and the remaining portion of the proposed school site, and was approved by the City in 2004. Approximately 11 single-family permits have since been issued for that subdivision.

Five subdivisions are located within an area bounded by Childs Avenue to the south, the Doane-Hartley Lateral to the east, Highway 140/Baker Drive to the north, and Coffee Road to the west, within an area zoned R-1-5 and R-1-6, which also includes Weaver School. The five subdivisions (Renaissance I & II, Sierra Vista, Makinson, and Tuscany East) consists of a total of 455 approved single-family lots, of which approximately 264 have been issued permits for construction.

Schools: Weaver Elementary School is located on 19.5 acres at the northeast corner of Coffee and Childs. The school's eastern boundary is approximately 3,200 feet from the Project site's western boundary. Pioneer Elementary School is located on 12 acres at the southwest corner of Coffee and Gerard. The school's eastern boundary is approximately 3,800 feet from the Project site's western boundary. Golden Valley High School is located on 45 acres at the northeast corner of Parsons and Childs. The school's eastern boundary is approximately 1.5 miles from the Project site's western boundary.

A proposed school site is located within the Sandcastle/Crossing at River Oaks Subdivisions at the southeast corner of Dinkey Creek Avenue and Albert Drive. The Weaver Union School District has not yet acquired the site and in preliminary discussions with City staff have indicated that due to the construction of the new Farmdale School at G and Mission, this proposed school site may no longer be needed. No official action in that respect has been taken, however. It should be noted that although the Weaver and Merced High School Districts were provided copies of the Draft EIR for this Project, neither school district chose to comment.

Project Impacts: The Project DEIR describes its impacts on nearby residences and schools and spells out mitigation measures to reduce these impacts to the greatest extent feasible. The Project is located within an area that has been designated for industrial uses for over a decade and for a portion of the site for

over 30 years. The East Merced Industrial Area was designated for heavy industrial uses in 1978, long before the residential subdivisions east of the Campus Parkway were planned. The City's General Plan and Zoning Map clearly show that this area is designated for industrial uses and these plans are all available to the public and potential homebuyers. The City's Heavy Industrial zoning district (Merced Municipal Code Section 20.36) allows such conditional uses as steel foundries, poultry slaughterhouses, meat packing, and salvage & wrecking operations, all of which could have potentially more impacts on nearby residential uses than the proposed Project.

The majority of Project traffic, including trucks, traveling to and from the proposed distribution center would be using Highway 99, the Mission Interchange, the Campus Parkway, and Gerard Avenue east of the Campus Parkway. Mitigation Measure 4.11-2b(c) and Condition #17 requires the applicants to direct all their truck drivers to only use certain streets (not including Gerard or Childs Avenues west of the Campus Parkway) to travel to or from the distribution center and not to park in any of the residential subdivisions west of the Campus Parkway. As long as the above restrictions are followed, trucks from the distribution center should not be impacting streets directly serving the residential uses described above or those streets serving the schools described above.

Given the above, City staff has concluded that all possible measures have been implemented to protect nearby residential uses and schools from potential Project impacts to the greatest extent feasible.

Public Correspondence

Since the Project was announced in 2006, the City has received hundreds of letters and e-mails regarding the project. Due to the volume of this correspondence, a CD-ROM has been enclosed with this administrative report (and copies will be posted to the City's website) including all the correspondence received as of September 14, 2009. It should be noted that this correspondence is in addition to the letters received on the Draft EIR during the 60-day public comment period from February 25 to April 27, 2009. Those DEIR comment letters are included in the Final EIR distributed under separate cover.

Public Notice

On September 10, 2009, a public hearing notice for the Project and associated applications was published in the *Merced Sun-Star*. On that same day, notices were mailed to over 421 adjacent property owners (there are actually 884 individual parcels but duplicate names and addresses reduced the number of

notices) within 2,600 feet of the project boundary. Legal requirements only require a 300-foot notice boundary, but the City chose to increase that boundary to 2,600 feet in order to make sure that all the residential subdivisions between Coffee Road and the Doane-Hartley Lateral were included. Public Hearing Notices were also mailed to over 200 individuals who had requested to be on the mailing list for the project and/or had submitted written correspondence to the City on the project, and notices were also mailed to all those 241 individuals and agencies who had submitted comments on the Draft EIR during the public review period. The Public Hearing Notice was also posted to the City's website.

Site Plan Review Committee Referral

On April 23, 2009, the Site Plan Review Committee considered the proposed Project. The Site Plan Review Committee is made up of the Director of Development Services, the Chief Building Official, and City Engineer per Merced Municipal Code Section 20.68.030. (Currently the Director of Development Services and the Chief Building Official are the same individual.) The Site Plan Review Committee, by a 2-0 vote, made Findings relating to Merced Municipal Code Section 20.68.040 (B), which allows the Committee to refer a Site Plan Application to the Planning Commission for hearing and decision if *"a request is of such magnitude to be a significant policy interpretation and/or of special interest to surrounding property owners and the planning commission."*

The Site Plan Review Committee determined that "since the proposed Wal-Mart Distribution Center project was announced in 2006, significant public discussion has taken place prior to any public hearings on the project being scheduled. The City has received large amounts of correspondence regarding the project as well as numerous public records requests regarding the project. All the above indicates a 'special interest to surrounding property owners' per MMC 20.68.040 (B)." The Committee also found that since the project required consideration of other City applications (i.e. General Plan Amendment, Abandonment, certification of an EIR, etc.) which would require public hearings before the Planning Commission and City Council, that "it is appropriate for all applications, including Site Plan Application #260, regarding the proposed project to be set forth for public hearings before the Planning Commission and City Council." It was also determined that per CEQA section 15025(c), since the Site Plan Review Committee, an advisory body, was not making a recommendation on the project to a decision making body, but was merely referring the project to the decision making body for a public hearing and decision, the Site Plan Review Committee was not required to review the Environmental Impact Report in draft or final form.

(See Attachment D of the Planning Commission Staff Report at Attachment 8, Pages 75 to 77, for the Site Plan Review Committee Resolution and Minutes.)

ENVIRONMENTAL IMPACT REPORT

Preparation of the Environmental Impact Report

The Draft and Final Environmental Impact Reports (EIR) for the proposed Wal-Mart Regional Distribution Center were prepared by EDAW, Inc. Specialized sub-consultants serving with EDAW in the environmental assessment process included DKS Associates (Traffic); Remy Thomas Moose & Manley (Legal Review); and Geocon Consultants, Inc. (Hazards). The contract with EDAW was amended three times in order to make sure that the analysis was as complete and accurate as possible. The City also hired an independent outside firm, RBF Consulting, to "peer review" the Draft EIR to ensure its completeness. The following table provides a summary of key events leading up to the Final EIR.

<u>Event</u>	<u>Date</u>
EIR Contract Approved by City Council with EDAW	May 15, 2006
Notice of Preparation (NOP) Distributed	July 7, 2006
Comment Period on NOP Ends	August 11, 2006
EIR Contract Amendment #1 Approved by City Council	November 6, 2006
EIR Contract Amendment #2 Approved by City Council	April 16, 2007
Contract for Peer Review of EIR Approved by City Council with RBF Consulting, Inc.	February 19, 2008
Peer Review Completed	May 2008
EIR Contract Amendment #3 Approved by City Council	September 15, 2008
Draft EIR Completed	February 2009
Draft EIR 60-day Public Review Period Begins	February 25, 2009
Draft EIR 60-day Public Review Period Closes	April 27, 2009
Final EIR Made Available to Public & Distributed to Those Who Submitted Comment Letters	July 30, 2009

Impacts Identified from the Project

The Draft EIR for the proposed Wal-Mart Regional Distribution Center has identified potentially significant physical environmental impacts that are expected to result from the development proposal. The EIR also provides appropriate measures to mitigate the impacts and to reduce anticipated *physical* environmental impacts to less than significant levels. Significant Environmental Effects Requiring Mitigation include impacts on air quality, biological resources, cultural resources, geology/minerals/soils/paleontological resources, hydrology & water

quality, noise, public health & hazards, traffic & circulation, utilities & public services, and visual resources. These impacts and mitigation measures are summarized in the table in Finding AA of the Planning Commission Staff Report at Attachment 8 (Pages 44 to 96) and in more detail in Table 2-1 in the Executive Summary of the Draft EIR as well as in the Mitigation Monitoring Program at Attachment 9, Exhibit 1A (Pages 183 to 236). For example, these mitigation measures include various measures to reduce emissions of air pollutants both during construction and normal operations; design features and program incentives to reduce employee commute trips; measures to minimize potential impacts on Swainson's Hawks and Burrowing Owls; storm water and erosion control measures; installation of sound barriers for 3 residences on Tower and Gerard; accommodating all delivery truck parking on-site; managing truck traffic on local streets; funding the update of the Safe Routes to School Plan for area schools; and various street improvements to area roadways.

The EIR for the proposed Wal-Mart Regional Distribution Center also identified Unavoidable Significant Impacts or Significant Environmental Effects That Cannot Be Avoided (summarized in Section 6.4, starting on page 6-36 of the Draft EIR and in the table indicated above). These irreversible impacts cannot be mitigated below the relevant threshold of significance. These impacts include agricultural land conversion; air quality (generation of greenhouse gas emissions); biological resources (special-status species foraging habitat); long-term operational traffic noise at sensitive receptors; and cumulative impacts to agricultural land, air quality (greenhouse gases), biological resources, noise, and visual resources.

Final EIR and Response to Comments

The Draft EIR for the proposed Wal-Mart Regional Distribution Center was distributed to interested agencies and the public for a 60-day-period (beginning on February 25, 2009 and ending on April 27, 2009). The City received 315 letters commenting on the DEIR. Two of those letters arrived after the close of the comment period, but they have been responded to as well. 241 individuals and agencies/organizations submitted letters (some individuals submitted more than one letter). Those letters can be seen in their entirety in Chapter 3 of the Final EIR (distributed to the City Council on July 30, 2009). Responses to comments contained in those letters are located immediately following each letter in Chapter 3 of the Final EIR. As required per Section 21092.5(a) of the State of California Public Resources Code, a copy of the response to comments was sent to each public agency who had submitted a letter on July 30, 2009 (at least 10 days prior to the Planning Commission hearing). A notice was also sent to all those

individuals who had commented on the DEIR regarding the availability of the Final EIR, including the Responses to Comments, on July 30, 2009. The Final EIR was made available for public review at City offices, the Main Branch of the Merced County Library, and the City's website. Printed copies and copies on CD-ROM were also made available.

The Final EIR for the proposed Wal-Mart Regional Distribution Center also contains minor modifications to the text and mitigation measures in response to the comments received (see Chapter 4). An errata sheet (Attachment H of the Planning Commission Staff Report at Attachment 8, Pages 44 to 96) with several additional minor corrections that were inadvertently omitted from the Final EIR has been prepared and included as part of the Final EIR. Appendix A of the Final EIR includes a revised table of proposed mitigation measures, which serves as the Mitigation Monitoring Program and is excerpted at Attachment 9, Exhibit 1A (Pages 183 to 236) of this administrative report.

Findings of Fact and Statement of Overriding Considerations

The Environmental Impact Report (EIR) for the proposed Wal-Mart Regional Distribution Center identified significant impacts associated with the proposed development. Approval of a Project with significant impacts requires that findings be made by the City pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines. These findings must state that significant impacts of the Project would either: 1) be mitigated to a less-than-significant level pursuant to the mitigation measures identified in this EIR; or 2) mitigation measures notwithstanding, have a residual significant impact that requires a Statement of Overriding Considerations.

EDAW in consultation with City staff has prepared Draft "Findings of Fact" (Exhibit 1 of Attachment 9, Pages 105 to 182). The findings are divided into seven sections: 1) Introduction and background; 2) EIR proceedings; 3) Record of Proceedings; 4) CEQA Findings; 5) Mitigation Monitoring Program; 6) Project Alternatives; and 7) a Draft Statement of Overriding Considerations.

All significant impacts associated with the Project have been mitigated to a level of less than significant except those described above. Therefore, a Draft Statement of Overriding Considerations (beginning on page 70 of Attachment 9, Exhibit 1 or Page 178 of the Attachments) has been prepared.

Mitigation Monitoring

In accordance with CEQA requirements, the City is required to adopt a Mitigation Monitoring and Reporting Program when approving mitigation measures

contained in an EIR or mitigated negative declaration. The Program is to be designed to ensure compliance with the adopted project mitigation measures that were required by the public agency in order to reduce or avoid significant environmental effects. A Mitigation Monitoring Program is required for this project. Per Merced Municipal Code Section 19.28, the applicant shall pay all direct and indirect costs incurred by the City for the mitigation monitoring program (Conditions #10 and #11 of the Project Conditions at Attachment 13, Exhibit B, Pages 261 to 266).

PLANNING COMMISSION RECOMMENDATION

On August 19 and 24, 2009, the Planning Commission held a public hearing on the proposed Project. Testimony was heard from 66 individuals (43 in support and 23 in opposition), including the Project applicant and a representative from the organized opposition, over the course of two meetings. The Planning Commission Minutes outlining the public testimony can be seen at Attachment 6, Pages 10 to 38. After the public hearing concluded on August 24, 2009, the Planning Commission deliberated and took the following actions:

- 1) By a 7-0 (7 ayes, 0 no) vote, to recommend to the City Council certification of the Environmental Impact Report #06-01, including adoption of the Mitigation Monitoring and Reporting Program and Findings of Fact and the Statement of Overriding Considerations (in accordance with Planning Commission Resolution #2959 at Attachments 7 and 8, Pages 39 to 96); and,
- 2) By a 7-0 vote, to recommend approval of General Plan Amendment #06-01 in accordance with the Resolution above); and,
- 3) By a 7-0 vote, to adopt a finding of General Plan consistency regarding the Abandonment of the Kibby Road Right-of-Way (contingent on City Council approval of General Plan Amendment #06-01) in accordance with the Resolution above; and,
- 4) By a 6-1 (6 ayes, 1 no) vote, to recommend approval of Site Plan Review Application #260 in accordance with 35 conditions and the Resolution above. The Commissioner who voted no on the Site Plan indicated that he would have liked to have seen a requirement to include landscaped berms (in addition to the trees and landscaping already required) as part of the project conditions.

APPEAL BY MERCED ALLIANCE FOR RESPONSIBLE GROWTH

On September 3, 2009, the City received a letter from Thomas N. Lippe, an attorney representing the Merced Alliance for Responsible Growth ("MARG"), in which he appeals on behalf of MARG certain actions of the Planning Commission in considering the Wal-Mart project. In his appeal (Attachment 3, Pages 4 to 6), Mr. Lippe appears to assert two bases for the appeal:

- That the Planning Commission failed to follow the requirements of Merced Municipal Code Section 20.68.040 relative to the Site Plan Review because the Planning Commission did not take a final action, but simply referred the matter to the City Council for action. If the Planning Commission did approve the Site Plan application, such approval would violate CEQA because the Site Plan is a discretionary decision subject to CEQA, and the EIR has not yet been certified.
- That the Planning Commission's action on the General Plan's conformity pursuant to Government Section 65402 was incorrect because MARG contends that Government Code Section 65402 requires the Planning Commission to make a "report" to the City Council and not to make a "final finding."

In the first sentence of the last paragraph on the first page of Mr. Lippe's letter, there appears to be an inconsistency. On September 4, the Assistant City Clerk, by letter to Mr. Lippe, requested clarification. A copy of the Assistant City Clerk's letter can be seen at Attachment 4, Pages 7 to 8. Mr. Lippe clarified by e-mail dated September 8, 2009 (Attachment 5, Page 9), that the word "not" was missing in his appeal letter. As such, the sentence was intended to read as follows:

"Nevertheless, this is not based on this legal error, and Alliance does not appeal the Planning Commission's decision to refer the Site Plan application to the City Council."

For the reasons that will be set forth below, it is staff's recommendation that the appeals be denied as lacking in merit.

Site Plan Application—Part I of Appeal

MARG contends it was legal error for the Planning Commission to adopt a resolution recommending that the City Council approve the Site Plan application (as opposed to the Planning Commission issuing the actual approval of the Site Plan) because such action allegedly violates Merced Municipal Code Section 20.68.040. This Section provides as follows:

"20.68.040 Site Plan Committee--Determination Procedure.

A. The site plan committee shall determine from data submitted whether the use and structures will meet the requirements of this title and shall, upon making a positive finding, approve an application. If, from the information submitted, the site plan committee finds that the requirements of this title would not be secured, the site plan committee shall disapprove, or approve subject to changes or additions.

B. In the event the site plan committee is of the opinion that a request is of such magnitude to be a significant policy interpretation and/or of special interest to surrounding property owners and the planning commission, the site plan committee shall refer the request to the planning commission for a hearing and decision."

While arguing it was legal error for the Planning Commission to make a recommendation that the City Council approve the Site Plan rather than issuing an approval itself, MARG also argues that the action was appropriate. In this respect, MARG states that ". . . the Alliance believes that as a matter of policy, the Commission's referral of the Site Plan application to the City Council for decision is the appropriate course of action to take. . ." It appears that this issue in the appeal was filed to protect the MARG against an argument that MARG failed to exhaust administrative remedies.

The Planning Commission's decision to adopt a Resolution recommending that the City Council approve the Site Plan application is not the final action to approve the Site Plan application and is appropriate because a final environmental impact report had not been certified, the General Plan Amendment had not been approved, and the Kibby Road right-of-way abandonment had not been approved by the City Council. Because the Site Plan application is clearly subordinate to the legislative acts and contingent upon their approval by the City Council, the Planning Commission could not approve it. Planning Commission Resolution #2959 expressly states: "The Planning Commission of the City of Merced does hereby resolve, determine, find, and order..." It has been the long standing practice of the City in such circumstances to essentially bundle the various applications and have the City Council render the ultimate decision whether or not to approve the applications, rather than having some applications approved by the Planning Commission and others approved by the City Council. As such, in order for the totality of the project to be considered by the City Council and the public, the Planning Commission, after considering the Draft and draft Final

Environmental Impact Report, decided to recommend that the City Council approve the Site Plan application. In light of the above, staff recommends that the City Council deny the appeal on this issue.¹

The General Plan Conformity Finding—Part II of Appeal

The second contention raised in MARG's appeal letter is that the Planning Commission's adoption of Resolution #2959 relating to the General Plan's conformity issue pursuant to Government Code Section 65402 was incorrect because MARG contends that Government Code Section 65402 requires the Planning Commission to make a "report" to the City Council and not to make a "final finding." Government Code Section 65402(a) provides as follows:

"(a) If a general plan or part thereof has been adopted, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes, and no real property shall be disposed of, no street shall be vacated or abandoned, and no public building or structure shall be constructed or authorized, if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of such acquisition or disposition, such street vacation or abandonment, or such public building or structure have been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof. The planning agency shall render its report as to conformity with said adopted general plan or part thereof within forty (40) days after the matter was submitted to it, or such longer period of time as may be designated by the legislative body

If the legislative body so provides, by ordinance or resolution, the provisions of this subdivision shall not apply to: (1) the disposition of the remainder of a larger parcel which was acquired and used in part for street purposes; (2) acquisitions, dispositions, or abandonments for street widening; or (3) alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening, or alignment projects are of a minor nature. . ."

¹ To the extent that the MARG or anyone else contends that the City Council is without jurisdiction to act on the Site Plan application because the Planning Commission's referral is not a "decision," MARG's filing of this appeal under Section 20.68.090 and Chapter 20.96 of the Merced Municipal Code has conferred jurisdiction upon the City Council to act on the matter.

MARG's appeal on this issue is without merit. The Planning Commission made the "report" in the form of a finding contained in an official Resolution. The specific language of the Planning Commission's finding is located in Section 5 of Planning Commission Resolution #2959. Section 5 provides as follows:

"The Planning Commission finds that Vacation/Abandonment of Kibby Road Right of Way between Gerard and Childs Avenue (contingent upon General Plan Amendment #06-01 being approved by City Council) is consistent with the General Plan, based upon the reasons and findings set forth in Staff Report in Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full herein."

It is clear from Section 5 of Resolution #2959 that the Planning Commission fulfilled its submission and reporting duty on the conformity issue under Government Code Section 65402(a) in the form of a finding. A copy of Planning Commission Resolution #2959 is attached to this Administrative Report (Attachments 7 and 8, Pages 39 to 96). Resolution #2959 expressly states: "... The Planning Commission of the City of Merced does hereby resolve, determine, find, and order. . ." Section 5 of Resolution #2959 incorporates by reference the Staff Report to the Planning Commission discussing the conformity and consistency issue, and the Report's conclusions and recommendations on the conformity issue is contingent upon the City Council approving the General Plan Amendment which makes the abandonment conform with the General Plan. Finally, Section 7 of Resolution #2959 directs the Secretary to the Planning Commission to cause the Resolution "... to be transmitted to the City Council for further proceedings in accordance with state law." A copy of Planning Commission Resolution #2959 is, in fact, attached to this Administrative Report as Attachments 7 and 8, Pages 39 to 96. In light of the above, staff believes this issue on appeal is without merit and recommends that it be denied.

SUMMARY/CONCLUSIONS

The Project is located within an area designated in the General Plan and zoned for industrial uses for many years. In fact, a smaller distribution facility (McLane Pacific) has been operating in the Project vicinity for many years. The environmental impacts of the project have been carefully analyzed and mitigation measures proposed to reduce most impacts to a level of less than significant. For those impacts that can not be reduced to a level of less than significant, a Draft Statement of Overriding Considerations has been prepared to outline reasons why the project's benefits outweigh its negative impacts on the environment.

Conditions of approval have also been proposed by City staff to address other project concerns, such as aesthetics, City services and utilities, and circulation. The appeal filed by the Merced Alliance for Responsible Growth is lacking in merit as discussed above. For the reasons set forth herein, City staff and the Planning Commission recommend that the project be approved in accordance with the Recommendations Section of this Administrative Report.

RESPECTFULLY SUBMITTED:


KIM ESPINOSA
PLANNING MANAGER

APPROVED:


DAVID B. GONZALVES
DIRECTOR OF DEVELOPMENT SERVICES

REVIEWED AND APPROVED:


JOHN M. BRAMBLE
CITY MANAGER

[ref: KE\Projects\2009\Wal-MartWarehouse\Public Hearings\CityCouncil-Sept09\Final Wal-Mart Project-AdminRpt-Sept-21-09.doc]

Attachments:

- 1) Project Vicinity Map (Page 1)
- 2) Project Site Plan & Preliminary Landscape Plan (Pages 2 to 3)
- 3) Appeal Letter by Tom Lippe for Merced Alliance for Responsible Growth (Pages 4 to 6)
- 4) Letter from City Clerk to Appellant (Pages 7 to 8)
- 5) Email Clarification from Mr. Lippe to City Clerk (Page 9)
- 6) Planning Commission Minutes (August 19 & 24, 2009) (Pages 10 to 38)
- 7) Planning Commission Resolution #2959 (Pages 39 to 43)
- 8) Planning Commission Staff Report (Exhibit 1 of the Planning Commission Resolution) (Pages 44 to 96)
 - A) Project Vicinity Map (Page 65)
 - B) Project Site Plan & Preliminary Landscape Plan (Pages 66 to 67)
 - C) Project Elevations (Pages 68 to 74)
 - D) Site Plan Review Committee Resolution & Minutes from April 23, 2009 (Pages 75 to 77)
 - E) Lot Split Resolution #871 & Site Plan Resolution #79-1 (Pages 78 to 87)

- F) Mitigation Monitoring Program (See Exhibit 1A of Attachment 9) (Page 88)
- G) Draft CEQA Findings of Fact and Statement of Overriding Considerations (See Exhibit 1 of Attachment 9) (Page 89)
- H) Final EIR Errata Sheet (Pages 90 to 95)
- I) Draft Planning Commission Resolution (See Attachment 7) (Page 96)
- 9) City Council Resolution for Certification of EIR (Pages 97 to 236)
 - A) Exhibit 1--CEQA Findings of Fact and Statement of Overriding Considerations (Pages 105 to 182)
 - B) Exhibit 1A--Mitigation Monitoring Program (Pages 183 to 236)
- 10) City Council Resolution for Appeal by MARG (Pages 237 to 241)
- 11) City Council Resolution for General Plan Amendment, Site Plan Review Application, and Developer Agreement (Pages 242 to 246)
- 12) City Council Resolution for Abandonment of Kibby Road Right-of-Way (Pages 247 to 251)
- 13) Developer Agreement (Pages 252 to 269)
 - A) Exhibit A—Project Description (Pages 258 to 260)
 - B) Exhibit B—Project Conditions (Excerpted from Planning Commission Resolution #2959) (Pages 261 to 266) and Exhibit B Continued—Mitigation Monitoring Program (See Exhibit 1A of City Council EIR Resolution—Attachment 9) (Page 267)
 - C) Exhibit C—General Plan Amendment Property Description (Pages 268 to 269)

Enclosures:

- 1) CD-ROM of Correspondence from the Public regarding the Project (2006-2009)

PLEASE BRING YOUR COPIES OF THE DRAFT AND FINAL EIR FOR THE PROPOSED WAL-MART REGIONAL DISTRIBUTION CENTER TO THE MEETINGS. (Please contact City staff if you need another copy.)