3 COMMENTS AND RESPONSES TO COMMENTS ON THE DEIR

3.1 INTRODUCTION

This section of the Final EIR contains comment letters received during the 60-day public review period for the Draft EIR, which concluded on April 27, 2009. In conformance with State CEQA Guidelines §15088(a), written responses to comments on environmental issues received from reviewers of the Draft EIR were prepared.

3.2 COMMENTS AND RESPONSES ON THE DRAFT EIR

This section presents master responses, comment letters and supplementary materials provided by commenters, and individual comment responses. Section 3.2.1, "Master Responses," presents responses to environmental issues raised in multiple comments. They are organized by topic to provide a more comprehensive response than may be possible in responding to individual comments, and so that reviewers can readily locate all relevant information pertaining to an issue of concern. Section 3.2.2, "Responses to Individual Comments," presents copies of comment letters and supplementary materials received by the City from commenters, and individual responses to each comment, with cross-references to relevant master responses as necessary

3.2.1 MASTER RESPONSES

MASTER RESPONSE 1: GROWTH INDUCEMENT AND EXPANSION

Several comments raised issues related to growth inducement. Of these comments, the majority expressed concern that, although the proposed project is not a retail store or supercenter, the proposed distribution center could expand Wal-Mart's distribution network, increasing the ability to convey inventory to stores that are currently not easily accessible along current truck routes, thereby increasing viability of potential retail stores or supercenters in locations that currently would be considered infeasible. In other words, the placement of this proposed distribution center in Merced could remove the "shipping distance" obstacle currently preventing the development of other stores throughout central California.

The Draft EIR for the proposed Merced Wal-Mart Distribution Center indicates that any growth-inducing effect the proposed regional distribution center may have relative to new Wal-Mart retail stores in the area or beyond is difficult to accurately determine. The proposed project can be viewed as a means to simply improve service to existing retail outlets, given the fact that proximity to a distribution warehouse in and of itself and in the absence of consumer demand is not likely to warrant construction of a new retail facility (Merced Wal-Mart Distribution Center DEIR, page 6-35). The DEIR does not preclude the possibility that the proposed project may somehow affect the viability of retail store locations throughout the larger region; rather, the DEIR discloses this possibility while avoiding gross speculation of potential environmental impacts. The distribution center could serve new retail stores if they are built; however, knowing how many, where, and when any new retail stores would be built is not possible and would be speculative. In addition, if new stores are planned and/or proposed in the future, it would be up to that particular jurisdiction to address any environmental issues and comply with CEQA, as appropriate.

Regarding speculation, CEQA is very clear: "[i]f, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." (*State CEQA Guidelines* Section 15145) This is precisely how the Draft EIR treats this issue in Section 6.2.2 "Growth Inducing Impacts of the Proposed Project." However, to further demonstrate the reasons that this impact discussion was terminated, it is not only extremely speculative to evaluate whether, if at all, the proposed distribution center would increase viability of store locations, but to determine where, specifically, these

potential store sites may be located, even within which cities and communities they might occur, would be pure conjecture. Furthermore, CEQA is not concerned about whether the project might provide an impetus for the construction of new stores, but whether these stores would result in any physical changes to the environment. Given the inability to calculate the effect of the proposed Distribution Center on the viability of unknown specific potential store locations, it is impossible to surmise, without gross speculation, the environmental effects related to the eventual development of those sites with retail stores. Therefore, due to the highly speculative nature of this issue, no additional analysis is required under CEQA, and the DEIR's dismissal of this issue remains appropriate.

Other comments raised concerns about continuing expansion of Wal-Mart and subsequent applicability of the EIR's analysis. First, it should be noted that if Wal-Mart sought future physical expansion of the proposed distribution center, a Site Plan Review would be required by the City, which would require additional review under CEQA. Second, if Wal-Mart retail stores expand regionally resulting in an increase in operational intensity of the proposed distribution center above and beyond the operational intensity described in the EIR's project description, this would constitute a change in the project and additional CEQA review would be necessary. CEQA states that when an EIR has been certified […] no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, [that] changes are proposed in the project which will require major revisions of the previous EIR […] due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (*State CEQA Guidelines* Section 15162[a][1]) Consequently, if the project operation increases such that a new environmental effect could occur, the City is required by CEQA to prepare additional environmental analysis.

MASTER RESPONSE 2: LANGUAGE BARRIER AND PUBLIC REVIEW PERIOD

Several commenters raised the issue that the CEQA documents for the proposed project were not made available in languages other than English, arguing that many of the residents impacted by the proposed project cannot read English and are therefore excluded from the CEQA public review process. For this reason, several commenters request documents translated into other languages and subsequently requested extension of the public comment period or recirculation of the DEIR. Other comments on the DEIR raise issues with the highly technical nature of the text and the inaccessibility of the technical language to some residents. A few of these commenters also suggested extending the comment period to allow more time to understand the document and provide well-reasoned responses.

Translation of CEQA Documents

CEQA does not require translation of CEQA documents into additional languages as requested by commenters. While CEQA is to be broadly construed to afford the fullest possible protection to the environment, this must be done within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 – 262.) Public Resources Code section 21083.1 states that CEQA and the CEQA Guidelines shall not be interpreted in a manner which imposes procedural or substantive requirements beyond those explicitly stated. Further, Public Resource Code section 21003 declares that "[a]ll persons and public agencies involved in the environmental review process [are] responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment." (Pub. Resources Code, section 21003, subd. (f).) CEQA's emphasis on environmental protection cannot be a basis for ignoring specific statutory language emphasizing the need to consider economic costs of CEQA compliance, and procedural or substantive requirements not "explicitly stated" either in CEQA or the CEQA Guidelines should not be imposed.

CEQA addresses public participation specifically in Section 15201 stating that "[e]ach public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related

to the agency's activities." Translation of CEQA documents is not part of the City's CEQA procedures and is not consistent with the City's existing activities or procedures. The City has made the CEQA document available to a wide audience by following the public review procedures prescribed by CEQA including posting of the Draft EIR and all notices on the City's website. Neither the Lao Family Community nor the Hispanic Chamber of Commerce, two prominent community organizations, requested the document be translated (Please see Comment Letter 14 and Comment Letter 10, respectively).

Neither CEQA nor any other statutory or regulatory mandate requires that environmental documents be published in any language other than English, inherently recognizing that the CEQA process is already a very lengthy and expensive one. The City Council considered the issue at its March 16, 2009 City Council meeting and voted not to translate the DEIR into any other language; however, the City Council directed staff to work with the Lao Family Community, the Hispanic Chamber of Commerce, and any other community organizations which had offered to provide translation services at public hearings related to the project. The City has complied with the requirements of CEQA.

Document Length and Complexity

When preparing a Draft EIR, a Lead Agency must weigh CEQA's suggested "normally acceptable" limit of 150 pages for a Draft EIR (Section 15141) against CEQA's "Standards for Adequacy of an EIR" (Section 15151), which state that "[a]n EIR should be prepared with a sufficient degree of analysis to provide decisions makers with information which enables them to make a decision which intelligently takes account of environmental consequences." It is clearly in the interest of the decision makers that a Draft EIR exceed the recommended page limit when necessary to meet CEQA's stated adequacy standards. Due to the ever-expanding regulatory context, the thickening volumes of CEQA case law, the increasing complexity of modeling systems, and the rise of new environmental issues and challenges, the amount of information that constitutes a "sufficient degree of analysis" is continuously increasing. It is quite rare to see a Draft EIR under 150 pages, even for relatively straightforward projects.

Likewise, CEQA documents have become increasingly complex. Due to the complex modeling systems that have been developed to more accurately analyze project and cumulative impacts associated with issue areas such as air quality, noise, and traffic, EIRs must describe complex model assumptions and outputs and compare those outputs to thresholds of significance, which, themselves, are often quite technical in nature. Decision makers, including responsible and trustee agencies, require this technical information in order to base their decision on substantial evidence (rather than a mere claim that an impact is significant or not). For example, an analysis of traffic impacts cannot simply describe in general terms that a project will impact traffic at an intersection; in order to provide a sufficient degree of analysis, the analysis must present the Level of Service information and compare it to the adopted threshold of significance and show the decision maker how the threshold is either exceeded or not exceeded. That is not to say that the Draft EIR needs to include ALL of the data in the body of the report. CEQA discourages excessive data, and recommends including the specialized studies and technical reports as appendices to the Draft EIR, rather than in the body text (as demonstrated by the Draft EIR for the Merced Wal-Mart Distribution Center).

Regarding this complexity, comments were received indicating that the Draft EIR was overly technical and not written such that the average resident could understand it. In one case, an example sentence was taken from the Air Quality section of the Draft EIR showing how all of the technical language rendered the sentence difficult to understand by the average resident. CEQA requires that EIRs be written in "plain language" (Section 15140); however, the "plain language" requirement does not nullify the need to provide technical information to reviewing agencies that have the technical expertise to evaluate the issues as well as to the decision makers, as described above, and should not be interpreted as a requirement that an EIR should be non-technical. Rather, the phrase "plain language" should be interpreted as articulate and precise, avoiding "legalese" and high-brow vocabulary. CEQA addresses the level of technical detail to be included in an EIR:

> The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. (*State CEQA Guidelines* Section 15147)

The Draft EIR for the proposed Merced Walmart Distribution Center, is written in "plain language" and complies with the CEQA-prescribed level of technical detail indicated in CEQA Guidelines Section 15147 (see above), to appropriately inform decision makers regarding project impacts, while placing technical data and reports in appendices.

Extension of Public Review Period

The *State CEQA Guidelines* (Section 15015[a]) state that "the public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances." The State CEQA Guidelines do not specify what constitutes an "unusual circumstance". The City of Merced considered the request for an extension of the comment period at the March 16,' 2009 City Council hearing and adopted a motion determining that 60 days, the maximum required by CEQA (except in unusual circumstances), is an appropriate public review period considering the scope of the project and the anticipated public interest. The City recognized that the 60-day comment period is 15 days greater than the typical 45-day review period required for Draft EIRs that go through the State Clearinghouse. The City Council also acknowledged public comments asserting that this project qualifies as an "unusual circumstance"; however, the Council did not consider the case of the project to be an unusual circumstance and based its motion, in part, on the fact that other lengthier and more complex CEQA documents have been released in Merced, including the Mercy Hospital Draft EIR (45-day review period) and the UC Merced Draft EIR, with no request for extension of the review period. Therefore, the 60-day public review period is appropriate for the proposed project and complies with the requirements of CEQA. No extension is necessary.

MASTER RESPONSE 3: PIECEMEALING

Several commenters raised the concern that the Draft EIR improperly segmented or "piecemealed" environmental review for the proposed WDC and other projects in the area. "Piecemealing" refers to the practice of chopping up a larger project into discrete pieces, and thereby ignoring or downplaying the impacts of the project as a whole. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1358 ("*Berkeley Jets*"); *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal.App.4th 712, 732; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716; *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) These commenters assert two distinct "piecemealing" claims: 1) the improvements to Childs Avenue and Gerard Avenue associated with the Campus Parkway project were modified to accommodate the Wal-Mart Distribution Center project and environmental review for these improvements and subsequent modifications was improperly piecemealed, and 2) the Draft EIR for this project did not consider several other past, present, and planned projects. (See Comments 16-22 and 20-5.) The first argument focuses on the fact that the Draft EIR describes turn lanes at Childs Avenue and Gerard Avenue and that these turn lanes were not as specifically described in the Campus Parkway EIR/EIS. This argument lacks in both factual and legal merit. Factually, the turn lanes were analyzed in the prior EIR/EIS. (See Campus Parkway Final EIR, pp. 2-24 – 2-25; see also Campus Parkway Final EIR, pp. 2-22 – 2-27.) Legally, the tests set forth in case law clearly establish that the Wal-Mart Distribution Center (WDC) and the roadway improvements associated with the Campus Parkway project are separate projects for purposes of CEQA.

In *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 396 (*Laurel Heights I*), the California Supreme Court developed the following legal test for piecemealing: "an EIR must include an analysis of the environmental effects of future expansion or other action if: (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." (Italics added.) In applying this test, the court held that a project EIR need only treat later land use activities as part of the "project" at issue where such activities are in some sense *caused* by the initial project approval.

In *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal. App. 4th 712 (*Del Mar Terrace*), the Court of Appeal looked at whether it is permissible to focus an environmental document solely on one small piece of what is arguably a larger project. In that case, the Court upheld an EIR that treated as the "project" at issue one freeway segment within a long-term, multi-segment regional plan to expand the freeway system throughout San Diego County. Because the one segment would serve a viable purpose even if the later segments were never built, the court found no problem with the agency's focus on that limited project. In reaching its holding, the court embraced the concept of "*independent utility*" developed in federal case law interpreting NEPA.

Reading *Laurel Heights I* and *Del Mar Terrace* together, it becomes clear that an agency, when considering how to define a project for purposes of analysis in an EIR, must ask whether the potential later actions or activities at issue would be "reasonably foreseeable consequences" of the limited project. If they would not, an environmental document need not consider them, except to the extent that they happen to be "probable future projects" for purposes of cumulative impact analysis. Furthermore, where a limited project has "independent utility" even though it is arguably a part of a larger scheme, the agency can focus on that limited project, though it must address the larger scheme, in a broad-brushed fashion, in its analysis of cumulative impacts. In the case of the Campus Parkway EIR, the proposed Wal-Mart Distribution Center cannot be considered part of a "larger scheme", because the proposed project was not submitted to the City at the time the Campus Parkway EIR was prepared, and the Campus Parkway EIR analyzed the site as an Industrial use, consistent with the General Plan designation; therefore, the "independent utility" concept applies to this case only in the sense that both the proposed project and the Campus Parkway project are part of the general development planned for the southeast area of Merced.

Using this legal test, both the improvements to Childs Avenue and Gerard Avenue, and other projects in the area are independent projects from the proposed Wal-Mart Distribution Center project and neither the road improvements nor these other projects are a consequence of the proposed project. The improvements to Childs Avenue and Gerard Avenue were contemplated as part of the Campus Parkway project and were analyzed in the Campus Parkway EIR/EIS. The Wal-Mart Distribution Center project is independent and distinct from all other past, pending, and future projects in the area, and is not a consequence of other projects. Thus, the City has not engaged in "piecemealing" and the scope of the project analyzed in the Draft EIR is adequate under CEQA.

MASTER RESPONSE 4: CUMULATIVE IMPACTS ANALYSIS

Several commenters question why the EIR's cumulative impact analysis only looks at impacts in the southeastern portion of Merced. The scope, or geographic area, of the cumulative impact analysis differs for each type of environmental issue area, and is not limited to only the southeastern portion of the City. For some issues, such as air quality, the scope is broad and regional to account for the fact that certain pollutants occur over a very broad area. Cultural resources, on the other hand, are considered on a site-specific basis, and such impacts don't tend to combine when considered with other projects.

The project's cumulative impacts were evaluated consistent with the requirements of CEQA in Chapter 6, "Cumulative and Growth-Inducing Impacts" of the DEIR. The CEQA Guidelines state that the cumulative impacts discussion does not need to provide as much detail as is provided in the analysis of project-only impacts, and should be guided by the standards of practicality and reasonableness (Guidelines Section 15130[b]). Although the cumulative impact analysis presented in the DEIR generally is *based* on an examination of existing urban development in southeast Merced and a summary of anticipated projects identified by City staff, the scope of the cumulative impact analysis is *not limited by* the list of projects in Table 6-1 of the DEIR, and is different for each of the various environmental topic areas. The cumulative impact analysis in the DEIR considers the specific

geographic area for each environmental issue area. For example, it is practical and reasonable for the cumulative impact analysis scope for agricultural land to consider farmland throughout Merced County (see page 6-4 of the DEIR). The scope of analysis for cumulative air quality impacts reasonably includes emissions from numerous sources in the region because air quality impacts are regional in nature (page 6-4 of the DEIR), and is not limited to the emissions from the projects listed in Table 6-1 presented on page 6-2.

MASTER RESPONSE 5: AGRICULTURAL RESOURCES

A number of comments were raised concerning the effects to important agricultural resources as analyzed in the DEIR. The comments generally focused on the lack of agricultural conversion mitigation and increased development pressure on adjacent agricultural land due to increased property tax assessment. Other issues pertaining to effects on important agricultural resources were raised by individual commenters. Responses to these comments can be found in Section 3.2.2 "Responses to Comments". Specific comments related to the analysis of impacts on agricultural resources in the DEIR are addressed below.

Impacts to Farmland and Mitigation

The DEIR includes a comprehensive evaluation of the potential impacts associated with the loss of important agricultural resources (i.e., important farmland). As described on page 4.1-4 of the DEIR, the project site contains approximately 229 acres of important farmland of which 70% is considered prime farmland. Impacts of the proposed project related to the conversion of important farmland were described in detail in Impact 4.1-1. As described therein, the project would result in the conversion, or loss, of 228.68 acres of important farmland. In addition, the DEIR quantified the direct conversion of farmland according to several criteria using the California Land Evaluation and Site Assessment (LESA) model. The project scored an 88.4 in the LESA model with subtotals of 43.4 and 45 for the land evaluation and site assessment portions, respectively. Based on the scoring established by the state, farmland on the project site is considered significant. The DEIR concluded the conversion of important farmlands on the project site would be considered a significant impact.

The project site is located within the City's planned urban growth boundary and is consistent with industrial land use designation established by the City. The City's designation of the project site for industrial land use indicates the City's vision for future land uses for the project site do not involve agricultural operations but involve urban development, specifically industrial uses. Although the project site currently consists of agricultural operations, the proposed project is consistent with the future urban land development vision of the City.

The reason an EIR is required by CEQA for this project is because of the request by the applicant to amend the General Plan and abandon the easement for Kibby Road. If such amendment were not needed, the applicant would have been entitled to build by right. Furthermore, CEQA does not provide for the specific type of mitigation measures that should be adopted to mitigate significant impacts to agricultural resources. The determination of how best to mitigate such impacts is left to the discretion of local agencies. The decision to zone this location as industrial was made by the City Council more than a decade ago in 1997, when it adopted the Merced Vision 2015 General Plan. The EIR for that General Plan evaluated the adverse environmental impacts that would result if agricultural land were converted to urban uses and concluded that converting agricultural soils to non-agricultural uses is a significant adverse impact under CEQA. At that time, the City determined not to have a policy providing mitigating agricultural impacts but rather a policy that land designated for development in the General Plan should be developed in accordance with that plan, which included consideration of land use, housing, conservation and open space issues at that time. The City adopted long term goals, objectives and policies relating to the appropriate balance between development of housing, industrial, commercial and other uses, and the preservation of agricultural land and open space. The City Council considered the significant impact associated with the conversion of farmland resulting from buildout of the General Plan and adopted a Statement of Overriding Considerations (Resolution No. 97-22). That Resolution reflected the judgment of the City Council that the social, economic and environmental benefits of the project outweighed its significant environmental risks.

The conclusion in the DEIR for this project is consistent with the policies established by the General Plan and findings for the proposed project would require adoption of a Statement of Overriding Considerations.

CEQA Guidelines Section 15126.4 outlines the requirements for mitigation measures. Specifically, the CEQA Guidelines state "[a]n EIR shall describe feasible measures which could minimize significant adverse impacts …" (Section 15126.4(a)(1)). The significant adverse impact identified in the analysis conducted in the DEIR is related to the conversion of 229 acres of important farmland on the project site. Mitigation suggested by commenters includes Agricultural Trust Lands, off-site conservation easements, and fee title acquisitions of comparable land. However, conserving agricultural land at a location other than the project site would not prevent or reduce the loss of important farmland at the project site. As concluded in the DEIR, mitigation that would eliminate the loss of agricultural land to urban development on the project site is not possible. The City has discretion to consider and then reject proposed mitigation measures. A lead agency's "duty to condition project approval on incorporation of feasible mitigation measures only exists when such measures would [avoid or] 'substantially lessen' a significant environmental effect." The agency is not required to adopt every proposed mitigation scheme brought to its attention. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal. App. 3d 1502, 1519.) The DEIR's approach is appropriate, given that the direct and cumulative impacts to agriculture caused by the conversion of farmland to non-agricultural uses was described and analyzed in the Vision 2015 General Plan EIR. (DEIR, pp. 4.1-7 – 4.1-8.) As stated in the DEIR, the site for the proposed project and the surrounding area have been designated for non-agricultural uses ever since the City adopted its current General Plan. (See *Id.* at pp. 4.1-4, 4.1-11.) The City of Merced previously considered the significance of impacts associated with conversion of farmland resulting from buildout of the General Plan and adopted a Statement of Overriding Considerations (Resolution No. 97-22). For these reasons, the conclusions made in the DEIR meet the requirements of CEQA and adequately conclude that "feasible measures which could minimize significant adverse impacts" are not available in accordance with CEQA Guidelines 15126.4.

Development Pressure on Adjacent Farmland

The DEIR includes a comprehensive evaluation of existing agricultural production occurring in the project vicinity. As described on page 4.1-12 of the DEIR, agricultural operations currently occur on the project site, in the immediate vicinity of the project site, and extend outward to the east, west, and south into Merced County.

Impacts of the proposed project related to other changes in the environment that could result in the conversion of important farmland were described in detailed in Impact 4.1-3. As described therein, urban development of the project site could foster future farmland conversions. However, the DEIR identifies an industrial land use, as proposed by the project applicant, can be compatible with agricultural activities if the industrial use is not sensitive to noise, dust, unfavorable smell, and other nuisances commonly associated with agricultural operations and therefore can exist in proximity to one another without significant impacts. The DEIR also indicates that the proposed project conforms to the City's plans and designations for industrial land uses and is located within the City's planned build-out boundary. Therefore, the DEIR concludes significant impacts associated with changes in the environment that could result in conversion of farmland to nonagricultural use would not occur with implementation of the proposed project.

As discussed in the DEIR, the Williamson Act establishes a mechanism for contracts between local governments (e.g., Merced County) and private landowners (e.g., agricultural operators) that restrict parcels of land to agricultural or related open space land uses and offered reduced property tax assessments as an incentive for the restrictions on land use. These contracts are valid for ten years, and subject to renewal. Cancellation and/or breach of Williamson Act contracts carries stiff financial penalties. If a property owner decides not to renew, the annual tax assessment gradually increases until the end of the nonrenewal period, when the contract is terminated. However, development of the project site will not necessarily lead to increased property assessments on adjacent parcels—properties are only reassessed at the time of sale. Exhibit 4.1-2 of the DEIR identifies three adjacent parcels, and parcels in the vicinity, of the project site that are currently enrolled in Williamson Act contracts. As discussed in Impact 4.1-2 of the DEIR, implementation of the proposed project would not remove any parcels

under an existing Williamson Act contract. In addition, implementation of the proposed project would not inhibit adjacent parcel owners from enrolling in a Williamson Act contract. The fact that the site is developed has no correlation to the property tax assessments on adjacent agricultural land. Those assessments will only change subject to the terms of the Williamson Act contract or by action of those particular property owners. It is impossible to even speculate what those property owners might do in the future. The DEIR fully analyzes all potential impacts associated with conflicts of Williamson Act contracts, which is directly related to tax assessments, as is required by CEQA. No additional analysis is required.

Where appropriate a DEIR may contain discussion of economic impacts of a project (e.g., tax assessment); by themselves, however, such impacts "shall not be treated as significant effects on the environment" (CEQA Guidelines, Section 15131, subd. (a)). As discussed in the CEQA Guidelines, "there must be a physical change resulting from the project directly or indirectly before CEQA will apply" (discussion following CEQA Guidelines, Section 15131). If a proposed project may cause economic consequences but no significant environmental impacts, CEQA does not require that an EIR be prepared (Hecton v. People of the State of California (1976) 58 Cal.App.3d 653, 656 [CEQA was "not designed to protect against the…decline in commercial value of property adjacent to a public project"]). Thus, a project's changes to land uses do not necessitate CEQA review unless such effects are "related to or caused by physical change" (discussion following CEQA Guidelines, Section 15131).

However, the City recognizes there is pressure on adjacent agricultural land to convert to urban development that could be construed as "growth-inducing", growth which could indirectly result in additional physical changes to the environment. However, as mentioned above, a change in property value is not in itself considered "growth-inducing" as defined by CEQA. As identified in CEQA Guidelines Section 15126.2(f), growth inducing is defined as fostering economic or population growth either directly or indirectly in the surrounding environment. CEQA Guidelines also identify a growth-inducing project as one "… which would remove obstacles to population growth …" The project would not require extension of services or utilities to an otherwise undevelopable area which could allow for more construction or development in service areas. In addition, the project would not remove any boundary to growth. The project site is located inside the city limits and does not require annexation. The primary obstacle to population growth is the city limits located east of the project site. Implementation of the proposed project would not remove this obstacle.

MASTER RESPONSE 6: TRUCKS AND THE TRANSPORTATION ANALYSIS

Several commenters raise issues related to heavy truck traffic in the vicinity of the project. Assumptions regarding the truck trips, including the number of trucks trips, the routing of trucks on local and regional roadways, and their hours of activity, were carefully reviewed prior to incorporation into the traffic analysis. In addition to City staff review, a comprehensive peer review of the traffic analysis was commissioned by the City of Merced and conducted by an independent consultant. The analysis assumptions and methodology was also confirmed by Merced County staff (see Comment Letter 11, second paragraph).

Assumptions regarding the use of truck containers on site was assumed to be the same as that of the Wal-Mart Distribution Center Apple Valley, California site, in the sense that containers are loaded and unloaded, and the traffic analysis is based the number of trucks entering and leaving the site.

The designated truck routes for Wal-Mart Distribution Center trucks, whether STAA routes or other routes approved by the City of Merced, would be defined as per Mitigation Measure 4-11-2b (a, b and c). The truck routing is based on the most logical routes to access SR 99, SR 140 and the regional roadway network. Truck routes are typically the shortest routes between a site and the regional roadway network, and that is the case here as well. The routes noted in Mitigation Measure 4.11-2b(c) are the routes that were assumed in the traffic analysis, are the logical truck route choices, and make the most sense to include in the truck route plan mitigation measure plan.

Goods that are brought to the Distribution Center come from various sources. It would be speculative to estimate how the proposed distribution center would potentially affect the Port of Oakland or any other port. Traffic dissipates as it moves further from the source, and the number of available route choices increases. Therefore, this location was considered outside the study area and too far way to accurately forecast project-generated traffic volumes.

It is an industry standard recommended practice to survey a similar facility when published standardized trip generation rates are not available for a proposed land use. In this case, the Apple Valley site was chosen for the trip generation survey as it was considered the most similar distribution center site to the proposed site in Merced in terms of its size and operating characteristics. The Apple Valley Distribution Center has 1,201 employees and a similar fleet mix as the proposed facility in Merced. Although the surrounding land uses may differ at the Apple Valley site, the trip generation of the site is based on the site function and size.

MASTER RESPONSE 7: DETENTION BASINS AND DRAINAGE

Several comments were made regarding the adequacy of the proposed detention basin with respect to run-off volume. Because plans for the proposed project are not yet designed to construction-level detail, calculations have not been finalized for the stormwater detention and conveyance facilities. However the preliminary designs described in Mitigation Measure 4.6-2 at the conceptual phase are conservative, that is, the basins and conveyance facilities are sized larger than necessary to handle the 100-year storm event and would be refined at the final design phase. The detention basins would be as shallow as possible; target depth for the detention basin or basins is 5 feet below ground surface (bgs), and although some areas may be deeper (8 to 10 feet) due to grading and terrain, the water depth would still be targeted at 5 feet. The berms would be designed and compacted pursuant to the final geotechnical report for the project (ENGEO 2006b). (Jim Emerson, pers. comm. 2009) The final geotechnical report will include evaluation of the filled-in stream channel areas, which are less dense and more permeable to water than surrounding land and soil and have high shrink-swell potential.

Senior City Engineer John Franck and City Engineer Dave Tucker (now retired) reviewed and found acceptable the preliminary plans with one condition. An agreement with the Merced Irrigation District's (MID) would be required by the City on proposed project stormwater discharge points and drainage improvement details (Kim Espinosa, pers. comm. 2009). This agreement, which would reconcile differences in the requirements from the City and MID including stormwater holding times in the retention basins and release rates, contain the following conditions (per MID Letter to City of Merced [Comment 13]):

- If storm water is to be discharged to any MID facility, the project proponent shall enter into a “Storm Drainage Agreement” with the MID Drainage Improvement district No. 1, and pay all applicable fees.
- The project proponent shall verify with MID stormwater discharge rates, means for connection to MID facilities, and water quality requirements so that MID can set final stormwater requirements. Depending on the approved route and discharge location (preferred alternative Fairfield Canal or the Farmdale Lateral/Doane Lateral) certain improvements including, but not limited to, pipelines, sensors, discharge structure assemblies and their appurtenances, would be required.
- The property owner must execute an appropriate agreement for all crossings over or under any MID facilities, including utilities, crossings, and pipelines.
- A signature block will be provided for MID on all project Improvement Plans that impact MID facilities.
- A “Construction Agreement” between the owner and the MID shall be executed for any work associated with MID facilities.

- Construction runoff into MID facilities is not allowed. Storm water discharges meeting MID requirements during the construction phase shall be agreed upon beforehand such that water quality is protected within the Doane Lateral and any downstream connected facilities or creeks.

- The west portion of the warehouse under the proposed project plan shall be realigned to avoid the existing electrical line, servicing City Well No. 10-R2 near the south end of the project site, within a new appropriately sized easement.

- MID shall receive a copy of the final, signed CEQA documents

These conditions of approval have been added to the text of the DEIR. Please see Section 4 "Revisions and Corrections to the Draft EIR" for the specific revisions to the DEIR text. Note that these revisions provide additional clarity and do not alter the conclusions or analysis in the DEIR.

MASTER RESPONSE 8: RUNOFF WATER QUALITY

As is the case for detention basins and drainage systems, the proposed project is not at the shovel-ready design level for its stormwater treatment facilities; therefore a detailed SWPPP has not been produced nor is one required at this time. Mitigation Measures 4.6-1b and 4.6-2 contain the performance standards that would be adhered to in the stormwater facilities. Master Plan standards have been applied to the formulation of required drainage infrastructure including storm drain conveyance elements and stormwater detention basins at the primary local watershed level (see page 4.6-1), in order to accommodate stormwater runoff under buildout conditions pursuant to the City of Merced Vision 2015 General Plan. As with the stormwater detention and conveyance facilities, the preliminary stormwater quality designs described in Mitigation Measure 4.6-2 at the conceptual phase are conservative (Jim Emerson, pers. comm. 2009). It should also be noted that the stormwater detention basins would be maintenance dredged when deemed necessary by the City Environmental Control Officer to remove fine sediments and other deposition, and the dredged materials would be disposed of in compliance with federal, state, and local hazardous materials regulations.

The applicant is required to develop and implement a Spill Prevention, Control, and Counter measures to ensure that all pollutants are controlled and contained. An SPCC is required as part of the unified hazardous waste and hazardous materials management program (i.e. Unified Program) required by Senate Bill 1082 (1993). The Merced County Division of Environmental Health (MCDEH) is the Certified Unified Program Agency designated to oversee the SPCC. The Unified Program includes requirements for a SPCC pursuant to California Safety Code Sections 25270-25270.13 and U.S. CFR Title 40 Part 112. The following types of BMPs must be incorporated into the SPCC:

- Material Delivery and Storage Controls: Provide covered storage for materials, especially toxic or hazardous materials, to prevent exposure to stormwater. Toxic or hazardous materials shall also be stored and transferred on impervious surfaces that will provide secondary containment for spills. Vehicles and equipment used for material delivery and storage, as well as contractor vehicles, shall be parked in designated areas.

- Spill Prevention and Control: Ensure that spills and releases of materials are cleaned up immediately and thoroughly. Ensure that appropriate spill response equipment, such as spill kits preloaded with absorbents in an overpack drum, are provided at convenient locations throughout the site. Spent absorbent material must be managed and disposed of in accordance with applicable regulations. In particular, absorbents used to clean up spills of hazardous materials or waste must be managed as hazardous waste unless characterized as nonhazardous.

- Solid Waste Management: Provide a sufficient number of conveniently located trash receptacles to promote proper disposal of solid wastes. Ensure that the receptacles are provided with lids or covers to prevent windblown litter.

- Vehicle and Equipment Fueling: Fuel vehicles and equipment off site whenever possible. If off site fueling is not practical, establish a designated on site fueling area with proper containment and spill cleanup materials.

- Vehicle and Equipment Maintenance: Use off site maintenance facilities whenever possible. Any wash bays or on site maintenance areas must be protected from stormwater runoff to or from the area.

- Toxic debris requiring disposal, including discarded chemical containers, shall be disposed of in a landfill designed to satisfy the standards for protecting groundwater in as described in the design criteria and associated performance standards in the Federal statutes 40 CFR 258.4.

Note that the DEIR text has been revised to include this discussion regarding the SPCC.

As described on p. 4-20 in Section 4.3 "Revisions and Corrections to Draft EIR in Response to Public Comment", an agreement with the Merced Irrigation District's (MID) will be required by the City on proposed project stormwater discharge points and drainage improvement details (Kim Espinosa, pers. comm. 2009). Since final designs have not been approved, this agreement contains performance standards protective of the beneficial uses of water in the proposed project area, including verification with MID regarding stormwater discharge rates, means for connection to MID facilities, and water quality requirements prior to MID setting final stormwater requirements.

All wastewater generated by the truck wash bay would be discharged to the City's sanitary sewer system after initial processing by separators and other pretreatment approved by the City Environmental Control Officer. The wash bays would be protected from stormwater runoff pursuant to City requirements (Jim Emerson, pers. comm. 2009b).

MASTER RESPONSE 9: GROUNDWATER QUALITY

Several comments identify issues related to the potential for leakage from underground storage tanks. The following discussion addresses these issues.

As described on page 4.10-6, the planned aboveground and underground storage tanks would be under the authority of the Merced County Department of Environmental Health. As described in Impact 4.10-3: "Create a Significant Hazard to the General Public through the Routine Use of Hazardous Materials during Operation of the Project", compliance with federal, state, and local hazardous materials regulations, which would be monitored by the state and/or local jurisdictions, would reduce impacts associated with the use, transport, and storage of hazardous materials during operation of the project.

As described on page 4.10-6, the Merced County Division of Environmental Health (MCDEH) is the designated Certified Unified Program Agency (CUPA) in Merced County for both unincorporated areas and incorporated cities. CUPAs carry out the unified hazardous waste and hazardous materials management regulatory program (Unified Program) that consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities for the following environmental programs:

- hazardous waste generator and hazardous waste on-site treatment programs;

- Underground storage tank (UST) program;

- hazardous materials release response plans and inventories;

- California Accidental Release Prevention Program;

- Aboveground Petroleum Storage Act requirements for spill prevention, control, and countermeasure plans; and

- California Uniform Fire Code (UFC) hazardous material management plans and inventories.

The project proponents would be required to comply with Chapter 6.7 of Division 20 of the California Health and Safety Code, and Title 23 of the California Code or Regulations, which includes an Underground Storage Tank Monitoring and Spill Response Plan. Project proponents would be required to prepare and implement a SPCC Plan for the aboveground storage tanks in accordance with U.S. Code of Federal Regulations, Title 40, Part 112 and conduct periodic inspections to assure compliance with 40 CFR 112.

The installation of the proposed USTs would require a permit from the MCDEH. As specified in the CCR Title 23, Division 3, Chapter 16, the proposed USTs would:

- Contain a primary containment system that meets specified Title 23 requirements;

- Include a secondary containment system in the event of a leak or unauthorized release;

- Contain a leak-monitoring program that would consist of either an audible and visual alarm system or a daily visual monitoring program as approved by the MCDEH; and

- Be contingent upon a response plan approved by MCDEH in the event of a leak or unauthorized release.

City Domestic Well: The City Domestic Well No. 10-R2 site is on a separate parcel and is not part of the project site. It has an established, direct access to Gerard Avenue, which exists by right. The well will continue to be used as a City well and contribute to the City water supply. The access will still be retained for City maintenance. There are no fees to be paid to keep the access since the City doesn't have to travel through private property to access the well. The County of Merced Division of Environmental Health conducts onsite inspections to oversee ongoing operations and compliance (Kim Espinosa pers. comm. 2009).

The methodologies and technologies for UST installation, operation, and maintenance are continually improving, and the best available technologies would be implemented for the proposed project. Although the potential for UST failure exists, attempts to predict likelihood of UST failure after compliance with applicable regulatory requirements as described in the FEIR would be speculative. Furthermore, the final geotechnical report that will be prepared for the project will address any issues related to corrosive soils and will provide recommendations to ensure that the UST's would not be adversely affected by these types of soil conditions.

The City is required to comply, and does comply, with California Department of Public Health (DPH) and City of Merced requirements for domestic well testing, monitoring, and reporting.

The City of Merced Environmental Control Officer would monitor inputs to the sanitary sewer system in order to insure compliance with the above regulations. The City Fire Department would conduct hazardous materials inspections on the proposed project (Kim Espinosa, pers. comm.).

MASTER RESPONSE 10: SWAINSON'S HAWK AND BURROWING OWL

A number of comments addressed potential impacts to Swainson's hawk and burrowing owl and the mitigation measures described in the DEIR. Some comments suggested that the mitigation was not adequate for protection of burrowing owl and Swainson's hawk while others suggested that it was excessive. Comments were also received suggesting that mitigation based on California Department of Fish and Game (DFG) draft 1994 guidelines was not appropriate. None of the commenters disagreed with the conclusion in the DEIR that impacts to Swainson's hawk and burrowing owl resulting from implementation of the proposed project would be significant and that mitigation was necessary to reduce those impacts to less than significant.

Swainson's hawk and burrowing owl are both known to occur in the vicinity of the project site. As noted on page 4.3-6 of the DEIR, the California Natural Diversity Database (CNDDB) documents six occurrences of Swainson's hawk nest sites active since 1991 within 10 miles of the project site, including one nest site within 5 miles. On page 4.3-5, the DEIR notes that the CNDDB includes one documented occurrence of burrowing owl within 10 miles of the project site. The project site provides very low-quality habitat for these species and more suitable habitat is available elsewhere in the region (see page 4.3-10 of the DEIR). However, the DEIR concludes that both species could be affected by implementation of the project.

To mitigate impacts to burrowing owl and Swainson's hawk, the DEIR recommends compensatory mitigation in accordance with DFG guidelines. Two comments suggest that this mitigation is excessive or otherwise inappropriate (Comments 22-8 and 213-2). Comment 22-8 states that the mitigation could conflict with DFG requirements but does not state specifically how that conflict could occur. The proposed alternative mitigation presented in comment 22-8 provides no assurances that compensatory mitigation necessary to reduce the impact to less than significant would be developed or implemented. The 1994 draft guidelines represent the only standard recommended mitigation issued by DFG for Swainson's hawk. The fact that the staff report that included the mitigation guidelines was released by DFG in 1994 and could therefore be considered dated is inconsequential because the mitigation would be effective in reducing the impact to Swainson's hawk to a less than significant level. The DEIR outlines compensatory mitigation requirement for burrowing owl should this species be detected onsite during preconstruction surveys. By including impact avoidance, minimization, and compensation measures, the mitigation in the DEIR provides higher levels of protection and greater assurance of implementation for both species compared to the mitigation presented by the commenter in comment 22-8.

One commenter states that the proposed .0.75 acres of mitigation lands for each acre of foraging habitat lost is inadequate to mitigate impacts to Swainson's hawk (Comment 118-4). The commenter notes that the mitigation would still result in a loss of habitat with only a small amount of the remaining habitat protected from future development. Although the compensatory mitigation ratio is less than 1:1, the long term protection of these mitigation lands would comply with CEQA by reducing the impact to a less than significant level. The commenter's suggestion that mitigation require protection of all remaining foraging habitat within 5 miles of the nearest active nest is not likely feasible and is not necessary to reduce this impact to a less-than-significant level.

MASTER RESPONSE 11: ECONOMICS AND URBAN DECAY

Several comment letters raise concerns that the EIR does not evaluate the economic impacts to surrounding property owners and dismisses the potential for urban decay as a result of the Wal-Mart distribution center. A number of comments stated that the distribution center would result in negative economic impacts to surrounding residential property owners. Several comments suggest that an increase in truck traffic activity combined with the perceived land use conflict between the proposed distribution center and surrounding residential uses would further decrease property values as to result in urban decay. The following discussion prepared by an expert in economics and urban decay addresses these concerns.

CEQA Standards for Urban Decay

CEQA Guidelines Section 15131(a) through (c) provides guidance on the discussion of economic and social effects in an EIR. Specifically, such effects may be included in an EIR but "shall not be treated as significant effects on the environment." However, economic and social effects may be used to determine the significance of physical changes caused by a project, but these changes "need not be analyzed in any detail greater than necessary to trace the chain of cause and effect." An EIR, therefore, should evaluate the extent to which socio-economic impacts result in permanent physical impacts, which are often manifested as urban decay. Thus, a decrease specifically in neighboring property values would not, on its own, represent a significant environmental impact. Rather, the socioeconomic impact would need to result in physical impacts, in this case urban decay, either through abandonment or dislocation.

Potential Urban Decay Impacts

To evaluate a project's potential to cause urban decay, an analysis must determine if the surrounding buildings would remain viable locations for housing, commercial, and industrial uses.

Economic Effects on Commercial Buildings. For commercial uses, proximity to a warehouse distribution center can provide positive economic impacts due to increased business activity, employment, and additional traffic which help to drive retail expenditures. As an example of increased retail benefits from additional employment, the International Council of Shopping Centers reports that suburban office workers averaged approximately $29 per week in lunchtime spending in 2004. Further, increased traffic counts are commonly used by retailers to determine a location's retail viability. Both factors would contribute positively to retail real estate conditions. In addition, office real estate would have marginal, if any, positive or negative impacts. Additional truck traffic and warehouse adjacencies generally do not generate significant adverse economic impacts to office buildings, although the distribution center may create additional business activity that can lead to a marginal increase in demand for office space.

Economic Effects on Industrial Buildings. Industrial and warehouse distribution would also be marginally impacted, at most, as the warehouse distribution center would not increase the *available* supply of industrial building floor area but is a build-to-suit building with a predefined tenant (i.e. Wal-Mart). However, the competitive available supply of warehouse distribution space in Merced and the surrounding market area would remain mostly the same after implementation of the proposed project.

Economic Effects on Residential Buildings. The land use specifically cited in comment letters to incur negative economic impacts is residential. Cited concerns included land use conflicts, increased truck traffic, additional air pollution, and noise.

Current housing market conditions are challenged in Merced with high foreclosure rates and devaluation. The downturn in the housing market was the result of a number economic factors including:

- Speculation and artificial home appreciation not tied to rising household incomes.
- Over construction in a market devoid of household or employment growth.
- Liberal and flexible lending practices that lead to households that could not afford home loans.
- Overall rise in unemployment and decreasing gross domestic product.

Home depreciation has been particularly acute in Merced County. According to Dataquick, a private real estate data vendor, the average monthly home sales price in Merced County decreased from a high of approximately $358,000 in October of 2006 to a low of approximately $97,000 in March 2009. The dramatic decline in home values has resulted in a significant rise in foreclosures with approximately 846 home foreclosures in Merced County from January to March 2009.

Despite the loss of home values and increased foreclosures, the critical CEQA question remains whether the proposed project would result in lasting residential vacancy and abandonment, leading to urban decay. This argument implies that housing demand within Merced will halt to the extent that marginal neighborhoods will be abandoned. But the argument fails to take into account the current and projected population, employment, and household growth that is projected to continue increasing the housing demand over the long-term. According to MCAG, Merced County will grow by approximately 74,800 persons from 2010 to 2020. Assuming the City of Merced would maintain its proportionate share of Merced County's overall population, the City of Merced would grow by approximately 23,600 residents over the 10-year period.

In addition, the possible introduction of a California High Speed Rail Station would improve Merced's access to regional employment centers in the Bay Area and increase local housing demand as Merced becomes a more affordable option to expensive housing markets in the Bay Area. Combined with the high speed rail is the continued expansion of University of California, Merced which will attract additional faculty, staff, and students.

According to the California Employment Development Department, State Education Employment will grow by approximately 1,700 employees from 2004 to 2014 in Merced County. Overall, employment is projected to grow by 11,600 employees from 2004 to 2014, inducing population growth.

This indicates long-term housing demand as employment expands and more people move to Merced County. If Merced's estimated average household size remains constant at 2.99 persons per household as of January 2008, then there would be additional household growth of approximately 7,900 households.[1] Household growth translates directly to housing demand, which can be absorbed either by the existing housing stock or from new housing. According to the California Department of Finance, approximately 1,570 housing units were vacant in the City of Merced. If the number of vacant units doubled to over 3,100 units, there would remain ample projected household growth to absorb the available supply and additional housing would need to be constructed to accommodate the increase in population. Those more affordable housing units will become a viable housing source for low and middle-income renters and buyers unable to afford new homes.

It is also important to note that one of the causes of the real estate downturn has been the dramatic increase in unemployment. This rise in unemployment has been especially sever in Merced. The Merced City Manager reported a 19.9% unemployment rate in Merced County for the month of February (Merced Chamber of Commerce 2009). It is difficult to imagine that a project generating up to 1,200 jobs would compound the real estate downturn in an area currently experiencing such high unemployment.

Conclusion

In conclusion, any negative effects to the housing markets resulting from additional truck traffic generated from the distribution center will be offset by continued household growth and continued demand for affordable places to live within Merced, including areas surrounding the proposed distribution center. This does not include any positive effect on the housing market that could result from the generation of up to 1,200 jobs in an area that is currently experiencing 19.9% unemployment (which is one of the factors in the real estate downturn).

MASTER RESPONSE 12: ALTERNATIVES

Several commenters raised questions or offered comments about the alternatives analysis, including the following:

- The No Project Alternative identified in the Draft EIR must represent existing, pre-project conditions.
- The assumption that a project similar to the proposed project would be developed on the project site if the project is not approved is speculative; the EIR should not assume that denial of the proposed project would result in a similar project being proposed. Rather, the DEIR should identify the No Project Alternative as preservation of the existing undeveloped site.
- The range of alternatives selected for analysis in the DEIR is too limited; further consideration should have been given to alternatives that were rejected and not analyzed in the DEIR.
- Vacant sites in other communities suitable for the proposed project should have been evaluated as alternative locations to the proposed project.
- The DEIR does not sufficiently explain the reasons why Wal-Mart rejected other possible sites described in Exhibit 5-1 and Table 5-1.
- The comparison of alternative sites is inadequate.

[1] The calculation divides the proposed projected population growth by the average persons per household to determine the net increase in households.

- Some commenters recommended that one or more of the alternatives be selected, instead of the proposed project site.

The following provides responses to the above described comments.

Pages 5-1 and 5-2 of the DEIR paraphrase Section 15126.6(a) through (f), of the State CEQA Guidelines, which contain the following guidance for the analysis of alternatives:

> An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

Section 15126.6(f)(1) of the State CEQA Guidelines states, in part:

> The range of alternatives required by an EIR is governed by the "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The key issue is whether the selection and discussion of alternatives fosters informed decision-making and informed public participation. An EIR need not consider an alternative whose effect cannot be ascertained and whose implementation is remote and speculative.
>
> Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives.

Pages 5-1 through 5-5 of the DEIR contain substantial documentation of the process leading to the selection of alternatives for analysis. Furthermore, Section 3.5 of the DEIR provides background information about the process Wal-Mart used in selecting the proposed project site for its new distribution center. Section 3.6 describes the objectives of the project from the perspectives of the City of Merced and the project proponent. Together, these discussions provide information concerning the criteria used to reject a number of alternative locations for the proposed project and to select the proposed project site as the preferred site to meet the project objectives.

The project objectives are reiterated in Section 5 Alternatives to the Proposed Project. This section of the DEIR provides a thorough description of the process by which alternatives to the proposed project were identified for analysis in the DEIR. Included in this section is an identification of sites that Wal-Mart had initially considered for development of its new distribution center, but had ultimately rejected, and the reason for the rejection.

The DEIR describes the process used to assess alternative project sites including "… physical criteria for selection of potential sites [which] were primarily limited to size of the parcel, absence of development, compatibility with surrounding land uses, and proximity to major roadways" (see Section 5.3.1, Alternatives to the Proposed Project). CEQA Guidelines state "the EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination" (Section 15126.6(c)). In accordance with CEQA Guidelines, the DEIR provides a brief explanation of why alternative sites were rejected and were deemed unable to meet project objectives including physical issues and political or socioeconomic issues (see Section 5.3.1, Alternatives to the Proposed Project). In addition, CEQA Guidelines state "an EIR need not consider an alternative whose … implementation

is remote and speculative" (Section 15126.6(f)(3)). As stated previously, physical issues and political or socioeconomic issues in other communities, such as Patterson (as recommended by commenters), would make implementation of such project alternatives remote and speculative. In addition, the DEIR analyzes three alternative sites (i.e., between Gerard and Mission avenues; West of SR 99, between Gerard and Mission avenues; South of the airport, at the Thornton Road/West Dickenson Ferry Road intersection) in compliance with the requirement to analyze alternative project locations if selecting such alternative locations could avoid or substantially lessen the project's impacts (CEQA Guidelines Section 15126.6(f)(2)(A)).

"[A]n EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, or to the location of the project, which (1) offer substantial environmental advantages over the project proposal...; and (2) may be 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved." (See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 566 (*Goleta II*) (italics deleted from original).) One of the factors that a lead agency may consider when analyzing the feasibility of alternatives is the land-use designations for the proposed project site as well as those of potential alternative sites. (See *id.* at pp. 572-573. "[A]n EIR is not ordinarily an occasion for the reconsideration or overhaul of fundamental land-use policy." (*Ibid.*) The range of alternatives to the proposed project considered in the DEIR fully complies with all requirements in CEQA Guidelines Section 15126.6.

One commenter asserts that the "No Project" Alternative must compare the impacts that would result from the proposed project to the impacts that would occur if no development would occur on the project site. This assertion is an inaccurate portrayal of what is required for this analysis under CEQA. Pursuant to CEQA Guidelines, Section 15126(e)(2), a "No Project" alternative analysis must discuss "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." Furthermore,

> If disapproval of the project under consideration would lead to predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

Comments urging an approach that would treat the "No Project" alternative as a "no build" alternative rely on *County of Inyo v. City of L.A.* (1981) 124 Cal.App.3d 1, a case decided 17 years before the above CEQA Guideline provision and CEQA Guidelines § 15125 were enacted. (See Remy, et al., Guide to CEQA, Appendix III, p. 1090.) On this point, therefore, *County of Inyo* is no longer good law.

The DEIR chapter concerning alternatives describes the assumptions behind the No Project Alternative. As stated on page 5-5, there are several reasons for characterizing the No Project Alternative as the development of a regional distribution facility that would be similar to the proposed project. In defining the No Project Alternative, the DEIR concluded that there are several factors that make the project site highly attractive for development. As such, the potential for it to remain in an undeveloped state is highly unlikely and unrealistic. Based on these factors, the DEIR reasonably concludes that the project site would not remain undeveloped if the project were withdrawn or rejected but would instead likely be developed into a project of similar size and scope to the proposed project. The discussion of the No Project Alternative also takes into consideration the existing conditions, as is required, by incorporating by reference the DEIR's earlier discussion of existing conditions. (See DEIR, p. 5-5 [referencing discussion of existing conditions in Chapter 4]; see also *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 715-716 ["The Guidelines on the no-project alternative do require attention to existing physical conditions "as well as" to hypothetical future developments under existing plans"], citing CEQA Guidelines, § 15126.6(e)(2).)].)

In other words, the analysis for No Project Alternative was adequate because, if the Wal-Mart distribution center is not approved, the factors that made it attractive to Wal-Mart would likely lead to a similar land development proposal by a different applicant. For this reason, the DEIR was not required to analyze a "no project" alternative that is based on "the property remaining in its existing state" because such a scenario would include "artificial assumptions that would be required to preserve the existing physical environment" (CEQA Guidelines, § 15126.6(e)(3)(B)). Similarly, the "no project" alternative analysis was not required to analyze every possible scenario that might unfold should the project not be approved. (See *Residents Ad Hoc Stadium Committee v. Board of Trustees* (3d Dist. 1979) 89 Cal. App. 3d 274, 286 ["The discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness. The statute does not demand what is not realistically possible given the limitation of time, energy, and funds. 'Crystal ball' inquiry is not required"].) Thus, the No Project Alternative analyzed in the DEIR satisfies CEQA's requirements (See CEQA Guidelines, §15126(e)).

It should be noted that the DEIR appropriately uses the undeveloped site as the environmental baseline against which potential impacts of the proposed project are compared.

The six alternatives presented in the DEIR were identified after publication of the notice of preparation for the project, but before the release of the DEIR, at a point in time where many potential impacts of the proposed project were known. Accordingly, each of the alternatives—with the exception of the CEQA-required No Project Alternative—was formulated with the objective of reducing the known potential environmental impacts. The first alternative analyzed is the No Project Alternative, which represents development of the site with a industrial or warehouse use similar to that proposed by Wal-Mart. The remaining five alternatives were developed by the City to provide rational and meaningful modifications to the proposed project location and design that would reduce environmental impacts while still achieving most project objectives. Each of the alternatives is potentially feasible, fosters informed decision-making (e.g., the City of Merced may consider components of the proposed alternatives as preferable to components of the proposed project), and informs public participation (e.g., members of the public also may recommend components of the proposed alternatives during public hearings on the proposed project).

Several comments described the need for the DEIR to incorporate alternatives that reduce specific impacts. The City is not obligated under CEQA to identify alternatives that reduce *all* potentially significant impacts to a less-than-significant level. (See *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 545–547 [rejecting the argument that an EIR's alternatives analysis was insufficient because each alternative had environmentally disadvantageous aspects.) Rather, as stated above, Section 15126.6(a) of the State CEQA Guidelines allows the City to select alternatives that would result in avoidance or substantial reduction of *any* significant effects of the project, and does not require reduction of impacts to a less-than-significant level. Project alternatives are not required to reduce specific individual impacts of the proposed project, so long as the City has established a reasonable range of feasible alternatives that address the significant effects of the project. Table 5-8 on page 5-39 of the DEIR compares the environmental impacts of the alternatives to those of the proposed project. The DEIR concludes that two alternatives may be environmentally superior to the proposed project, but one of these alternatives does not meet all of the project objectives.

MASTER RESPONSE 13: PROJECT-GENERATED EMISSIONS OF AIR POLLUTANTS AND PUBLIC HEALTH CONCERNS

Multiple comments argue that the DEIR fails to correlate the project's contribution to increases in air pollution to increased health effects in the affected population. Some comments mention concern because some individuals who live or attend school in areas near the project site suffer from asthma or other respiratory problems. Other comments mention that high rates of asthma and other respiratory problems exist in Merced and throughout the San Joaquin Valley Air Basin (SJVAB). Table 4.2-3 (pages 4.2-7 and 4.2-8) in the DEIR summarizes the California and National Ambient Air Quality Standards (AAQS), which are health-based standards for criteria air pollutants (CAPs) identified in the California Clean Air Act and the federal Clean Air Act. Overwhelming

scientific evidence has shown that exposure of members of the public to concentrations of these pollutants in excess of these standards can result in the adverse health effects described in detail on pages 4.2-3 through 4.2-5 of the DEIR.

The San Joaquin Valley Air Pollution Control District (SJVAPCD) regulates criteria air pollutant and precursor emissions in the SJVAB through a variety of control measures, regulations, and emissions limits with the goal of attaining AAQS by the earliest practical date. SJVAPCD's CEQA thresholds of significance (i.e., 10 tons per year [TPY] of reactive organic gases (ROG) and oxides of nitrogen (NOx) (which are precursors to secondary pollutant formation of ozone [a CAP for which the SJVAB is in nonattainment]) and 15 TPY of PM10) are designed to limit emissions from new development to a level that would be consistent with attainment planning efforts (i.e., accounted for in emissions inventory projections for the SJVAB; see Table 4.2-5 (page 4.2-19) for a list of applicable attainment plans in the SJVAPCD's jurisdiction). Projects that would exceed these emissions thresholds would not be considered compliant with SJVAPCD air quality planning efforts, and would be considered to result in a substantial contribution to a violation of AAQS and/or expose members of the public to concentrations of pollutants from which adverse health effects could result. The DEIR has not omitted any analysis of the increase in pollutant emissions that would occur associated with project implementation (see Tables 4.4-5 and 4.4-6) and has conducted the correct level of analysis to correlate project-generated emissions with health effects on the public. Impact 4.2-1 regarding construction-generated emissions of CAPs and precursors was found to be significant and mitigation measures 4.2-1a through 4.2-1e were proposed to minimize this impact to a less-than-significant level. Impact 4.2-2 regarding operational emissions of CAPs and precursors was found to be significant and mitigation measures 4.2-2a through 4.2-2e were proposed to minimize this impact to a less-than-significant level. Impact 4.2-3 regarding localized mobile-source emissions of carbon monoxide was found to be less than significant. Impact 4.2-4 and the supporting health risk assessment (HRA) examined the localized exposure of sensitive receptors to emissions of toxic air contaminants. This analysis did not address the potential for short-term acute effects on individuals with asthma or other respiratory conditions because none of the TACs that would be generated by construction or operation of the project has an acute risk value according to the Office of Environmental Health Hazard Assessment (OEHHA 2003); therefore, no short-term acute risk elevation is expected (and none were raised in the comments). In addition, with regards to diesel particulate matter (PM) from vehicle exhaust, the potential cancer risk from inhalation was found to be less than significant in Impact 4.2-4. Because the potential cancer risk from inhalation, as discussed in the EIR, outweighs the potential non-cancer health impacts (ARB 2003), the potential for non-cancer health impacts was also concluded to be less than significant.

3.2.2 RESPONSES TO INDIVIDUAL COMMENTS

The written comments received on the Draft EIR and the responses to those comments are provided in this section. Each comment letter is reproduced in its entirety and is followed by the response(s) to the letter. Where a commenter has provided multiple comments, each comment is indicated by a line bracket and an identifying number in the margin of the comment letter.

This page intentionally blank.

1

DEPARTMENT OF CONSERVATION

DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES

466 N. FIFTH STREET • COALINGA, CALIFORNIA 93210

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

April 20, 2009

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

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

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

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

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

1-1

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

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

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

The Department of Conservation's mission is to balance today's needs with tomorrow's challenges and foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources.

directly at:

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

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

Thank you.

Timothy S. Boardman PG, CHG
District Deputy

CC "Fancher" 54-34 well file

Notice of Completion & Environmental Document Transmittal

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

SCH # 2006071029

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

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

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

RECEIVED
FEB 27 2009
12:50
STATE CLEARINGHOUSE

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

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

2/27

Project Issues Discussed in Document:

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

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

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

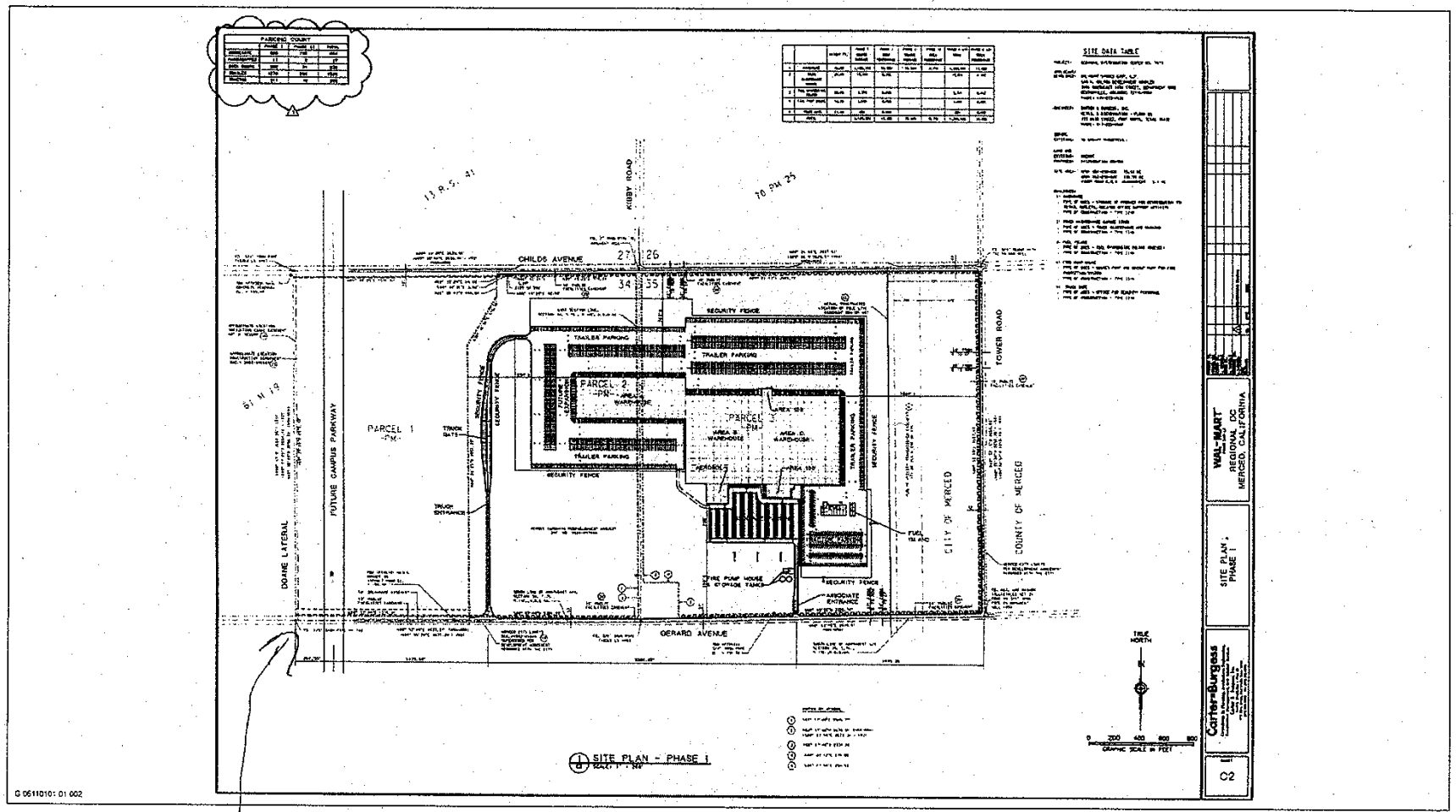
State Clearinghouse Contact: (916) 445-0613 SL
State Review Began: 2-25-2009
SCH COMPLIANCE 4-27-2009
per lead.

Please note State Clearinghouse Number (SCH#) on all Comments
SCH#: 2006071029
Please forward late comments directly to the Lead Agency

AQMD/APCD 18
(Resources: 2,28)

Project Sent to the following State Agencies

X Resources	**Bus Transp Hous**	**State/Consumer Svcs**
___ Boating & Waterways	___ Aeronautics	___ General Services
___ Coastal Comm	X CHP	**Cal EPA**
___ Colorado Rvr Bd	X Caltrans # 10	___ ARB – Airport Projects
X Conservation 4	___ Trans Planning	___ ARB – Transportation Projects
X Fish & Game # ___	___ Housing & Com Dev	X ARB – Major Industrial Projects
___ Delta Protection Comm	___ Food & Agriculture	___ Integrated Waste Mgmt Bd
X Cal Fire	___ Health Services	___ SWRCB: Clean Wtr Prog
___ Historic Preservation		___ SWRCB: Wtr Quality
X Parks & Rec	**Independent Comm**	___ SWRCB: Wtr Rights
___ Central Valley Flood Prot.	___ Energy Commission	X Reg. WQCB # 5F
___ Bay Cons & Dev Comm	X NAHC	X Toxic Sub Ctrl-CTC
X DWR	X Public Utilities Comm	**Yth/Adlt Corrections**
___ OES (Emergency Svcs)	___ State Lands Comm	___ Corrections
	___ Tahoe Rgl Plan Agency	
	___ Conservancy	
	___ Other:	



Proposed Project Site Plan

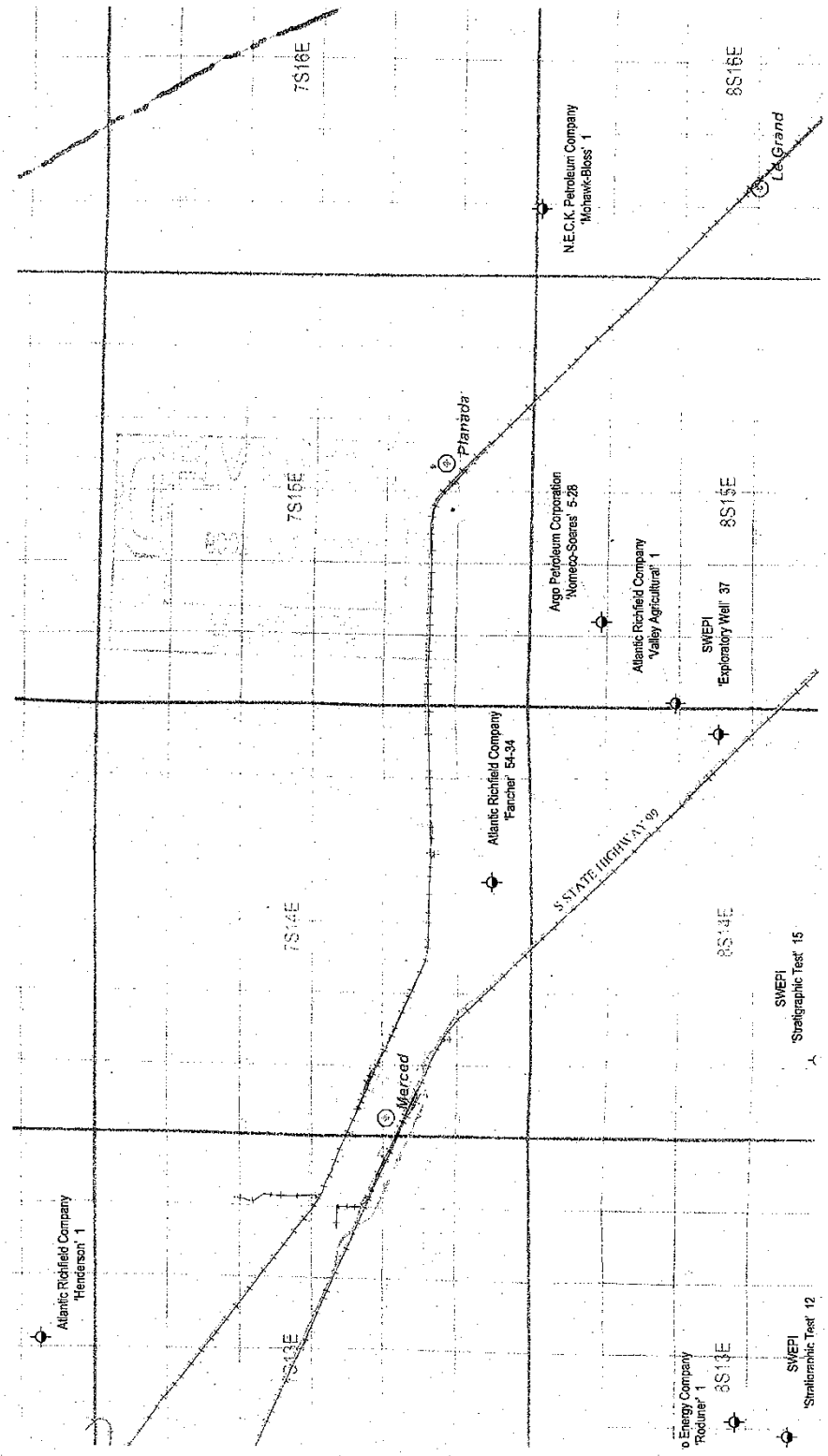
Exhibit 3-1

Atlantic Richfield Co

"Fancher" 54-34 Sec 34 T7S R14E

API # 047-00022

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


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

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

DOGGR Home Page | Online Production/Injection | H

Back

Well Details

Well Details

API: 04700022 Well Status: Plugged Dis

Operator: Atlantic Richfield Co. Operator Code: A4505 Operator

Lease: Fancher Well Number: 54-34

Field: Any field Field Code: 000 Area: Any

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

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

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

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

Last edited on January 15, 2009

FORM 159 (9-49)

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

REPORT OF WELL ABANDONMENT

Coalinga, California, November 23, 1953

Confidential

Mr L C [illegible] Agent
Richfield Oil Corporation
1250 - 16th Street
Merced, California

Dear Sir

Your report of abandonment of Well No. [illegible],
Sec. [illegible], T. 7 [illegible], R. [illegible], [illegible] B. & M., oil field,
Merced County, dated October 29, 1953, has been
examined in conjunction with records filed in this office.

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

only
11-27-53
olf

GH:ef
cc: Company, [illegible]
Company, Bakersfield

R. D. BUSH
State Oil and Gas Supervisor

By E R Murray-Aaron
Deputy Supervisor

82601 7-53 6700 SPO

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

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

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

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

ORIG. T.D. 4110' **PLUG** 940' — 835' **REDRILL** **PLUG**

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

COMMENCED PRODUCING Abandoned ☐ FLOWING ☐ PUMPING ☐ GAS LIFT

PRODUCTION DATA

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

CASING RECORD

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

CEMENTING OR OTHER SHUT OFF RECORD

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

PERFORATION RECORD

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

PRESENT CONDITION OF WELL AS OF:

DATE October 29, 1953

ATTACHED FORM

RICHFIELD OIL CORPORATION

BY J. P. Shea [signature]
District Development Engineer

FORM 1410 ...

LOG AND HISTORY
PANCHER 54-34
Section 34, T. 7 S., R. 14 E., M.D.B.&M. Page #2

(DRILLED BY: Clyde Hall Drilling Co.)

Commenced drilling operations at 9:00 a.m., August 30, 1953, drilling a 10-5/8" hole 0-524'. Ran Schlumberger electric log and recorded from 522', drilled depth 524'.

0 524 Surface sand and clay

Opened 10-5/8" hole to 17½" 0-524'.

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

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

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

524 1285 Sand and clay
1285 4108 Sand and shale

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

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

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

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

Stood cemented a total of 4½ hours. Located top of cement plug at 463'. Witnessed by Richfield Oil Corporation representative for Division of Oil and Gas. Removed b.o.p. equipment. Placed 10' cement plug in top of 12-3/4" casing. Welded steel plate on stub of 12-3/4" casing. Contractor's crew and equipment released at 6:30 a.m., September 8, 1953. HOLE ABANDONED AS OF SEPTEMBER 8, 1953.

FORM 111 (1-49)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

REPORT ON PROPOSED OPERATIONS

No. P 553-261

Coalinga Calif. September 10 19 53

Mr. L C Jirsa

1250 - 16th Street Merced Calif. Confidential

Agent for RICHFIELD OIL CORPORATION

DEAR SIR:

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

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

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

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

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

PROPOSAL:
"The proposed work is as follows: (Conforming telephone conversation Forwie - Chea)
1. Place 100' cement plug above 950'. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for the Division of Oil and Gas.
2. Place 60' bridge plug across shoe of surface casing. Location and hardness of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
3. Leave all unplugged portions of hole filled with heavy mud.
4. Place 10' cement plug at surface. Location of plug to be witnessed by Richfield Oil Corporation representative for Division of Oil and Gas.
5. Weld steel plate across stub of surface casing, tear out all surface lines and equipment and [illegible]."

DECISION:
THE PROPOSAL IS APPROVED.

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

R. D. BUSH
State Oil and Gas Supervisor
By R. Murray Deputy

FORM 108. 37613 2-52 20M @ SPO

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

Notice of Intention to Abandon Well

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

Bakersfield, Calif. September 7, 19 53

DIVISION OF OIL AND GAS

Coalinga, Calif.

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

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

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

The present condition of the well is as follows:

1. Total depth. 4110'

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

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

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

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

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

RICHFIELD OIL CORPORATION
(Name of Operator)

By [signature] District Development Engineer

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

FORM 111 (1-49)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

REPORT ON PROPOSED OPERATIONS

No. P 553-221

Coalinga Calif. August 14 1952

Mr. [illegible] Mesa

1250 - 16th Street Merced Calif.

Confidential

Agent for [illegible]

DEAR SIR:

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

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

THE NOTICE STATES:

"Legal description of lease __________

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

Elevation of ground above sea level 1[illegible] feet (topo) datum.

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

PROPOSAL:

[illegible]

Size of Casing Inches [illegible]	Weight	Grade and Type	Top	Bottom	Cementing Depths
20"	65#	Conductor	13'	18'	
12-3/4"	19.56#	Grade "B"	13'	300'	300'

Intended zone or zones of completion: ________

Please designate as [illegible].

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

DECISION:

THE PROPOSAL IS APPROVED PROVIDED THAT:

1. At least 300' of 12-3/4" surface casing shall be cemented in the hole with sufficient cement to fill back of this casing from the shoe to the ground surface.
2. Mud fluid of sufficient weight and proper consistency to prevent blow-outs shall be used in drilling, and the column of mud fluid shall be maintained to the surface at all times, particularly while pulling the drill pipe.
3. Adequate blow-out prevention equipment shall be provided and kept ready for operation at all times.
4. Water suitable for irrigation shall be protected from contamination.
5. This division shall be notified before landing or cementing any casing below the 12-3/4" surface casing, and additional requirements will be outlined at that time.

Blanket Bond

CMC:ef

cc: Company, [illegible]
Company, Bakersfield

R. D. BUSH
State Oil and Gas Supervisor

By G. G. Peirce, Deputy

FORM 105

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

Notice of Intention to Drill New Well

This notice and surety bond must be filed before drilling begins

047-00022

Bakersfield, Calif. August 12, 1953

7

DIVISION OF OIL AND GAS

In compliance with Section 3203, Division III, Article 4, Public Resources Code, notice is hereby given that it is our intention to commence the work of drilling well No. Fancher 54-34, Sec. 34, T. 7 S., R. 14 E., M.D. B. & M., Merced Area Field, Merced County.

Legal description of lease

(Attach map or plat to scale)

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

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

All depth measurements taken from top of Kelly Bushing which is 2 feet above ground.
(Derrick Floor, Rotary Table or Kelly Bushing)

PROPOSED CASING PROGRAM

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

Intended zone or zones of completion:

Please designate as CONFIDENTIAL PROSPECT WELL.

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

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

Telephone Number 5-5951 By District Development Engineer

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

1-1 There is an abandoned well that would be under the planned Campus Parkway road. The well location will be confirmed and noted in the final grading plans, will either be avoided or decommissioned in conformance with Section 13801 of the California Water Code and City of Merced Standard Designs—Well Destruction, as described in Impact 4.6-6.

This page intentionally blank.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

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

Flex your power!
Be energy efficient!

2

March 26, 2009

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

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

Dear Ms. Espinosa:

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

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

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

1) **The provided Traffix analysis (Appendix A, Merced Wal-Mart Distribution Center) was prepared using an unreasonable peak hour factor (PHF). Applying a PHF = 1.0 is contrary to recommended practice for HCM intersection analysis, and will result in underestimating impacts to intersection LOS and queue lengths. Please revised the Traffix analysis and submit the electronic files to the Department for review.** 2-1

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

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

3) **The TIS contains uncompleted signal warrant analysis at all unsignalized intersections (only warrant 3, peak hour is analyzed). A traffic signal is warranted if it satisfies all eight warrants as shown in Figure 4C-101 (CA) MUTCD. Please revise the signal warrant analysis .** 2-3

4) **The proposed project anticipates improvements to the intersection of SR 140/Tower Rd to accommodate STAA trucks. Please provide electronic (AutoCAD) files of truck turning templates.** 2-4

5) **According to the existing lane configuration at the SR 99/Mission Ave. Interchange, there is no dedicated left-turn lane at the SR 99 SB off-ramp traveling westbound to Mission Ave. However, the provided truck turning template shows STAA trucks making left-turn from westbound Mission Ave onto SR 99 southbound on-ramp. Need to verify and submit the electronic (AutoCAD) file of STAA truck turning templates at SR 99 SB ramps and Mission Ave, and SR 99 NB ramps and Mission Ave.** 2-5

6) **Approved residential/commercial projects will contribute a significant traffic volume at the interchange of SR 99/SR 140; however the TIS does not include it into the analysis. Please include data for these approved projects and submit an operational analysis at this interchange .** 2-6

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

Sincerely,

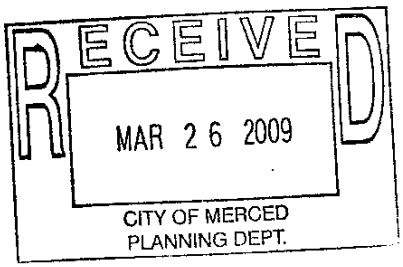
TOM DUMAS, Chief
Office of Metropolitan Planning

"Caltrans improves mobility across California"

STATE OF CALIFORNIA
FACSIMILE COVER
10-2A-0049

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

RE: Wal-Mart Distribution Center DEIR



Thank you,

- John -

2-1 The commenter indicates that the peak hour factor used in the Traffix analysis is not consistent with recommended practice. A peak hour factor of 1.0 was applied consistently in the traffic analysis. This is often used for analysis of future conditions, as it is not possible to forecast a future peak hour factor. The peak hour factor of 1.0 was also applied to existing conditions to allow for a common comparison between analysis conditions. This is an accepted analysis approach in planning-level transportation studies. The City of Merced and Merced County, after review of the traffic study assumptions and methodology, concurred with this approach.

2-2 The commenter suggests an inconsistency between the proposed project trip generation and the level of expected employees by shift. The trip generation forecast that was used in the traffic analysis was based on a survey of a similar facility in Apple Valley, CA, which has 1,201 employees and a similar fleet mix as the proposed facility in Merced. The survey of the Apple Valley facility analyzed the number of vehicles entering and exiting the site throughout the day and the type of vehicles (car, truck, etc.). The number of trips from the trip generation survey at the Apple Valley site included all trip purposes (e.g., trucks, automobiles, deliveries, staff, and other trips associated with the facility). The kd Anderson study was not based on actual survey data, and therefore applied different assumptions. In response to this comment, DKS Associates, Inc., preparers of the Traffic Impact Study, have checked and verified the trip generation rates and analysis in the DEIR.

2-3 The commenter requests additional signal warrant information. Only peak hour traffic signal warrants were conducted for unsignalized intersections, based on the data available. A peak hour warrant is appropriate for a planning-level CEQA analysis; additional warrants are typically conducted for more detailed operational studies or during the design process. To achieve this level of detail, other warrant studies require additional data, which has not been calculated at this point in the project planning. However, a peak hour warrant is a standard initial test for traffic signal necessity, and it is recognized that other warrants may be desired during the more detailed design process; however, again, these are not necessary to evaluate or mitigate the impact under CEQA.

2-4 The commenter requests truck turning templates in AutoCAD for the intersection of SR 140 and Tower Road. This information is not necessary to determine the conceptual effectiveness or feasibility of the proposed roadway improvement at SR 140/Tower Road. The City will endeavor to provide this information to Caltrans when or if it is available.

2-5 The commenter notes that the existing lane configuration of SR 99/Mission Avenue interchange shows no dedicated left-turn lane at the SB off-ramp traveling westbound to Mission Avenue, but that the template shows trucks making left-turns from westbound Mission Avenue. The commenter requests to review the AutoCAD file. The City will endeavor to provide this information to Caltrans when or if it is available. Existing lane configurations in the Traffic Impact Study were based on observations taken at the time the traffic counts were performed. Lane configurations identified in the Traffic Impact Study (and Draft EIR) remain consistent with the actual lane configurations, as currently observed at the interchange.

2-6 The commenter notes that the interchange of SR 99 and SR 140 was not included in the traffic analysis, despite several approved projects affecting that interchange. The Traffic Impact Study and the Draft EIR appropriately assumed that project traffic would not typically utilize this

interchange; consequently, the analysis considered only the SR 99 interchanges that would potentially be impacted by the proposed project. These include the Mission and Childs interchanges, but not the SR 140 interchange. Data on approved projects is provided in Tables 4.11-4, 4.11-5 and 4.11-6, and the trips associated with approved projects were included in the Background Conditions analysis.

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Linda S. Adams
Secretary for Environmental Protection

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

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

Arnold Schwarzenegger
Governor

12 March 2009

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

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

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

Based on the project description, it appears the project proponent intends to conduct activities at the site described by the Standard Industrial Classification (SIC) Code of 4225 (General Warehousing and Storage). Operators of facilities with the SIC Code 4225 are required to obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ* (Industrial General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and a fee of $1,008 to the State Water Resources Control Board. 3-1

Prior to commencing construction activity at the site, the project proponent must obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Storm Water Discharges Associated With Construction Activity, Water Quality Order No. 99-08-DWQ* (Construction General Permit). To obtain coverage, the project proponent must submit a Notice of Intent, a site map, and the appropriate fee to the State Water Resources Control Board. 3-2

If facility operations include the storage of petroleum products in above-ground tanks, with a single tank capacity of greater than 660 gallons, or a cumulative capacity of greater than 1,320 gallons, the project proponent will be subject to State above-ground petroleum tank 3-3

regulations. The project proponent must file a storage statement with the State Water Resources Control Board, pay a facility fee, and prepare a federal Spill Prevention Control and Countermeasure Plan. 3-3 Cont'd

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

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

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

3-4

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

The Draft Environmental Impact Report indicates portions of the project site are located within the 100-year flood zone. However, there is no discussion of mitigation measures to account for the impact of inundation of flood waters on the facility. When flood waters come into contact with potential pollutants on the site, there is the potential for the pollutants to discharge with receding flood waters. 3-5

There is no discussion of the ultimate disposition of wastewater or process water generated on the site. The project description states that a wash bay will be included in the truck maintenance building. Wastewater generated from the wash bay must be treated and/or disposed of properly under separate waste discharge requirements, fully contained on site, discharged to the sanitary sewer, or removed from the site and disposed of at a properly permitted site. If wastewater or process water is contained on site, there should be a discussion of mitigation measures to prevent contamination from inundation with flood waters. 3-6

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

discharges, or the storage of such waters. If facility operations include the discharge of wastewater or process water other than to the sanitary sewer, the project proponent must submit a Report of Waste Discharge 180 days prior to commencing discharges at the site. 3-6 Cont'd

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

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

W. DALE HARVEY
Senior WRC Engineer
RCE No. 55628

cc: State Clearinghouse, Sacramento

3-1 The comment indicates that planned project activities under SIC Code 4225 require NPDES Industrial General Permit. This permit and its requirements are included on Page 4.6-5 of the Draft EIR. Project proponent will obtain coverage under this permit.

3-2 The comment indicates that planned project activities require Construction General Permit. This permit and its requirements are included on Page 4.6-6 and Mitigation Measure 4.6-1a of the Draft EIR. Project proponent will obtain coverage under this permit.

3-3 The comment indicates that a storage statement to the SWRCB is required for the proposed above-ground storage tanks. Project proponent will obtain the required above ground tank storage permit. Spill prevention is addressed in Mitigation Measure 4.6-1a. Aboveground and underground tank regulations and safety procedures are explained in Section 4.10 "Public Health and Hazards" (p. 4.10-14). It is not necessary to create mitigation measures to describe safeguards and procedures that the proposed project would be subjected to under existing regulations.

3-4 The commenter suggests that there is no discussion of source control of pollutants prior to discharge to the proposed stormwater basins. Regarding source control, see Master Response 8: Runoff Water Quality. Also see Comment 3-1. Source control measures are required under NPDES Industrial General Permit requirements.

3-5 The commenter indicates that the potential exists for pollutants to discharge with receding flood waters. See Master Response 7: Detention Basins and Drainage which describes the adequacy of the proposed drainage facilities during the 100-year storm event. Also see Master Response 8: Runoff Water Quality, which describes existing regulations and mitigation measures to reduce pollutants in stormwater runoff.

3-6 The commenter indicates that there is no discussion of wastewater or disposal water generated onsite. Regarding source control, see Master Response 8: Runoff Water Quality. Also see Comment 3-1. Source control measures are required under NPDES Industrial General Permit requirements.

4

the Chamber
The Greater Merced Chamber of Commerce

11 March, 2009

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

Dear Mayor Wooten:

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

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

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

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

Additionally, the State of California and the City of Merced are currently severely impacted by the current financial crisis. Reuters reported that California lost 79,300 jobs in January, the most of any state in the U.S. California unemployment rates are running 10.1% compared to a national rate of 7.6%. 4-1

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

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

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

Very truly yours,

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

360 East Yosemite Ave. #100 • Merced, CA 95340 • Phone (209) 384-7092 • Fax (209) 384-8472

4-1 The commenter notes that the public comment period for the DEIR is consistent with CEQA requirements and with those allowed by other California cities. The comment is noted.

Lippe Gaffney Wagner LLP www.lgwlawyers.com

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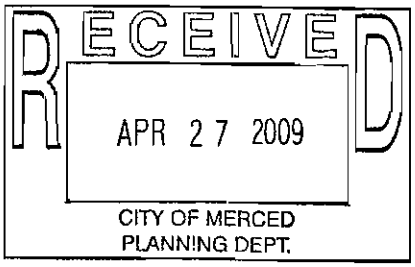
5

April 27, 2009



Submitted by email to: espinosak@cityofmerced.org

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

Re: Proposed Wal-Mart Regional Distribution Center, Draft Environmental Impact Report, State Clearinghouse Number 2006071029

Dear Ms. Espinosa:

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

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

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

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

5-1

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

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

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

5-1
Cont'd

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

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

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

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

Second, even if future City approval of a replica of this Project were "predictable," this would not provide grounds to dispense with a "no-project" alternative based on "the property remaining in its existing state." It would merely require the DEIR to also "discuss" the effects of the predictable future action in addition to "the property remaining in its existing state." Here, the no-project alternative in the DEIR contains no discussion of "the property remaining in its existing state" whatsoever. 5-1 Cont'd

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

2. THE DEIR IS INFORMATIONALLY DEFICIENT.

a. Hydrology Impacts

As explained in the letter dated April 24, 2009 from hydrologist Dennis Jackson (attached hereto as Exhibit 1 and incorporated by reference), the DEIR is informationally deficient with respect to storm water runoff impacts. 5-2

b. Traffic Impacts

As explained in the letter dated April 24, 2009 from traffic engineer hydrologist Dan Smith (attached hereto as Exhibit 2 and incorporated by reference), the DEIR is informationally deficient with respect to traffic impacts. 5-3

c. Land Use Impacts

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

Dr. King describes the immediate, local and direct effects of this Project on the surrounding residential neighborhoods, including increased rates of foreclosure, abandoned homes, increases in crime, etc. 5-4

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

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

For example, the Project description is narrow, stating: "The underlying purpose of the project is storage and distribution of nongrocery goods to Wal-Mart retail stores located throughout the region." The growth-inducing impact section is singularly evasive, stating: "Any growth-inducing effect the proposed regional distribution center may have relative to new Wal-Mart retail stores in the area or beyond is difficult to accurately determine. The proposed Project can be viewed as a means to simply improve the service to existing retail outlets, given the fact that proximity to a distribution warehouse in and of itself and in the absence of consumer demand is not likely to warrant construction of a new retail facility." 5-4 Cont'd

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

d. Visual Impacts

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

While the DEIR admits that cumulative visual impacts are significant, it does not quantify or document the magnitude of the impact. *See Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ["The EIR must contain facts and analysis, not just the bare conclusions of a public agency. ... The conclusion that one of the unavoidable adverse impacts of the project will be the "[increased] demand upon water available from the Santiago County Water District" is only stating the obvious. *What is needed is some information about how adverse the adverse impact will be*" (emphasis added).] 5-5

e. Air Quality Impacts

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

As explained in the letter dated April 27, 2009 from Dr. Klaas Kramer and his colleagues (attached hereto as Exhibit 5 and incorporated by reference), the DEIR is informationally deficient with respect to the magnitude of this Project's cumulatively considerable contribution to greenhouse gas emissions. 5-6

(2) Impacts on Ozone Precursors: Reactive Organic Gases ("ROG") and Nitrogen Oxides ("NOX") 5-7

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

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

The DEIR borrows this TOS from the San Joaquin Valley Air Pollution Control District ("air district"). The DEIR's use of the air district's TOS is erroneous as a matter of law because the DEIR applies the TOS uncritically, without any factual explanation as to why the 10 TPY standard represents an appropriate TOS for judging the significance of project-level ozone pollution impacts. 5-7 Cont'd

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

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

(3) Toxic Air Contaminants - Diesel PM Impacts

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

5-8

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

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

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

Indeed, the DEIR does not even provide a "project plus baseline" health risk assessment, in violation of CEQA Guideline 15125, subdivision (a). But adding the project-induced health risk increase (7.3) to the baseline health risk (390) yields a total cumulative Diesel PM health risk of 397.3 excess cancer cases per million people in the basin among people living within one mile of the Project. 5-8 Cont'd

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

f. Growth-Inducing Impacts

See discussion of urban decay impacts in section 2.c, *ante*. 5-9

Thank you for your attention to this matter.

Very truly yours,

Thomas N. Lippe

List of Exhibits

1. Letter from Mr. Dennis Jackson dated April 24, 2009 and curriculum vitae for Mr. Jackson.
2. Letter from Mr. Dan Smith dated April 24, 2009 and curriculum vitae for Mr. Smith.
3. Letter from Dr. Phillip King dated April 27, 2009 and curriculum vitae for Dr. King.
4. Letter dated April 27, 2009 from Harry Benke of Visual Impact Analysis LLC and curriculum vitae for Mr. Behnke

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

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EXHIBIT 1

Dennis Jackson - Hydrologist

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April 24, 2009

Tom Lippe
Lippe Gaffney Wagner LLP
9333 Sparks Way
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re: Merced Wal-Mart Distribution Center DEIR

Dear Mr. Lippe:

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

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

Project Description

The DEIR gives the following project description.

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

EIR Areas of Controversy

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

Hydrology and Water Quality

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

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

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

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

The following tanks are proposed as part of the project.

Underground Tanks

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

Above Ground Tanks

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

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

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

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

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

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

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

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

Lack of Information in the DEIR

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

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

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

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

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

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

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

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

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

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

Inconsistent Information in the DEIR

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

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

Detention Basin Design

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

The final geotechnical report (Engeo 2006) states that:

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

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

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

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

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

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

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

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

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

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

Alteration of Flow Patterns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Flood Issues

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

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

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

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

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

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

Water Quality

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

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

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

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

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

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

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

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

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

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

Summary:

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

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

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

Revisions to the Hydrology and Water Quality Section

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

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

Sincerely,

Dennis Jackson

Dennis Jackson
Hydrologist

References

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

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

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

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

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

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

DENNIS JACKSON

HYDROLOGIST

Fluvial geomorphology

Sediment transport

River and watershed assessment and restoration

EXPERIENCE

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

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

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

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

EMPLOYMENT HISTORY

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

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

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

PROJECT EXPERIENCE

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

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

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

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

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

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

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

- Russian River Enhancement Plan: The Coastal Conservancy funded an extensive investigation of the entire mainstem of the Russian River. Mr. Jackson directed the Mendocino County portion of the study. Mr. Jackson facilitated the advisory committee meetings, collected field data, coordinated with the contractor preparing the enhancement plan and was the Mendocino County contact with the Coastal Conservancy.
- Russian River Gravel Management Plan: Mr. Jackson was hired by the Mendocino County Water Agency to study in-stream gravel extraction in the Russian River. The Russian River is severely incised resulting in unstable banks, loss of ground water storage and damage to public works such as bridges and pipelines. Mr. Jackson established a network of monitoring cross sections in 1989. He also conducted an extensive analysis of the USGS gaging station records on the Russian River. His analysis showed that the bed was incising prior to the construction of Coyote Dam. Mr. Jackson was able to obtain a grant from the State Water Resources Control Board to prepare a gravel management plan. The grant funding allowed Mr. Jackson to continue monitoring the cross section network and to retain the USGS to collect total load sediment data for the Russian River.
- Russian River Restoration Program: Mr. Jackson is currently participating in a multi-year effort to restore the riparian wetlands of the Russian River system in conjunction with local agencies and landowners. His work has included a regionalization of flood frequency data for the Russian River tributaries and developing a method to estimate channel dimensions based on watershed area. He is also providing technical assistance to an extensive volunteer monitoring program with watershed residents and landowners in creek and watershed restoration in the tributary basins. He is the co-author of a handbook for volunteer stream monitors prepared for the Sotoyome Resource Conservation District in Santa Rosa, CA. The handbook guides volunteers in obtaining a watershed perspective. The larger perspective is essential in designing a meaningful monitoring program.
- Russian River Watershed – A Voluntary Cooperative Approach for Attaining Water Quality Objectives: The Sotoyome Resource Conservation District had 319(h) grant to fund several water quality improvement. Mr. Jackson was the grant's Project Director. The grant included landowner/volunteer water quality monitoring, development of bioassessment reference conditions, cooperative projects with two high schools and work with dairymen to reduce water pollution from animal waste.
- Redwood Valley Ground Water Study: Mr. Jackson negotiated approval for a cooperative study of the ground water resources of Redwood Valley. The Redwood Valley Water District was under a court ordered moratorium until additional water supplies could be found. Mr. Jackson convinced the Water District's Board of Directors that it would be beneficial to engage the USGS to take a thorough look at the ground water supplies within their District. Mr. Jackson collected data and worked closely with the USGS during the study.
- Review of Proof of Water Tests: The town of Mendocino is on a coastal headland. Water supply is a critical issue within the Mendocino City Community Services District (MCCSD). The state of California granted MCCSD the authority to manage ground water within the District's boundaries. The District requires all new wells to perform a proof-of-water test to demonstrate

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

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

EDUCATION

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

Graduate studies in hydrology
University of Arizona

B.A. Mathematics with honors
Humboldt State University

PROFESSIONAL WORKSHOPS

Stream Restoration & Classification

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

Sediment Data Collection Techniques

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

Alluvial Systems

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

EXHIBIT 2

SMITH ENGINEERING & MANAGEMENT

April 24, 2009

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

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

P09004

Dear Mr. Lippe:

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

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

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

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

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

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

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

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

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

The DEIR Traffic Analysis Underestimates the Project's Trip Generation

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

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

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

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

The DEIR Fails To Analyze Residential Traffic Impacts of the Project

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

The DEIR's Analysis of Truck Traffic Appears Flawed

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

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

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

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

Project Site Access Is Not Evaluated in the DEIR

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

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

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

Conclusion

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

Sincerely,

Smith Engineering & Management
A California Corporation

Daniel T. Smith Jr., P.E.

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SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

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

PROFESSIONAL REGISTRATION

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

PROFESSIONAL EXPERIENCE

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

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

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

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

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

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

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

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

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

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

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

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

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

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

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

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

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

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

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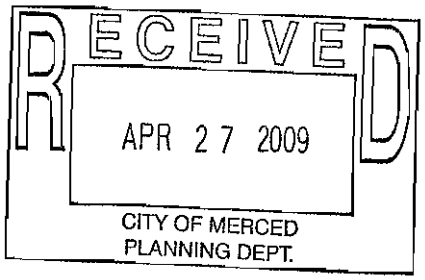
EXHIBIT 3



April 27, 2009

Memo

To: Tom Lippe, Lippe Gaffney Wagner LLP

From: Philip King, Ph.D.

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

Attached: Curriculum Vita

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

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

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

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

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

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

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

And it goes on to say that estimates:

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

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

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

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

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

Urban Decay

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

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

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

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

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

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

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

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

Potential Urban Decay as a Result of Retail Expansion

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

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

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

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

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

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

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

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

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

PHILIP G. KING

Economics Department, San Francisco State University

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Cell: (530)-867-3935

Education:

July, 87	**Ph.D. in ECONOMICS**	**CORNELL UNIVERSITY**
	Fields: Applied Microeconomics, Economic Development, International Economics **Dissertation**: Bargaining between Multinational Corporations and Less Developed Countries over Mineral Concessions Contracts.	
May, 78	**B. A. in PHILOSOPHY & ECONOMICS**	**WASHINGTON UNIVERSITY**
	Nominated to Omicron Delta Epsilon (Economics Honor Society.)	

Work Experience:

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

Policy Papers prepared for Government and Non-Profit Organizations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Published Papers:

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

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

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

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

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

Public Testimony:

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

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

EXHIBIT 4

Visual Impact Analysis LLC

P.O.Box 1926
Novato, CA 94948

Tel: 415 897 5505
Fax: 415 897 3373

April 27, 2009

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

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

Dear Mr. Lippe:

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

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

PROJECT DESCRIPTION

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

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

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

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

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

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

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

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

VISUAL RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

CUMULATIVE IMPACTS

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

Sincerely,

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

Harry Benke
Visual Impact Analysis LLC

EXHIBIT 4A

Visual Impact Analysis LLC

P.O.Box 1926
Novato, CA 94948

Tel: 415 897 5505
Fax: 415 897 3373

Qualifications/CV

Harry Benke
Partner, Visual Impact Analysis LLC

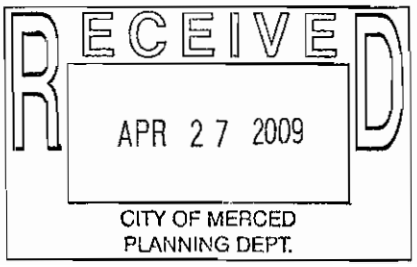
Instructor - Three-Dimensional Computer Modeling, Computer Arts Institute, San Francisco
Applied Mathematics - Drexel University, Philadelphia Pa.
Sculpture - California College of Arts and Crafts, Oakland, Ca

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

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

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

EXHIBIT 5



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

Dear Mr. Lippe:

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

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

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

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

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

The remainder of this letter addresses each of these concerns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  See discussion under section 4 below.

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

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

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

  See discussion under section 4 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  See discussion under section 4 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

This mitigation involves measures that include

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

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

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

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

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

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

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

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

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

This mitigation involves measures that include

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

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

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

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

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

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

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

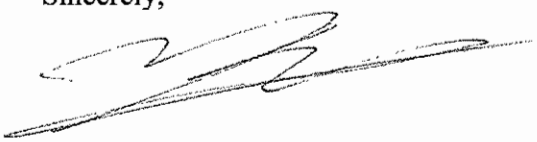
e. Mitigation Measure 4.2-2c, & 4.2-2d: Implement Recommended Mitigation Measures to Reduce Operational Emissions & Implement Additional Operational On-Site Emission Reduction Measures.

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

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

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

Sincerely,



Dr. Klaas Kramer

Resume Klaas Jan Kramer

Qualifications

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

Professional experience

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

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

Current: Consultant at KJKramer Consulting

Contribution to projects for ClimateCooler (Oakland):

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

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

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

Accomplishments.

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

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

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

Accomplishments.

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

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

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

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

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

Education

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

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

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

Languages

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

Relevant publications:

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

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

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

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

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

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

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

Other, reports and contributions (selection of):

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

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

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

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

Michel Gelobter

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Founder & CEO

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

President/CEO

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

Professor

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

Director of Environmental Quality/ Assistant Commissioner

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

Environment and Health Issues Director

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

Congressional Black Caucus Fellow

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

Adjunct Assistant Professor/Instructor

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

Assistant Producer

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

Researcher

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

EDUCATION.

Ph.D.

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

Master of Science

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

Bachelor of Science

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Daniel M. Matross, Ph.D.

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dmatross@gmail.com

Education

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

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

Stanford University — Palo Alto, CA

B.S., Chemistry — June 2000

Scientific Research and Management Experience

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

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

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

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

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

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

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

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

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

Freelance Science Writer, *Harvard University Gazette*, 2001

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

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

Field Campaign Experience

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

Grants and Fellowships

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

Recent Presentations

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

Publications

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

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5-1 The commenter questions the manner in which the No Project Alternative is defined in the Draft EIR. Refer to Master Response 12: Alternatives.

5-2 The commenter suggests that the DEIR is deficient with respect to storm water runoff and groundwater impacts and indicates that sufficient detail is not given for the drainage plan, stormwater treatment system, and aboveground and underground storage tank spill prevention. For drainage plan information see Master Response 7: Detention Basins and Drainage. For stormwater treatment system information see Master Response 8: Runoff Water Quality. For storage tank spill prevention see Master Response 8: Runoff Water Quality regarding source control. Also see Comment 3-1. Source control measures are required under NPDES Industrial General Permit requirements. As a general note, the level of detail requested in the letter by Mr. Jackson attached to the comment letter is not necessary to evaluate and understand the scope of the project's environmental impacts. The discussion following Section 15146 "Degree of Specificity" indicates that "[t]he analysis must be specific enough to permit informed decisions making and public participation. The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. What is required is the production of information sufficient to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned." The Draft EIR includes the necessary level of detail to inform the decision makers and the general public of the environmental impacts resulting from the proposed project and to reasonably compare those impacts against those resulting from a list of feasible alternatives. Including additional level of detail suggested by the author of the letter attached to the comment would not provide any additional clarity to the analysis and would not alter any conclusions. No changes to the Draft EIR are necessary.

5-3 The commenter indicates that the DEIR is lacking information on traffic impacts and references an April 24, 2009 letter prepared by Daniel Smith. The letter raises several concerns, and states that the DEIR fails to disclose impacts by comparing a projected existing plus project scenario to existing traffic conditions, the 2010 cumulative analysis assumes an unrealistic level of development, the analysis underestimates the project's trip generation, the DEIR fails to analyze residential traffic impacts, the analysis of truck traffic appears flawed, there is no connection between the DEIR's traffic study and air quality analysis, and project site access is not evaluated in the DEIR. The following discussion responds to the commenters concerns and also provides response to the April 24th letter by Daniel Smith.

The traffic analysis was prepared using industry standard methodologies and the impact analysis guidelines of the City of Merced. Known approved projects were included in the 2010 Background Condition, and the traffic analysis was based on the information and appropriate assumptions at the time of the analysis. While economic conditions are cyclical and will change over time, traffic impact studies follow this procedure in order to provide a common methodology for comparison of projects.

The TIS used a valid starting point for the analysis, one that is consistent with the lead agency's methodology for analyzing traffic impacts. It is also consistent with the methodology used by the EIR consultant to prepare many other traffic impact studies in jurisdictions throughout California. The commenter's statement regarding a higher threshold of significance is speculative and cannot be affirmed without conducting an analysis to test the hypothesis; however, it should be noted

that many of the study intersections and roadway segments are operating at LOS A, B or C under the Existing and Background Conditions, which may require a greater amount of traffic rather than less as implied by the commenter, to trigger an impact.

The comment regarding "a false impression that there will be many fair share payers towards area traffic mitigations" is incorrect. The traffic analysis makes no assumption regarding other fair share payers. The improvements to Campus Parkway and the Mission interchange are assumed to be fully funded and programmed improvements, and hence were included in the future roadway network assumptions.

The trip generation forecast that was used in the traffic analysis was based on a survey of a similar facility in Apple Valley, California, and was conducted in a manner and during a timeframe that was considered representative of average conditions and appropriate for analysis. The number of trips from the trip generation survey at the Apple Valley site included all trip purposes (e.g., trucks, automobiles, deliveries, staff, and other trips associated with the facility). The surveys reflect the shift patterns of workers, the arrivals and departures during the morning and afternoon peak hours, and the average vehicle occupancy. The statements about using a "realistic 1.10 persons per vehicle" vehicle occupancy is noted as assumed by the commenter and speculative. The survey data was peer reviewed by an independent consultant and considered appropriate for use in the DEIR.

It is industry standard practice that traffic analyses and trip generation surveys are based on average typical conditions, and not peak conditions. For example, shopping malls are not surveyed at Christmas for their trip generation and parking characteristics as this represents the peak and not typical condition. Using peak conditions would overstate the potential impacts and their frequency of occurrence.

The comment notes that many of the streets that would carry project traffic are residential in character. This comment is not consistent with the DEIR analysis, however. As noted on page 4.11-21 of the DEIR, 90% of the truck traffic is assumed to access the site via the SR 99/Mission Avenue interchange and Campus Parkway. Mission Avenue is designated as a divided arterial in the Merced General Plan, which means it is not addressed in the Merced Neighborhood Traffic Calming Guidelines and it is not eligible for construction of any traffic calming measures (page 6 of City of Merced Neighborhood Traffic Calming Guidelines). Arterial roadways serve a different function than residential or collector streets. With respect to the Goals and Policies of the City of Merced Neighborhood Traffic Calming Guidelines (page 5 of the Guidelines), a review of the DEIR analysis would not indicate that the proposed project would violate any of the seven goals or seven policies. The Merced Neighborhood Traffic Calming Guidelines outlines a procedure for addressing concerns such as pedestrian-bicyclist safety, gaps in traffic flow, speeding and other concerns. The transportation analysis of the proposed project evaluated congestion and service levels at intersections and along roadways that would potentially be used by project vehicles, and nothing in the DEIR analysis would lead to a conclusion that local residential or collector streets would be adversely impacted.

The trip distribution patterns have been reviewed and confirmed as appropriate for use in this analysis. This is discussed in detail in the Master Response on truck trips.

The study intersections identified for analysis were developed in cooperation with City staff, and include those most likely to be impacted by the proposed project. Generally, access point intersections are often design issues that are managed through the design review process, as they are not city street intersections but rather mid-block driveways on Gerard Avenue.

The issue of trucks parking on the side of the road and idling was considered in the analysis and addressed in Mitigation Measure 4.11-2a.

Please refer Master Response 6: Trucks and the Transportation Analysis for information regarding potential truck impacts and mitigation measures.

5-4 The comment primarily indicates that the Draft EIR did not appropriately analyze the project's potential to cause urban decay impacts through the development of new retail stores throughout the region. Please refer to Master Response 1: Growth Inducement and Expansion, which explains that the Draft EIR does disclose the possibility for the project increasing viability of retail stores due the increased shipping accessibility, but also that it is impossible to analyze such impacts, such as urban decay, without gross speculation. For more specific discussion of urban decay, please see Master Response 11: Economics and Urban Decay.

5-5 The commenter indicates that the DEIR is deficient with respect to visual impact information. The commenter suggests that, despite the DEIR's conclusion that impacts would be significant, the DEIR lacks quantification of the visual impacts. Further specificity by the commenter is deferred to an attached letter provided by Harry Benke of Visual Impact Analysis LLC. However, regarding the claim that the DEIR lacks quantification in the analysis, it must be recognized that the analysis of visual impacts is not, nor should it be, an exact science and of all the environmental issue areas, aesthetics is arguably the most subjective. This is because the "impact" is based entirely on the human perception of beauty (aesthetics). Miriam Webster defines "aesthetics" as "a branch of philosophy dealing with the nature of beauty, art, and taste and with the creation and appreciation of beauty." The issue of aesthetics has been argued by Plato and Aristotle and by many great philosophers through history even to the present day. It is not possible to reduce such a subjective issue down to a quantifiable science based on logarithms and equations. To analyze visual impacts it is most important to show, using pictures and description, the physical change to the environment resulting from the project (as required by CEQA). The DEIR includes photosimulations and descriptions to provide the decision makers and the public with an idea of the impacts of the project. The DEIR does not attempt to overcomplicate (and subsequently muddle) this highly subjective issue using measurements and calculations; rather the DEIR clearly describes the physical change to the environment that would result from the proposed project.

Specific comments on the DEIR's analysis are provided in the aforementioned letter written by Mr. Benke, which indicate that the project description does not appear to provide sufficient information to conduct an adequate visual analysis, the visual resources section lacks clarity and detail, and the cumulative impacts discussion is not complete. In addition, Mr. Benke states that the discussion of cumulative visual impacts does not quantify or document the magnitude of the impact. These concerns are addressed below in turn.

Project Description

On page one of the April 27, 2009 letter from Harry Benke, the commenter states that the project description does not appear to provide sufficient information to conduct an adequate visual analysis and to determine the level of environmental effects from the proposed development, and references CEQA Guidelines Section 15124. Specifically, Mr. Benke states that important details and components have been omitted or are unclear, including site lighting details; the number, location, and operation of lights; the color of the warehouse and distribution structures; paving color; fencing; and landscaping.

The project description for the proposed project was prepared consistent with the requirements of CEQA in Chapter 3, "Project Description," of the DEIR. As stated in Section 15124 of the CEQA Guidelines, "the description of the project shall contain the following information but *should not supply extensive detail beyond that needed for evaluation and review of the environmental impact*." Furthermore, the project description shall contain "a general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities (CEQA Guidelines Section 15124 [c]). In accordance with CEQA, the project description includes a description of site lighting, buildings and structures, roadways and parking, fencing, and landscaping at a level that is detailed enough for an adequate evaluation and review of visual resources impacts. Available project design information (including site lighting and other project features) was included in the project description for analysis (see pages 3-5, 3-12, and 3-13 of the DEIR).

As described in Section 4.13, "Visual Resources," of the DEIR, the proposed project would result in a significant visual resources impact if it would have a substantial adverse effect on a scenic vista; substantially damage scenic resources within a state scenic highway; substantially degrade the existing visual character or quality of the site and its surroundings; create a new source of substantial light and glare that would adversely affect day and nighttime views in the area; or substantially conflict with the goals or policies in the City General Plan related to visual resources and/or aesthetics (see page 4.13-6). As described in Section 4.13, the project would result in potentially significant visual character and light and glare impacts, and mitigation is recommended to reduce these impacts to less-than-significant levels. Mr. Benke does not provide any specific disagreements with the analysis provided in the DEIR, and does not offer any evidence that demonstrates how project-related visual resources impacts would remain significant after implementation of mitigation measures 4.13-2 and 4.13-3.

As demonstrated by the analysis contained in Section 4.13, the detailed information identified by Mr. Benke is not necessary to thoroughly and adequately analyze proposed project visual resources impacts. Furthermore, highly detailed information, such as the type of light poles, loading bay lighting, the exact location of the lights, the color of project structures, paving color, fencing characteristics, and a detailed landscaping plan would not alter any of the DEIR's visual resources impact conclusions (see Section 4.13, "Visual Resources"). Such detailed information is not necessary for the adequate evaluation of visual resources impacts in the DEIR. The Discussion following Section 15146 "Degree of Specificity" indicates that "[t]he analysis must be specific enough to permit informed decisions making and public participation. The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. What is required is the production of information sufficient to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned." The Draft EIR includes the necessary level of detail to inform the decision makers and the general public of the environmental impacts resulting from the proposed project and to reasonably compare those impacts against those resulting from a list of feasible alternatives. Including additional level of detail suggested by the author of the letter attached to the comment would not provide any additional clarity to the analysis and would not alter any of the DEIR's conclusions.

Visual Resources

On page two of the April 27, 2009 letter, Harry Benke states that the visual resources section of the DEIR has a number of shortcomings, resulting from the lack of detail and clarity, to adequately and fully disclose the potential impacts resulting from implementation of the proposed project. This lack of disclosure precludes the identification of adequate mitigation measures and

opportunity for public comment. In general, the project description response provided above addresses these concerns. These comments are addressed more specifically below.

Mr. Benke states that the extent of sensitive viewers and their location lacks clarity and detail, and makes it difficult to evaluate light and glare impacts. As described above, the project description includes information at a level that is detailed enough for an adequate evaluation and review of visual resources impacts, and more detailed information is not necessary to thoroughly and adequately analyze proposed project visual resources impacts. The analysis of project visual character and lighting impacts is provided on pages 4.13-7 and 4.13-14 of the DEIR (see Impacts 4.13-2 and 4.13-3). As described therein, the project would result in potentially significant visual character and light and glare impacts, and mitigation is recommended to reduce these impacts to less-than-significant levels. As described in response to comment 12-22, impacts associated with illumination and light spillage on adjoining properties (including residences) are presented and analyzed. Detailed information on the density, location, or approximate number of residences is not necessary, and would not alter the impact conclusion for Impact 4.13-2 concerning visual character or Impact 4.13-3 concerning lighting and glare. Mr. Benke does not provide any specific disagreements with the analysis provided in the DEIR, and does not offer any evidence that demonstrates how project visual resources impacts would remain significant after implementation of mitigation measures 4.13-2 and 4.13-3.

Mr. Benke raises concerns about the photosimulations, key viewpoints, depicted features, the type of camera lens used to take photos, and nighttime photosimulations. As described in the last paragraph on page 4.13-7 of the DEIR, the photo vantage points selected are considered by the EIR author (EDAW) to be representative views of and through the project site, and provide an appropriate, scaled visual representation of what the proposed project would look like. View locations were selected based on a site visit by EDAW staff, and were determined – in collaboration with City staff - to be adequate for environmental impact analysis purposes based on the specific visual characteristics of the project area. Detailed information on the density, location, or approximate number of residences is not necessary, and would not alter the impact conclusion for Impact 4.13-2 concerning visual character or Impact 4.13-3 concerning lighting and glare. The information provided in the project description and photosimulations are considered detailed enough for an adequate evaluation of visual resources impacts. It should be noted that the nearest residential subdivision is nearly ¼-mile east of the project site.

Regarding potential nighttime light and glare impacts, these impacts are adequately considered in Impact 4.13-3. Mitigation measure 4.13-3, “Prepare and Submit a Lighting Plan,” would reduce impacts to a less-than-significant level and require that the City review and approve a lighting plan for the site. The commenter does not provide any specific disagreements with the analysis provided in the DEIR, and does not offer any evidence that demonstrates how project visual resources impacts would remain significant after implementation of mitigation measures 4.13-2 and 4.13-3; therefore, no further response can be provided.

Mr. Benke summarizes Impact 4.13-2, stating that the analysis of the impact is very general and that a preliminary landscaping plan should have been included as part of the project description. As described in response to comment 22-18, specific visual changes of the project are illustrated by Exhibits 4.13-8 through 4.13-11, and compares these changes to the representative views of the project site (as described above). As described on page 4.13-13 of the DEIR, implementation of mitigation measure 4.13-2 would reduce the potentially significant impact to a less-than-significant level. See response to comment 121C-1 regarding the landscaping plan. As described above, detailed information concerning fencing, location of lights, and color of structures is not necessary to adequately evaluate visual resources impacts, and would not alter the impact conclusion for Impact 4.13-2 concerning visual character. Mr. Benke does not offer any evidence

that demonstrates how project visual resources impacts would remain significant after implementation of mitigation measure 4.13-2; therefore, no further response can be provided. As described in Section 4.13 of the DEIR, implementation of mitigation measure 4.13-2 would reduce the impact to a less-than-significant level, and would not itself result in a significant impact.

Mr. Benke raises concerns about Impact 4.13-3, including insufficient project description detail, impacts to nearby viewers within proximity to the site, mitigation measures, and examples of possible lighting impacts. These concerns are addressed above in this response. The commenter does not offer any evidence that demonstrates how project visual resources impacts would remain significant after implementation of mitigation measure 4.13-3; therefore, no further response can be provided.

As noted by Mr. Benke, cumulative sky glow impacts are considered in Chapter 6, "Cumulative and Growth-Inducing Impacts," of the DEIR. No further response is necessary because no issues related to the adequacy of the environmental impact analysis were raised.

Mr. Benke states that preparation of a lighting plan is "putting the cart before the horse," and the conclusion that Impact 4.13-3 can be reduced to less than significant by mitigation measure 4.13-3 is conclusory and not supported by evidence. Please refer to responses to comments 22-19 and 12-22 regarding mitigation measure 4.13-3 and Impact 4.13-3. Mr. Benke does not offer any evidence that demonstrates how project light and glare impacts would remain significant after implementation of mitigation measure 4.13-3; therefore, no further response can be provided. As described above, detailed information such as the number of lights, range of illumination, landscaping, and effects on sensitive viewers is not necessary to adequately evaluate visual resources impacts, and would not alter the impact conclusion for Impact 4.13-3 concerning light and glare.

Cumulative Impacts

The project's cumulative visual resources impact were evaluated consistent with the requirements of CEQA in Chapter 6, "Cumulative and Growth-Inducing Impacts" of the DEIR. The *State CEQA Guidelines* state that the cumulative impacts discussion does not need to provide as much detail as is provided in the analysis of project-only impacts, and should be guided by the standards of practicality and reasonableness (Guidelines Section 15130[b]). Specifically, cumulative visual resources impacts are evaluated and discussed on page 6-33 of the DEIR. As stated in the third paragraph of the cumulative visual impact discussion, the project's incremental contribution to cumulative impacts is cumulatively considerable, and the project's cumulative impact is therefore considered significant.

Regarding sky glow, although implementation of mitigation measure 4.13-3 would reduce the severity of this cumulative impact, the impact cannot be fully mitigated (see pages 6-33 and 6-41). The commenter does not provide any specific disagreements with the analysis and impact conclusions provided in the DEIR; therefore, no further response can be provided.

5-6 **Letter by Dr. Klaas Kramer**

Response to Kramer Comment 1

The comment argues that the DEIR does not adequately account for and quantify all sources of carbon emissions associated with the project. In particular, the commenter states that the DEIR should account for greenhouse gases (GHGs) embedded in construction materials and in the goods being distributed through the center.

The comment suggests that the analysis should have included emissions from the production of building materials such as cement, metal, and other accessories, or what might be called the full life cycle of the project (e.g., the milling of trees for wood for framing materials to be used in the construction of the proposed facilities). To date, most of this information is simply not available for this project or indeed for any project subject to CEQA. Thus, any attempt to quantify emissions to the extent suggested by the commenter would include a great deal of speculation, and would be of little or no practical value. (See CEQA Guidelines, Section 15145.) More to the point; however, common CEQA practice has never included attempts to generate some of the kinds of information demanded, for air quality, greenhouse gases, biological resources, or any other resource; it is neither feasible nor practical in providing informed decision making. For example, the request for quantification of the emissions "embedded in the construction materials" assumes that the applicant and their consultants have knowledge of, or could obtain knowledge of, all of the following: (i) the specific wholesale or retail suppliers of all of the building materials that construction companies would use during the build-out period for the project; and (ii) the quantities of building materials of various kinds that would be used during the build-out period. At present, the applicant has no way of knowing whether the lumber products to be used would be produced in Canada, the Pacific Northwest, the Southeastern United States, or somewhere else (e.g., Siberia or Southeast Asia). Nor can the applicant reasonably ascertain the locations of the mills where the raw lumber would be turned into building materials, and the sources of energy of those mills. Furthermore, the applicant lacks any power to address many of the emissions of concern to the commenter, occurring, as they do, in other states or countries, and involving manufacturing and milling activities outside of the project area. Taken to a similar level, the EIR does not address the biological impacts of tree removal in forests, but it is a similar "life-cycle" issue that is impractical to consider in an EIR.

The comment cites the Energy Information Administration's (EIA's) estimate of the embedded energy in retail and warehouse building construction and suggests that this estimate be used to quantify the embedded GHG emissions. It is not clear if the EIA's estimate is a national average or a value specific to California or to the proposed project. Besides, the embedded energy in building materials would be unique for each construction project depending upon the location and quantity of building materials used. Thus, it may not appropriate to use the EIA's estimate of embedded energy since the actual amount could vary considerably depending upon the factors identified above. More importantly, where the analysis could plausibly produce quantitative information in support of its analysis, the analysis has done so. The analysis includes an attempt to quantitatively include the non-speculative (direct) sources of emissions by using conservative assumptions and the best available emission factors and methods to report the direct GHG emissions that would occur from the project. The analysis in Chapter 4 of the DEIR represents a sophisticated, good faith attempt to quantify and disclose emissions using the information that is reasonably available. The analysis is in accordance with the Governor's Office of Planning and Research (OPR's) Technical Advisory on CEQA and Climate Change, which states that "Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of carbon dioxide (CO2) and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities."

In addition, the commenter makes a similar comment about the embedded emissions in the products and goods distributed through the proposed center. The same rationale applied above for embedded emissions in construction materials applies to emissions embedded in goods distributed through the proposed center. The commenter supplies a national average factor for CO2 equivalent per dollar of retail cost, and proceeds to make some assumptions about the applicability of this factor to the proposed project. There are no means of knowing the source of this factor, or whether this factor is representative of the goods distributed through the center.

More importantly, the commenter's analysis of embedded GHG emissions flowing through the proposed center treats these emissions as though they are a net increase in GHG emissions. It must be noted that the project (proposed distribution center) is simply a more efficient process for distributing goods from one point to another; it does not create the demand for the goods distributed through the proposed center. The project would accommodate goods movement that is a function of the economy external to the proposed project and discretionary action by the City. Without the proposed project, the goods would be shipped through a different distribution center (e.g., Apple Valley or Porterville), and would still exist. (It could be reasonably argued that this distribution center would shorten overall trips and emissions, including GHG emissions, associated with Wal-Mart operations by a more strategic location in proximity to the stores it will serve. Otherwise, those same stores would rely on delivery of goods from the more remote distribution centers. However, this type of consideration was not included in the analysis, which is, therefore, an analysis of worst-case conditions.) The distribution center would serve as a facility to distribute goods to the point of sale, and would have no effect on the embedded emissions in the goods that pass through the project site. Further, any discretionary action taken by the City would have no effect on the embedded emissions in the goods distributed and sold by the retailer. Reporting of embedded GHG emissions in the DEIR would result in a false level of precision in the knowable GHG emissions that would occur associated with the project, and may have the effect of minimizing the importance of the GHG emissions that would occur as a direct result of the project and over which the City has some amount of control. Thus, the analysis places emphasis on the non-speculative portion of GHG emissions that would occur as a direct result of the proposed project.

Response to Kramer Comments 2 and 4

The commenter disagrees with the assertion in the DEIR that the mitigation measures proposed for the purpose of reducing GHG emissions could not be quantified at the time of writing. The commenter references mitigation measures that were proposed with the intent of reducing CAPs (and precursors) and correctly notes that these would also have some effect on GHG emissions reductions from reduced fuel consumption. However, there is no method available to accurately estimate how much fuel would be saved by each measure in order to translate into a quantifiable GHG emission reduction. The commenter does not offer methods to quantify the reductions in GHG emissions associated with each measure.

Regarding mitigation measure 4.2-6d, the commenter believes that the effect of installing an undetermined amount of solar panels is quantifiable. Because the quantity of solar panels to be installed is yet to be determined, based on the availability of surface areas with proper orientation for solar panels, it is not possible to quantify the emissions reduction associated with this measure at this time. In addition, the commenter believes that the DEIR should quantify the emissions reduction associated with purchasing electricity from a utility provider yet to be determined. This is also not possible at the time of writing. (Please refer to response to comment 22-7 regarding some text changes that will be made to Mitigation measure 4.2-6d.)

The commenter believes the effect of the measure that requires that the applicant "retain the portion of the existing almond orchard located between the proposed truck gate and future Campus Parkway" should be quantified. The baseline for this measure is the existing condition at the time of the Notice of Preparation (i.e., existing almond orchard). The measure involves preserving the almond orchard, and thus, would not cause a change to the baseline. Therefore, no emissions quantification would be involved with this measure in the context of an analysis performed pursuant to CEQA

The commenter states that the impact of inventorying GHG emissions can be quantified, but does not provide any method for quantification of the effect of inventorying GHG emissions. To date, there are not any agencies (e.g., SJVAPCD, OPR, California Air Resources Board [ARB]) that have recommended or adopted methods for quantifying the effectiveness of this mitigation measure. In fact, the California Air Pollution Control Officers Association (CAPCOA) and the Bay Area Air Quality Management District (BAAQMD) are currently in the process of developing such guidance.

Even if the magnitude of GHG emission reductions could be estimated with any level of reasonable precision, the impact conclusion 4.2-6 would remain significant and unavoidable.

The commenter also states that "the DEIR relies on mitigation being used for ROG and NOx to achieve some mitigation for greenhouse gasses." This is correct; however, the DEIR also includes Mitigation Measure 4.2-6d, which specifically requires reductions in GHGs associated with energy consumption, proper management of the site's almond orchard that consists of sequestered carbon, and an inventory of operational GHGs. The commenter expresses specific concern that "present technology for reducing ROG, NOx, and particulate fractions of emission use techniques like engine gas regeneration (EGR) and particulate filters, each of which decreases vehicle equipment fuel efficiency." This statement is correct for many technologically-based methods of reducing ROG, NOx, and particulate emissions. However, the DEIR includes multiple mitigation measures that reduce ROG, NOx, and particulate emissions by reducing the amount of activity that generates these emissions, particular the operation of motor vehicles. Please refer to Mitigation Measure 4.2-2b, Mitigation Measure 4.2-2c, Mitigation Measure 4.2-2d, and Mitigation Measure 4.2-6d.

Response to Kramer Comment 3

With respect to the GHG emissions associated with the proposed project, the commenter questions whether the "offsetting strategies contained in the DEIR" are valid. It is assumed that this comment pertains specifically to Mitigation Measures 4.2-6a and 4.2-6c, which in turn, require implementation of the Mitigation Measures 4.2-1a and 4.2-2a, which require the project to comply with SJVAPCD's Indirect Source Review Rule (Rule 9510). The discussion of Mitigation Measures 4.2-6a and 4.2-6c on page 4.2-49 states that compliance with Rule 9510 would have the added benefit of reducing construction- and operation-related emissions of CO2 and on page 4.2-50 the DEIR states that "these reductions cannot be fully quantified." This is the reason that the DEIR concludes that "because the project would potentially still result in a net increase in CO2 emission levels and conflict with the state's AB 32 goals, this impact would be remain significant and unavoidable."

The commenter then outlines criteria and standards that should be used to substantiate a GHG offset and the City generally agrees with these criteria. In addition, the commenter acknowledges that "additional criteria and standards are emerging [for offsets] as part of the process of implementing the California Global Warming Solutions Act. The commenter, however, does not recommend any particular offset opportunities. The City and its consultants believe that GHG offsets cannot be fully substantiated until these criteria are fully established.

5-7 The commenter suggests that the DEIR erroneously and "uncritically" applies the SJVAPCD's thresholds of significance for ROG and NO_X in determining the significance of project-level impacts. As stated in Appendix G of the State CEQA Guidelines, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to determine the level of significance of a project's impact. SJVAPCD has recommended a threshold of 10 TPY for a project's operational ROG and NO_X emissions in its *Guide for*

Assessing and Mitigating Air Quality Impacts (GAMAQI). The GAMAQI also includes a discussion of the basis for ozone precursor thresholds. While the commenter may disagree with the agency responsible for managing the air basin, the comment offers no evidence to suggest that, contrary to the SJVAPCD's thresholds of significance, the project's contributions should be considered significant. Because the project's mitigated operational emissions fall below SJVAPCD's significance thresholds, SJVAPCD considers that the project's ROG and NO_X emissions would be less than significant.

The comment goes on to state that the DEIR's assessment of cumulative ozone impacts is inconsistent with CEQA's definition of cumulative impacts because of the assumption that a less-than-significant project-level impact implies that the contribution to a cumulative impact is less than considerable. In Section 5.9, the GAMAQI provides the following guidance for determining whether a project would result in a considerable contribution to a cumulative impact: "Lead Agencies should use the quantification methods described in Section 4.2 [for analyzing project-specific impacts] to determine if ROG or NO_X emissions exceed SJVAPCD thresholds" (p. 53). Therefore, the SJVAPCD recommends that the determination of whether a project would contribute considerably to a cumulative impact should be based on the project's individual impact. In effect, the project threshold is the cumulative threshold. Given that these impacts are inherently cumulative (a single project would not, by itself, generate emissions that would cause the air basin to reach non-attainment), the interchangeable use of the cumulative/project threshold is logical. The project's air quality cumulative impact analysis is consistent with SJVAPCD's guidance.

5-8 The commenter states that DEIR's analysis of toxic air contaminants (TACs) applies SJVAPCD's threshold of significance uncritically, without any factual explanation of why the threshold of an incremental increase in cancer risk of 10 in one million or greater represents an appropriate threshold of significance. The commenter, however, does not provide reasons why this threshold of significance is inappropriate or offer ideas about what threshold of significance should be used in the analysis. Pages 4.2-27 and 4.2-28 explain that the thresholds of significance are recommended by SJVAPCD's *Guide for Assessing and Mitigation Air Quality Impact*. This same threshold level is used by most other air districts in California for evaluating cancer risk. Further, it appears that an enhanced risk based on 10 occurrences in 1 million people (one in 100,000) is a reasonably conservative standard (i.e. threshold) for the protection of people's health.

The commenter also states that the analysis does not provide a "project-plus-baseline" HRA, as required by CEQA Guideline 15125. The threshold used in the analysis is an incremental increase threshold, in other words, it is the level of increased risk associated with the project, which is a reasonable approach and an industry-wide accepted protocol for consideration of health risk affects. The threshold of significance used in the analysis is, and stated on page 4.2-27 of the EIR is stated as follows:

- exposure of sensitive receptors to a substantial incremental increase in emissions of TACs that exceed 10 in 1 million for the carcinogenic risk (i.e., the risk of contracting cancer) and/or a noncarcinogenic Hazard Index (HI) of 1 for the Maximally Exposed Individual (MEI), as recommended in SJVAPCD's Guidance for Air Dispersion Modeling (SJVAPCD 2007c)

5-9 The commenter raises issues related to growth inducement and expansion of operation. These issues are addressed in Master Response 1: Growth Inducement and Expansion.

6

RESOURCE MANAGEMENT AGENCY
PLANNING DEPARTMENT
Jerald C. James, Director

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

March 13, 2009

RECEIVED
MAR 16 2009
CITY OF MERCED
PLANNING DEPT.

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

RE: Walmart Distribution Center DEIR
SCH#2006071029

Dear Ms. Espinoza:

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

The County's main concern is the amount of traffic generated predominately along State Route's 99 and 152 through the County. While the project in and of itself would not significantly add to the traffic on these State Route's, they will add to the cumulative nature of these routes. We point to the evaluation of the Childs Avenue/SR 99 intersection evaluation as an indication that there will be problems. We would like to have seen a better evaluation of the impacts to the above interchanges, as well as potential impacts on a transportation/circulation level of all traffic through Madera County as a result of this project. 6-1

On Page 1-7, an area of concern mentioned regarding issues to be resolved mentioned traffic and fog, which is prevalent in the Valley particularly during the winter months. However, further evaluation of this as it relates to traffic circulation and safety does not appear to have been evaluated. Additionally, no mention of interface with railroad crossings is made. 6-2

In review of your proposed mitigation measures, we saw no reference to a monitoring program in the sense of who will do the monitoring, how that will be carried out, and acceptable time frames for completion or on-going monitoring. 6-3

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

Sincerely,

Jerald C. James
Planning Director

cc: Robert Mansfield, REA, Planner III

6-1 The commenter is concerned about the amount of traffic generated along State Route 99 and State Route 152 in the County. The study intersections and roadway segments identified for analysis were developed by DKS Associates in cooperation with City staff and include those most likely to be impacted by the proposed project. Traffic dissipates as it moves further from the source, and the number of available route choices increases. Therefore, certain intersections and roadway segments (such as SR 152) were considered outside the study area and too far way to accurately forecast project-generated traffic volumes. The analysis in the DEIR is appropriate and no changes to the DEIR are necessary.

6-2 The commenter expresses concern about traffic safety related to weather conditions and railroad crossings. The issue of railroad crossings is noted. Mitigation Measure 6-3 does include consideration of the need to coordinate future traffic signals with existing railroad crossing signals. It should be noted that 10% of the truck trips (64 trips per day) are anticipated to use Tower Road and cross over the railroad, with the remaining 90% accessing the street and freeway network via the Mission interchange and Campus Parkway. Regarding potentially hazardous roadway conditions caused by fog, the commenter notes that this was raised as an issue in the public scoping session, prior to preparation of the Draft EIR, but was not carried forward and analyzed in the EIR. This issue was not specifically studied for a number of reasons, including the fact that dense fog conditions are relatively common throughout most of the Central Valley of California, and roadways are designed to allow for safe driving in all weather conditions. Lastly, no significance threshold has been identified that would allow for a meaningful analysis of the potential effect on fog on roadways associated with this project.

6-3 The comment indicates that mitigation measures included in the DEIR did not identify a monitoring program. It should be noted that the majority of the mitigation measures do identify a specific monitoring agent and the FEIR includes a mitigation monitoring program (Please see Appendix A of this FEIR). However, City staff also identified various measures that required additional specificity. The text of these mitigation measures has been modified to provide clarity. Please see Section 4.2 of this FEIR for the specific text revisions.

7

Espinosa, Kim

From: Walker, Dawn on behalf of city, council

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

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

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

Subject: FW: URGENT

From the website.

Dawn

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

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

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

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

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

7-1

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

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

Thank You

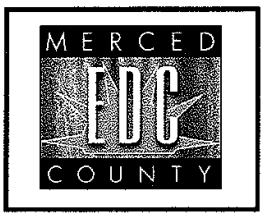
MCCOC

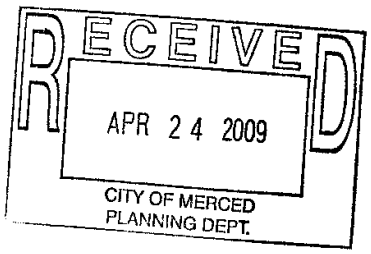
3/16/2009

Letter 7 Response	Merced County Chamber of Commerce Julius@mercedcountychamber.com March 14, 2009

7-1 The comment describes the petition to City Council requesting that the comment period be extended for translation of the DEIR into other languages. (For more information related to public review and translation of documents, please refer to Master Response 2: Language Barrier and Public Review Period.) The commenter expresses opposition to these petitions due to the delay that may result. This comment does not raise issues with the adequacy of the DEIR.

8





April 10, 2009

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

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

Dear Ms. Espinoza,

On behalf of the Board of Directors of the Merced County Economic Development Corporation (MCEDCO) we are pleased to express our continued support for the above referenced project and urge the City of Merced to approve the EIR. MCEDCO first evaluated this project in 2002 in response to inquiries from the site selection consultants retained by the firm to identify appropriate industrial sites. 8-1

Although the EIR addresses a multitude of topics and environmental issues MCEDCO is primarily concerned with quickly facilitating new investment and employment generated by the project and sustainable economic development that will benefit the City and entire county of Merced. It is unfortunate that the EIR does not address specific economic development resources with particular emphasis on employment and new revenue in an area suffering continued and chronic high unemployment, poverty and declining revenues to fund essential public services. 8-2

The proposed site was and is designated for industrial and business development in the City's general plan. The existing surrounding land uses are compatible and similar to the proposed project. Distribution centers already operate in the area. 8-3

The purported loss of agricultural land is not a function of this project, but rather is a result of the realization of the City's own plans for this area as an employment center. The site is buffered from residential areas by the physical barrier of the Campus Parkway right of way and future commercial and business properties adjacent to the proposed Campus Parkway 8-4

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

The proponent has publicly pledged to incorporate state of the art equipment and vehicles to reduce emissions. The building design and site plan incorporate many features to reduce adverse impacts. 8-5

In addition to direct employment for construction, new business investment induced by the logistics center and as many as 900 new positions are projected. These jobs will be offered wagers in excess of the average income of local residents and help increase the wealth and prosperity of our community. In addition, the economic multiplier effect will induce additional employment 8-6

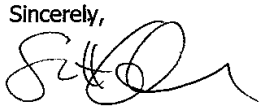
470 West Main Street, Suite 7 * Merced * California * 95340
TEL: 209-723-3889 * FAX: 209-723-4450 * email: sgalbraith@mcedco.com

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

8-6
Cont'd

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

Sincerely,



Scott Galbraith, CEcD
President/CEO

Copy MCEDCO Executive Committee

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

8-1 The comment introduces the letter and addresses the merits of the project and the historic involvement of MEDCO with the project. The comment is noted.

8-2 The commenter indicates that the Draft EIR does not describe the positive economic impacts from the Wal-Mart distribution center, generating direct, indirect, and induced employment to the region. Further, the commenter suggests that it does not describe the available labor and existing poor economic conditions that necessitate additional economic development in Merced. Please refer to Section 3.7.5 of the Draft EIR titled "Employment" for the proposed projected employment at the Wal-Mart distribution center. The Wal-Mart distribution center is expected to employ approximately 1,200 new employees. CEQA does not require an EIR to evaluate the overall economic impacts of a proposed project. In addition, Section 4.9 titled "Population and Housing" describes unemployment, median household income, families below the poverty level, and unemployment. Merced County was ranked fourth of all California counties in unemployment at approximately 10.9 percent in September 10.9 percent. As indicated in the Draft EIR the proposed project is anticipated to draw largely from the local unemployment pool.

8-3 The commenter indicates that the proposed site was designated for industrial and business development in the City's General Plan and is consistent with surrounding land uses. The comment does not raise issues related to the adequacy of the Draft EIR. The comment is noted.

8-4 The commenter indicates that loss of agricultural land is not a function of the proposed project, but of the City's urbanization and growth planning. The comment does not raise issues related to the adequacy of the Draft EIR. The comment is noted.

8-5 The commenter indicates that sustainability measures have been committed to by the applicant in a public setting. The comment does not raise issues related to the adequacy of the Draft EIR. The comment is noted.

8-6 The commenter suggests that other light industrial development in the area may spur further employment generation. The comment does not raise issues related to the adequacy of the Draft EIR. The comment is noted.

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9

Merced County Farm Bureau

April 24, 2009

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

RECEIVED
APR 27 2009
CITY OF MERCED
PLANNING DEPT.

Dear Ms. Espinosa:

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

- Ag Land Mitigation – Merced County Farm Bureau requests that the conversion of agricultural land be addressed in the EIR for the proposed Walmart Distribution Center. Merced County has included a 1:1 ag land conversion policy in the Santa Nella, Delhi and Hilmar Community Plans as well as other projects, including conversion of ag land to industrial or commercial development. Merced County Farm Bureau supports in their Land Use Policy a 4:1 mitigation ratio for the conversion of agricultural land. 9-1
- Air Quality Impacts and mitigation – In addressing the impacts on air quality the City of Merced needs to consider the impacts on existing businesses and operations which in our region is agriculture. Impacts on our air quality must be addressed and not put on the backs of agriculture and our support businesses. What guarantees are in place that Walmart will be using the latest energy efficient, technologically advanced trucks and require their contracted trucks to be held to the same truck standards recently passed for the San Joaquin Valley Air Basin? 9-2
- Road Impacts – Currently our local, state and federal highways are not adequately funded in regards to maintenance. Our County and City roads, especially, are in poor condition. Trucks coming to the facility will use other roads besides Highway 99 throughout our county. Those impacts need to be addressed and mitigated. 9-3
- Truck Parking - What rules are in place to control truck parking on rural roads near the proposed facility so as not to impact the movement of agricultural equipment on our rural roads, especially those roads directly east of the facility and along South Healy Road? 9-4
- Hydrology/Water/Storm Water Drainage –
  1. Currently East and South Merced County along Mariposa Creek/Duck Slough is an impacted waterway for the East San Joaquin Water Quality Coalition (ESJWQC). With gravity flow irrigation in that region we need to know that the storm water drainage would not be entering our irrigation system waterways. If they do they need to test the water leaving the retention basin and be held to the same standards that the ESJWQC is currently held to. 9-5
  2. Currently we are in our third year of drought. A comprehensive water plan for our city and region must be in place. The Walmart Distribution Center should not impact the underground aquifers and should be required to use the latest technology for recycling and reuse of water. 9-6
- With the size of the proposed warehouse solar power should be a requirement so as not to impact our already short supplied power grid. 9-7

Thank you for the opportunity to comment.

Sincerely,

Diana Westmoreland Pedrozo
Executive Director

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

9-1 The comment requests the conversion of agricultural land be addressed in the DEIR. The comment further cites County policies requiring between 1:1 and 4:1 agricultural land conservation for conversions, or loss, of agricultural land. The DEIR addresses conversion of agricultural land in Section 4.1 and indicates that the impact would be significant and unavoidable. Please refer to Master Response 5: Agricultural Resources.

9-2 The commenter suggests that the City needs to consider the proposed project's air quality impacts on existing businesses and operations which are comprised mainly of agriculture. Section 4.2 of the DEIR is focused on the regional and local air quality impacts of the project. The analysis of short-term construction, long-term regional (operational), local mobile-source, odor, and TAC emissions was performed in accordance with the recommendations of SJVAPCD. The commenter does not raise a concern regarding any particular portion of the air quality analysis.

The commenter also expresses concerns about the applicant's use of energy efficient trucks. Mitigation measure 4.2-2c, which would be a required measure, would ensure that the applicant's participation in the U.S. Environmental Protection Agency's (EPA) SmartWay Transport Partnership shall include the portion of its haul truck fleet that is based at or serves the Merced distribution center. The measure would require the applicant to use energy efficient trucks in its haul truck fleet that is based at or serves the Merced distribution center. Additional text has been added to the measure, which explains that this measure would apply to the 40% of truck trips generated by the project that are operated by Wal-Mart trucks. In order to clarify how the measure would be enforced, another sentence has been added requiring that, once each year, the applicant shall provide to the City of Merced a letter from EPA confirming the project's participation in the SmartWay Transport Partnership. Please refer to Section 4.2 for text changes and additions.

9-3 The commenter states that City and County roads are in poor condition, and that impacts to County roads need to be addressed. The potential impacts to the state, county and city roadways and intersections are identified in the DEIR, and mitigation measures have been identified to address project impacts. No changes to the DEIR are necessary.

9-4 The commenter expresses concern about truck parking on rural roadways near the proposed facility. The DEIR analyzes impacts associated with truck traffic in Section 4.11 "Traffic and Transportation." This section of the DEIR includes Mitigation Measure 4.11-2b, which addresses the issue of truck traffic on local streets.

9-5 The commenter raises the concern that improperly treated stormwater drainage would enter the Mariposa River and Duck Slough irrigation systems. For runoff volumes to the irrigation systems, see Master Response 7: Detention Basins and Drainage: discussion of coordination with MID. For stormwater treatment system information see Master Response 8: Runoff Water Quality.

9-6 The commenter states that the proposed project should not be allowed to impact the underground aquifers, and should be required to use the latest technology for recycling and reuse of water. As described on page 4.12-15, the City requires new development to implement water efficient landscaping in project designs. Based on the estimated water demand for the project, available water supply, the WSA, the City's water distribution system facilities, the project's water supply and water distribution facilities impacts would be less than significant.

9-7 The commenter suggests that "solar power should be a requirement." Mitigation Measure 4.2-2d requires that "the project shall include as many clean alternative energy features as possible to promote energy self-sufficiency (e.g., photovoltaic cells, solar thermal electricity systems, small wind turbines)." Solar panels, or other on-site alternative energy sources, are also required by Mitigation measure 4.2-2d. Please also refer to response to comment 22-7 below.

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10

Espinosa, Kim

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

From the website.

Dawn

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

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

3/16/2009

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

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

Dear Wal-Mart Supporters:

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

City staff agree. However, the city council will consider the opposition's request Monday night. Please join us Monday, March 16th at 7:00pm at City Hall to oppose any further delay in what has already been a very lengthy process. We need jobs now! 10-1

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

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

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

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

3/16/2009

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

3/16/2009

10-1 The content of this comment letter is nearly identical to comment 7-1. Please refer to Response to Comment 7-1.

11

MERCED COUNTY

DEPARTMENT OF PUBLIC WORKS
Administration Division

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

715 Martin Luther King Jr. Way
Merced, CA 95341
(209) 385-7602
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Equal Opportunity Employer

April 24, 2009

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

Dear Ms. Espinosa:

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

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

This segment of Mission Avenue will be critical to serve the proposed Project as it will prove to be a popular route for truck traffic needing to ultimately travel on State Route 152 accessing Pacheco Pass and Interstate 5. It should also be considered in the traffic study and DEIR that it is not possible to travel northbound on State Route 99 from eastbound State Route 152. This traffic must use State Route 59 and likely Mission Avenue to access the Project. 11-1

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

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

The DEIR should include measures to mitigate any increases in truck traffic caused by this Project to Mission Avenue, its intersections, and particularly the intersection of Mission Avenue and State Route 59. 11-1 Cont'd

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

Sincerely,

Robert E. Smith
Director of Special Programs
Merced County

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

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STRIVING FOR EXCELLENCE

11-1 The commenter states that the traffic study does not appear to analyze the impact of increased traffic to the segment of Mission Avenue between State Route 99 and State Route 59, and the DEIR should include measures to mitigate any increases in truck traffic caused by the proposed project. The roadway segment analysis considered those segments most likely to be impacted by the proposed project, based on the total trips and the trip distribution patterns. Exhibit 4.11-2 in the DEIR shows that the project would potentially add 65 a.m. and 48 p.m. passenger-car-equivalent trips traveling on Mission Avenue west of SR 99 (study intersection 14).

Comments regarding SR 152, I-5, SR 99, and Mission Avenue west of SR 99 are noted. The DEIR traffic analysis would not change based on these comments, as the locations noted are outside the study area limits that were identified for this traffic analysis.

The intersection of Mission Avenue and SR 59 was not included in the analysis. Traffic dissipates as it moves farther from the source, and the number of available route choices increases. Therefore, this intersection was considered to be outside the study area and too far away to accurately forecast project-generated traffic volumes. No changes to the DEIR are required.

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12

April 27, 2009

Kim Espinosa,
City of Merced, Planning Dept.

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

The Merced Group of the Sierra Club welcomes the opportunity to submit comments on the Draft Environmental Report (D.E.I.R.) for the Wal-Mart Distribution Center (W-M D. C.) proposed in the City of Merced. We have concerns about specific areas of the document where mitigations are not fully explored and those that are included are not adequately described. Also lacking throughout many mitigation proposals is a mechanism to monitor compliance and enforcement specifics. We also see some overall areas that are treated too cursorily and explored incompletely. These include the sections on alternatives, air quality, health risks , and urban blight (degradation of the local community). We also have concerns that other environmental impacts such as those on water quality and containment of hazardous wastes are not adequately addressed in this rendition of the E.I.R. We expect that the Final E.I.R. will be more thorough and complete so that the City of Merced can objectively discern whether the proposed Wal-Mart Distribution Center on balance will be a benefit to the community or a liability. 12-1 12-2

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

The review process has been further complicated by the fact that all documents were presented only in English. The Merced community at large and much of those in the immediate vicinity of the project are not english speaking. The public requested that at least the executive summary and the basic impacts and mitigations be translated into Spanish and Hmong. There was also a request for some presentations be made to the community, focusing on residents in the project area and those whose children attend the nearby schools. it was hoped translators would be made available. In other words "extenuating circumstances" exist- specifically the complexity of the document and language barriers of those most impacted. Under CEQA provisions more time is allowed and should be granted to insure proper involvement by the public in the project review process. The City Council was approached by the public early in this process requesting an extension to the review and comment period. By a vote of 5 to 1 they rejected these requests. 12-3

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

Air Quality

The ultimate conclusion of the DEIR's analysis is that impacts on air quality by the Distribution Center are "insignificant" (page 5-34). Estimates are that the WMDC will produce 74,812 tons of carbon dioxide per year. This is more than double the total greenhouse gas emissions for the entire county calculated for 2005. Recent recognition by the federal government that CO2 is indeed a factor in climate change requires that our community be attentive and responsive to meeting the expectations of lowering these levels. The California Air Resources Board (CARB) has recently passed their cleanup plan for diesel emissions through the year 2030. How 600-900 trucks a day can run in and out of the WMDC, idling as they load and unload, without causing a significant impact is imponderable. Reference is made to low emission W-M trucks being used. Hopefully this will indeed be the case and will also be monitored and enforced. There is no mechanism in the DEIR to make sure this happens. Nor are contingencies or consequences spelled out should this commitment not be followed through on. 12-4

Of important note is that many of the trucks (up to 2/3 by some accounts) moving in and out of the distribution center will not be company vehicles. There need to be the same 'air friendly' requirements for them as the Wal-mart vehicles. If not then the DEIR analysis needs to define how this impact will be prevented or mitigated. It is definitely not "insignificant" as stated under the construction and long term emissions section (page 5-34). 12-5

It is clear that our County with its number 6 ranking in the state and our Valley with 4 counties out of the 10 worst in the country, cannot afford to indulge any business or industry that flagrantly adds to our severely compromised air quality. Especially when there are ways to do business in a more responsible manner. A company such as Wal-Mart (second largest in the nation) can certainly be a trend setter in finding effective controls and mitigations for this challenge. 12-6

Idling rules are of a similar concern. The Wal-Mart trucks are stated to have a three minute automatic shut off feature. There are also electric hook ups for those parked for an extended time. These are good features to help control emission impacts. Will all the Wal-Mart company trucks entering and leaving the distribution center have these features? Will the non-Wal-Mart trucks have similar controls? They should. And all of this should be monitored and enforced by an outside agency or party chosen by the city and paid for by Wal-Mart. Penalties for violations should be stated upfront and fully mitigate any compromising of Valley air quality. Of note is that recent studies out of Los Angeles have shown that diesel emissions have been directly linked to lung damage if sensitive receptors like schools are nearby. 12-7

The impacts of the WMDC on our local and regional air quality need to be explored in depth and mitigated completely. The second largest company in the U.S. certainly has the resources to be responsive to the health and quality of life impacts which they bring to our residents. 12-8

Traffic 12-9

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

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

12-9 Cont'd

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

12-10

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

12-11

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

12-12

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

12-13

Land Use

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

12-14

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

12-14

12-15

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

12-16

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

12-17

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

12-18

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

12-19

Other Environmental Concerns

Air quality rates its own discussion but other impacts associated with this project are noteworthy too. Will the run-off basins be adequate to meet the 100 year flood standards? What assurances are there that runoff and groundwater will not be contaminated by petrochemicals in the ____square feet of blacktop? Those same waters could be in jeopardy from chemicals stored on site, including 6,000 gallons of new oil, up to 2500 gallons of waste oil, and 20,000 gallons of diesel fuel. Given the many problems neighborhood gas stations have had with leaks and ground contamination, how ca we be assured that these incredibly larger amounts will be safely stored and monitored. No one wants a spill or leakage but the fact is they do occur. There need to be specific standards to safeguard transportation and storage of these toxins and consequences built-in should they impact our health, water supplies, land, etc. In fact are the impacts of the fuel trucks bringing diesel and oil on to site included in the traffic as well as safety impacts? 12-20

Noise is another problem of no small consequence. Diesel trucks will pass by homes and near schools 24-7. Another major noise impact is the practice of "dropping" which where trucks release their trailers. This creates a resounding noise- Hundreds of times per day, day and night?! 12-21

The DEIR states that light will be "contained within the borders of the distribution center site" and therefore will not be a significant impact. This is an interesting new physics discovery- the fact that light will not cross property lines. Forty-five foot high poles with halogen lights, even if directed downward, will indeed illuminate the neighborhood. The glow across the Valley from major facilities like the local prisons makes this seem obvious. 12-22

Health Risk Assessment

A comprehensive health risk assessment is sorely lacking for the DEIR document. The health of Merced citizens is the top priority of our community and should be for our elected leadership. We need analysis of how air quality degradation will impact the health of residents nearby, the three schools in the area (and a potential fourth), and our community as a whole. Experts agree that the cost of health care is one of the main factors creating our economic crisis. We in the Central Valley, and Merced County specifically, already have asthma and respiratory problems far in excess of state and national averages. The costs for medical care of these conditions is in billions of dollars. A project like the Wal-Mart distribution center which will bring more traffic accompanying emissions to our area will increase both the human and monetary health costs. The DEIR needs to attempt to estimate these impacts and Wal-mart needs to propose some preventive measures and/or mitigations. For instance build and staff a local respiratory clinic. Too much to ask? too expensive? well the certainly same is true for the city's citizenry. It seems only fair that the entity creating the hardship should pay for its impact. 12-23

Alternative Sites

The alternatives proposed by the Merced City panning staff and analyzed in the DEIR seem very limited, as though they are meant to point to the proposed site 12-24

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

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

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

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

12-24 Cont'd

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

In Conclusion

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

12-25

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

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

12-25 Cont'd

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

12-26

Roderick Webster

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

12-1 The comment indicates that mitigation measures did not identify a monitoring mechanism. The FEIR includes a mitigation monitoring program (Please see Appendix A of this FEIR). This issue is addressed in response to Comment 6-3.

12-2 The comment suggests that the EIR's analysis of various issue areas is cursory. However, the commenter only generally identifies the issue areas and does not provide any specific examples or any reasoning behind this allegation. Except for minor changes or clarification provided in this FEIR, the DEIR's analysis of the issue areas identified is considered appropriate per CEQA.

12-3 The commenter suggests that the duration of the public comment period for the Draft EIR was inadequate doe to the size and complexity of the document and supporting appendices and that the document should have been translated into Spanish and Hmong. Please refer to Master Response 2: Language Barrier and Public Review Period, which fully addresses these issues.

12-4 The commenter states that "the ultimate conclusion of the DEIR's analysis is that impacts on air quality by the Distribution Center [would be] 'insignificant'." To clarify, six separate impacts are discussed in Section 4.2, "Air Quality." Generation of Short-Term Construction-Related Emissions of Criteria Air Pollutants and Precursors (Impact 4.2-1) would be less than significant with mitigation. Generation of Long-Term Operation-Related (Regional) Emissions of Criteria Air Pollutants and Precursor Emissions (Impact 4.2-2) would be less than significant with mitigation. Generation of Long-Term, Operation-Related (Local) Mobile-Source Emissions of carbon monoxide (Impact 4.2-3) would be less than significant and no mitigation would be required. Exposure of Sensitive Receptors to Emissions of Toxic Air Contaminants (Impact 4.2-4) would be less than significant and no mitigation would be required. Exposure of Sensitive Receptors to Emissions of Odors (Impact 4.2-5) would be less than significant and no mitigation would be required. Generation of Emissions of Greenhouse Gases (GHGs) (Impact 4.2-6) would be a significant impact and implementation of Mitigation Measures 4.2-6a through 4.2-6d would reduce greenhouse gas emissions, but not to a less-than-significant level.

The commenter states that "estimates are that the [Wal-Mart Distribution Center] [would] produce 74,812 tons of carbon dioxide per year." This is not stated in the DEIR. Table 4.2-10 of the DEIR shows that the estimated operational emissions of CO_2 would be 12,708 TPY. The commenter also states that the project's GHG emissions would be "more than double the total greenhouse gas emissions for the entire county calculated in 2005." However, the commenter does not state the total value of the GHG inventory for the county or the source of this information.

The commenter states that "recent recognition by the federal government that CO_2 is indeed a factor in climate change requires that our community be attentive and responsive to meeting the expectations of lowering these levels." This comment is noted and the City agrees. The environmental and regulatory setting for GHG emissions and climate change is discussed on pages 4.2-11 through 4.2-14 of the DEIR and a discussion of construction- and operation-generated emissions of the proposed project is discussed under Impact 4.2-6 on pages 4.2-46 through 4.2-56.

The commenter also states that "how 600-900 trucks a day can run in and out of the [proposed distribution center], idling as they load and unload, without causing significant impact is

imponderable." Trucks would not idle as they are loaded and unloaded. Haul trucks would check in at the entrance gate, proceed to their assigned drop location, and decouple their trailer. Then an on-site yard trucks would move the trailer to a loading dock and leave the trailer at the loading dock for loading or unloading. A tractor would not be attached to the trailer during the loading or unloading period. The significance determinations made for Impact 4.2-2 and Impact 4.2-4 are described in the DEIR. The commenter does not address the reasoning used to reach these significance determinations and, therefore, the comment does not raise issues with the adequacy of the DEIR.

12-5 The comment states that up to 2/3 of the vehicle trips generated by the project will not be "company vehicles." Additional information has been added to the project description explaining that approximately 40% of the truck trips generated by the project would be Wal-Mart-operated trucks. Please refer to Section 4.2 for text changes and additions.

The comment states that the non-Wal-Mart vehicles should be subject to the same emission reduction requirements as the Wal-Mart trucks. It is considered administratively infeasible for the applicant to create and enforce rules regarding the emissions efficiency of trucks that are not under its control. This would be similar to an office building requiring the U.S. Postal Service to only deliver its mail in vehicles that meet certain efficiency standards. Additional text has been added to Mitigation Measure 4.2-2c, which explains that this measure would apply to the 40% of truck trips generated by the project that are operated by Wal-Mart trucks. This measure also states how implementation of the measure would be monitored.

The comment also states that the impact "is definitely not 'insignificant'" as stated under the analyses of construction- and long-term operational emissions. The comment provides no reasons why the impact conclusion for construction-generated emissions should be considered significant. With regard to the commenter's statement about operational emissions, it is assumed that the commenter means that emissions from non-Wal-Mart trucks were not accurately estimated. However, the emissions for all truck trips does not account for the fact that emissions from by Wal-Mart trucks would be lower than those from non-Wal-Mart trucks. A statement has been added to Table 4.2-7 to provide additional clarity. Please refer to Section 4.2 for text changes and additions.

12-6 The commenter describes the poor air quality within the county and suggests that projects adding to the air quality problems should not be approved. The commenter indicates that Wal-Mart should be able to mitigate these impacts. The Draft EIR identifies feasible mitigation measures to reduce emissions generated by the proposed project. These measures include those required by the SJVAPCD, as well as additional measures derived by professional air quality specialists that specifically target the project-generated emissions; although these mitigation measures would successfully reduce emissions associated with project construction, emissions generated during the operation of the project cannot be successfully mitigated to a less-than-significant level. The commenter does not offer additional or alternative mitigation measures; therefore, the Draft EIR appropriately analyzes and mitigates air quality impacts to the extent feasible, and no changes to the Draft EIR are necessary.

12-7 The commenter raises concern about idling emissions from the trucks. All trucks would be required to comply with ARB's air toxic control measure limiting stationary idling by diesel-fueled commercial trucks to 5 minutes (13 CCR Chapter 10 Section 2485). The comment also states that "the Wal-Mart trucks are stated to have a three minute automatic shut off feature" and that "there are also electric hookups for those [trucks] parked for an extended time." On the contrary, no such statements are written in the DEIR. Please refer to the response to comment 12-

5 regarding the proportion of trucks using the site that would be Wal-Mart trucks, and related mitigation, and the enforcement mechanism for the mitigation.

The comment also expresses concern about diesel emissions sources and their effect on local schools. The potential for exposure to off-site receptors, including nearby schools, is analyzed in Impact 4.2-4, Exposure of Sensitive Receptors to Emissions of Toxic Air Contaminants.

12-8 The commenter states that the impacts to local and regional air quality need to be explored in depth. The air quality analysis is presented in Section 4.2 of the DEIR. Please refer to Master Response 13. The commenter also states that the impacts to air quality shall be "mitigated completely." CEQA requires lead agencies to adopt all mitigation to reduce significant impacts to the extent feasible. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CCR Section 15364) If an impact cannot be feasibly mitigated, it is considered a significant and unavoidable impact. In the case of air quality, all impacts were reduced to the extent that feasible mitigation was available to do so.

12-9 The commenter states that the proposed facility should not have been sited so close to schools and residences, and that the mitigation measures for identified significant impacts are not adequate. Many of the LOS conditions cited in the comment would occur regardless of the proposed project. Impacts associated with the proposed project have been identified, and mitigation measures are provided in the DEIR, which reduce the project's impacts to the extent feasible. No changes to the DEIR are required.

12-10 The commenter expresses concern about a mitigation measure requiring the painting of roadway striping on Tower Road. The roadway striping was identified as an issue that needs to be improved. Roadway striping affects driver behavior and overall safety on the roadway; therefore, the mitigation measure is appropriate. No changes to the DEIR are required.

12-11 The commenter expresses concern about the adequacy of mitigation for impacts to the stretch of SR 140 between Kibby and Santa Fe Streets. Impacts associated with the proposed project have been identified, and mitigation measures for the project's impacts are provided in the DEIR. The issues of roadway capacity, number of vehicles, widening needs and other transportation factors have been identified and noted under the timeframes under which they may be needed (e.g., 2010 Background, or 2010 Background with Project Condition, etc.). The poor operating conditions cited in the comment are projected to occur under No Project Conditions due to projects already approved and ambient traffic growth in the study area. The proposed project's incremental impacts are measured against a baseline that already has poor operating conditions projected. No changes to the DEIR are required.

12-12 The commenter expresses concern about the adequacy of mitigation for impacts to the Mission Avenue interchange, and states that restriping is an overly simplistic solution to a serious traffic dilemma. The commenter cites the Campus Parkway and Mission interchange projects, and is speculating that the impact of trucks would logically be greater than the assumed passenger car equivalent of four autos per truck. The figure of four autos per truck is very conservative by current industry standards. The Mission interchange and Campus Parkway projects are important projects. When they were each envisioned and originally analyzed they each assumed the known cumulative traffic forecasts, which would include the General Plan buildout of the area. In addition, roadway striping affects driver behavior and overall safety on the roadway, as noted in the response to comment 12-10; therefore, the mitigation measure for striping (along with the other mitigation measures required to reduce this impact) is appropriate. No changes to the DEIR are required.

12-13 The commenter indicates that the impacts from large trucks is greater than the assumed ratio of four autos equals one truck. The passenger car equivalent of four passenger cars for every truck is a conservative estimate and takes into consideration the factors noted in the comment such as mobility, acceleration, etc. Although the commenter disputes the conclusion, no support for such dispute is offered.

12-14 The commenter raises issues related to proximity of the proposed project to residences and schools and suggests potential land use conflicts may occur. The commenter also indicates that the project does not include the required buffers. The commenter seems to be suggesting that the proposed project is located too closely to urban residential development, while simultaneously arguing that the location is too rural. As discussed in detail under Master Response 7: Agricultural Resources, industrial land uses are not considered to be in conflict with agricultural uses, and no buffers are required. As noted by the commenter, the project site is surrounded mostly by agricultural uses (not to mention other industrial uses), and the commenter mistakenly states that low- to medium-density residential development exists adjacent to the west of the site. In fact, the residential development to which the commenter refers is located approximately 1,200 feet west of the site (nearly ¼ mile). The commenter does not consider the fact that the project site has already been evaluated for industrial use, such as that proposed, in the EIR prepared for the General Plan.

Second, the commenter restates the City's objectives for the industrial land use zone which includes creating jobs for local residents and suggests that Wal-Mart does not make commitments to employ local residents. The commenter states the City should demand commitments that assure the economic benefits reach the community. Where appropriate, a DEIR may contain discussion of economic impacts of a project; by themselves, however, such impacts "shall not be treated as significant effects on the environment"(CEQA Guidelines, Section 15131, subd. [a]). As discussed in the CEQA Guidelines, "there must be a physical change resulting from the project directly or indirectly before CEQA will apply" (discussion following CEQA Guidelines, Section 15131). If a proposed project may cause economic consequences but no significant environmental impacts, CEQA does not require that an EIR be prepared (Hecton v. People of the State of California (1976) 58 Cal.App.3d 653, 656 [CEQA was "not designed to protect against the…decline in commercial value of property adjacent to a public project"]). Thus, a project's changes to land uses do not necessitate CEQA review unless such effects are "related to or caused by physical change" (discussion following CEQA Guidelines, Section 15131). The commenter provides no evidence of economic changes, nor of any adverse physical changes, that would be caused by implementation of the proposed project. The DEIR analyzes all potential physical impacts of implementing the proposed project, as is required by CEQA. No additional analysis is required.

12-15 The commenter indicates that proposed project traffic will lower intersection LOS to E and F, and the City should find an applicant who meets their objectives for this land parcel. Many of the LOS conditions cited in the comment would occur regardless of the proposed project. Impacts associated with the proposed project have been identified, and mitigation measures for the project's impacts are provided in the DEIR.

12-16 The commenter suggests that the project would result in land use conflicts and other environmental impacts that would affect the existing residents and schools. The commenter indicates that residents "undoubtedly had no awareness that such a facility could spring up nearby." Regarding land use conflicts, please refer to Response to Comment 12-14. It should be noted that the other environmental issues raised (i.e., light pollution, noise, hazardous materials, water quality, and air quality) are analyzed in the DEIR: light pollution is discussed in Section 4.13 "Visual Resources;" noise is addressed in Section 4.8 "Noise;" hazardous materials are

addressed in Section 4.10 "Public Health and Hazards;" water quality is addressed in Section 4.6 "Hydrology and Water Quality;" and air quality (including effects related to diesel emissions) is addressed in Section 4.2 "Air Quality." The comment does not suggest that the Draft EIR inappropriately analyzed these issues. Regarding the purported residents' lack of knowledge of the potential for an industrial land use at the site, the project site has been designated for industrial use for over a decade (a portion of the site has been designated Industrial for at least as far back as the General Plan adopted in 1980), which predates much of the residential development in the area (the subdivisions west of the Doane-Hartley Lateral/Future Campus Parkway were developed after 2000). The planning process for the General Plan was a public process, and the documents are all publicly available. The comment does not raise issues with the adequacy of the Draft EIR. The comment is noted.

12-17 The commenter suggests that the Draft EIR fails to evaluate the blighting effects of the Wal-Mart distribution center to the housing market. Please refer to Master Response 11: Economics and Urban Decay, which addresses this issue.

12-18 The commenter raises concerns about social and crime problems that could potentially arise as a result of an increase in long-haul truck drivers in the community. Concern is expressed that truck drivers may engage in illegal activities such as drug dealing and prostitution. Concerns were also expressed that truckers who are delayed from delivering or receiving materials will need to spend long hours of idle time in Merced without a place to park and without basic facilities and services.

The comment is essentially focused on anticipated social behavior that cannot be accurately predicted. Moreover, these potential activities would not generally result in environmental impacts; social impacts are not subject to analysis under the California Environmental Quality Act. (See CEQA Guidelines Section 15382) The exception to this would be instances in which social behavior could result in an environmental effect. For example, if criminal activities led the Merced Police Department to a decision to add onto its existing station or build a new facility, such as a sub-station, such activity could potentially have an environmental effect. As is standard practice for development projects proposed in the City of Merced, the Merced Police Department was asked to comment on the proposed project and make recommendations. Comments from the Police Department did not express concern about potential illegal activities or other nuisance factors associated with an influx of truck drivers. Specifically, the Police Department determined that, with proposed on-site security measures and payment of City impact fees, the proposed project would not result in an impact on police services.

There is no direct correlation between the presence of truck drivers and criminal activity; there are no identifiable potential environmental effects.

12-19 The commenter asks what resource is more critical to feeding people and essential to economic soundness of the region other than farmland. The comment expresses hope that the City will follow the County and region in attempting to preserve as much farmland as possible and encourage higher density land uses. Regarding economic issues, please refer to Response to Comment 12-14. Related to the preservation of farmland, please refer to Master Response 5: Agricultural Resources, which addresses the issue related to conversion of important farmland.

12-20 The comment questions if runoff basins would be adequate to meet the 100-year flood standards and raises concerns regarding spills and leaks from the above ground and underground storage tanks. For flood standard concerns see Master Response 7: Detention Basins and Drainage. For storage tank spill prevention see Master Response 8: Runoff Water Quality regarding source control. Also see Comment 3-1. Source control measures are required under NPDES Industrial

General Permit requirements. And see Comment 3.3 regarding aboveground and underground tank regulations and safety procedures.

12-21 The commenter expresses concern about noise generated by diesel trucks passing by homes and schools on a "24/7" basis. Noise levels generated by off-site truck travel are addressed in Impacts 4.8-3 and 4.8-4 of the DEIR. The commenter also expresses concern about noise associated with on-site truck activity including the practice of "dropping" (i.e., decoupling) trailers from the truck tractors. On-site noise-generating activities are discussed under Impact 4.8-2. The loudest on-site noise-generating activities observed at the existing distribution center in Apple Valley are presented in Table 4.8-10 of the DEIR. This table, however, does not include the decoupling of trailers from semi-tractors or from yard trucks. Decoupling trailers from semi-tractors does not involve the dropping of the trailer onto the pavement because this could cause damage to the trailer. When decoupling, the driver steps out of the semi-tractor and raises the front end of the trailer with a stabilizer jack until all of the weight of the trailer's front end is supported by the jack. Then the driver enters the semi-tractor and pulls away from the trailer. The coupling of a semi-tractors to a trailer is a noisier activity and the noise level (L_{max}) generated by this activity was measured to be 79.5 dBA at distance of 50 feet, or 56.6 dBA at the nearest off-site sensitive receptor, as presented in Table 4.8-10. The comment does not raise issues with the adequacy of the DEIR.

12-22 The commenter indicates that the DEIR does not find that proposed project lighting impacts are significant, and that lighting would illuminate areas beyond the borders of the project site. The analysis of project lighting impacts is provided on page 4.13-14 of the DEIR (see Impact 4.13-3). As described therein, the project would result in potentially significant light and glare impacts, and mitigation is recommended to reduce these impacts to less-than-significant levels. In particular, the first paragraph on page 4.13-14 states that the project would result in a very noticeable increase in illumination on and from the site that would be readily visible from all of the public streets abutting the site and from vantage points beyond. In addition, as described on paragraph 4 on that page, there is potential for light spillage impacts on adjoining properties, and light spillage could result in glare impacts on persons at vantage points beyond the site boundary. The commenter does not provide any specific disagreements with the analysis provided in the DEIR; therefore, no further response can be provided. See also the response to comment 5-5 (Visual Resources).

12-23 Commenter states that that "a comprehensive health risk assessment is sorely lacking for the DEIR." A comprehensive HRA is included in Appendix C of the DEIR. Impact 4.2-4, Exposure of Receptors to Toxic Air Contaminants, includes discussion about the potential health risk from short-term construction-related emissions of TACs and long-term operation-related emissions of TACs. The methodology and results of the HRA are summarized in the discussion about long-term operation-related emissions of TACs on pages 4.2-43 through 4.2-45. This discussion analyzes the potential health effects of nearby residents, workers, and schools. Please also refer to Master Response 13.

12-24 The commenter criticizes the list of alternative sites as too limited. The commenter finds fault with Alternative Site #1, but presents advantages for locating the proposed project at Alternative Sites #2 and #3. The commenter focuses on impacts to residential uses and dismisses other potential environmental impacts that could occur at these alternative sites. Please see Master Response 12: Alternatives for more detailed discussion regarding CEQA's purpose and requirements for the alternatives analysis.

12-25 The commenter suggests, based merely on the number of pages, that the DEIR's traffic impact analysis overshadows the much more important air quality analysis. The DEIR makes no

suggestion that either traffic or air quality is a more important issue. The DEIR treats all issues objectively and focuses most on those environmental resources most likely to be adversely affected by the project. However, that is not to say that because the traffic analysis has more pages than the air quality analysis that the project has a greater potential to result in traffic impacts. The number of pages does not equate to significance. Traffic analyses tend to consume a lot of pages because of the nature of traffic computer modeling and the large volume of data output sheets. The commenter is incorrect regarding the unequal treatment of these environmental issues. The DEIR dedicates the appropriate level of analysis to air quality and traffic issues.

12-26 This comment asks that the City keep the commenter notified of the status of the proposed project and take the comments offered into consideration before acting upon the Final EIR and the application.

13

MERCED IRRIGATION DISTRICT

April 14, 2009

RECEIVED
APR 24 2009
CITY OF MERCED
PLANNING DEPT.

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

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

Dear Ms. Espinosa:

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

MID operates and maintains the Doane Lateral in a pipeline assembly of varying diameters, west of, the west property line of the project. 13-1

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

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

2. MID offered Wal-Mart alternatives regarding discharging storm water to either the Fairfield Canal or the Farmdale Lateral/Doane Lateral. Wal-Mart needs to engage MID to verify discharge rates, means for connection and water quality requirements before MID can set its final requirements. Depending upon the approved route and discharge location, certain improvements, including but not limited to, pipelines, sensors, discharge structure assemblies and their appurtenances would be required. MID will notify the City as these issues are worked out between MID and Wal-Mart 13-2

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

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

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

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

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

13-2 Cont'd

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

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

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

13-3

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

13-4

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

Sincerely,

Rory Randol
Facilities Specialist

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

13-1 The comment indicates that MID requires conditions of approval from Wal-Mart. See Master Response 7: Detention Basins and Drainage regarding MID conditions of approval.

13-2 The comment indicates that MID requires conditions of approval from Wal-Mart. See Master Response 7: Detention Basins and Drainage regarding MID conditions of approval.

13-3 The comment describes a new rebate program offered by Merced Irrigation District for energy efficiency in buildings. The comment does not raise issues related to the adequacy of the DEIR. The comment is noted.

13-4 The comment indicates that the project site is within an area of the Merced Irrigation District where secondary water is available for landscape irrigation. The comment recommends that the applicant explore installation of a dual water system and utilize surface water for landscape irrigation, which would help conserve groundwater. Section 4.12 of the DEIR "Utilities and Public Services" includes analysis related to water supply and distribution, which is based on a Water Supply Assessment prepared specifically for the proposed project. The DEIR concludes that the project would result in a less-than-significant impact related to water supply. No mitigation is necessary to reduce this impact, and the comment raises no issues with the adequacy of the DEIR. This comment will be forwarded to the decision makers.

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14

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

March 6, 2009

RECEIVED
MAR - 6 2009
CITY OF MERCED
PLANNING DEPT.

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

Dear Mayor and City Council,

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

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

To date, no member of our community has expressed any concern with the project. In fact, the response has been overwhelmingly supportive for a distribution center project that promises over 900 full-time jobs. 14-1

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

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

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

Sincerely,

Chong Sue Xiong
Vice President

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

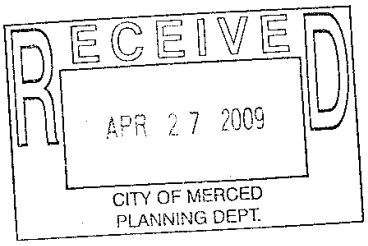
Letter 14 Response	Merced Lao Family Community, Inc. Chong Sue Xiong, Vice President March 6, 2009

14-1 This comment indicates that translation of the DEIR into other languages is not necessary. The comment further discusses the merits of the project, and raises no other CEQA issues. The comment is noted.

15

April 1, 2009

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



Kim,

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

15-1

Mike Baldwin
Merced-Mariposa Asthma Coalition - Steering Committee
559-903-4570
41810 Rd 40L
Coarsegold, Ca 93614

15-1 The comment is not written clearly, but it is assumed that the commenter questions why the DEIR (and supporting HRA) concludes that the increased exposure of children, schools, and residents located near the project site to project-generated TACs is considered a less-than-significant impact (as discussed in Impact 4.2-4), but that an on-site child daycare center for employees' children shall not be provided. To clarify, Mitigation Measure 4.2-2b states that an on-site child daycare center for employees' children shall not be provided unless supported by the findings of a comprehensive HRA performed in consultation with SJVAPCD.

The comprehensive HRA prepared for the proposed project, which is included in Appendix C of the DEIR and discussed under Impact 4.2-4, analyzes the potential health effects of nearby off-site residents, workers, and schools. The HRA and impact discussion did not address the potential health effects to children at a possible on-site daycare facility because a daycare facility is not included in the project description. Therefore, the DEIR did not conclude that a daycare facility should not be located on the project site.