

RESOLUTION NO. 2011- 63

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING AND CERTIFYING A FINAL
ENVIRONMENTAL IMPACT REPORT FOR THE
MERCED VISION 2030 GENERAL PLAN,
MAKING FINDINGS AND DETERMINATIONS,
ADOPTING A STATEMENT OF FACTS AND
OVERRIDING CONSIDERATIONS, AND
ADOPTING A MITIGATION MONITORING
PROGRAM**

WHEREAS, The City of Merced proposes to amend its General Plan as described in the "Merced Vision 2030 General Plan" (the "Project"); and,

WHEREAS, Opportunities for public input on the proposed Project have been provided through a public scoping meeting, which were open to user groups, public organizations, neighborhood organizations, neighborhood watch groups, homeowners associations, Merced residents, and all persons or entities interested in the proposed Project; and,

WHEREAS, The Planning Commission and City Council have held public hearings on the Environmental Impact Report and on the proposed Project; and,

WHEREAS, A public hearing was held by the City Council on September 19, 2011 and October 17, 2011, to consider the proposed Project and a Final Environmental Impact Report under the provisions of the California Environmental Quality Act ("CEQA").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. CEQA FINDINGS. The City Council makes the following findings pursuant to CEQA:

- A. A Notice of Preparation was sent to all organizations and individuals who requested notice with the notice specifying the period during which comments would be

received, the date, time, and place of the public scoping meetings on the Project, and Project information, including the Project description, location, and potential environmental effects; and,

- B. The Notice of Preparation was also circulated for public review on or about July 17, 2008, and sent to every responsible, trustee, and public agency with jurisdiction over the resources affected by the Project on or about July 17, 2008; and,
- C. Notice of Availability of the draft Environmental Impact Report was published in the *Merced County Times* on August 24, 2010, and both were circulated for public review on or about August 24, 2010, for a comment period ending on October 22, 2010, with the notice specifying the period during which comments would be received, a brief project description, and the address where a copy of the draft Environmental Impact Report and documents referenced in the draft Environmental Impact Report were available for review, and sent to every responsible, trustee, and public agency, including the State Clearinghouse, with jurisdiction over the resources affected by the Project on or about August 24, 2010, as well as filed with the City Clerk and posted in a public location at 678 West 18th Street on August 24, 2010, and a copy posted on the City's website for public review and download at www.cityofmerced.org; and,
- D. Notice of Availability and the draft Environmental Impact Report were also sent to every responsible, trustee, and public agency, including the State Clearinghouse, with jurisdiction over the resources affected by the Project on or about August 24, 2010, as well as filed with the City Clerk and posted in a public location at 678 West 18th Street on August 24, 2010; and,
- E. Notice of Completion of the draft Environmental Impact Report was filed with the State Clearinghouse on or about August 24, 2010; and,

- F. Comments and responses for the draft Environmental Impact Report were received by the City on or before October 22, 2010; and,
- G. All actions required to be taken by applicable law related to the preparation, circulation, and review of the draft Environmental Impact Report have been taken; and,
- H. Pursuant to applicable CEQA provisions and considering the public comments made, a Final Environmental Impact Report was prepared for this Project and posted on the City's website at www.cityofmerced.org; and,
- I. The Planning Commission held a noticed public hearing on July 20, 2011, at which time all those desiring to present evidence or testimony were afforded the opportunity to do so; and,
- J. Notice of the Planning Commission's public hearing was posted on the City's website at www.cityofmerced.org and published in the *Merced County Times* on June 30, 2011, as well as to all those individuals that had asked to be on the mailing list for the Project, and to every responsible, trustee, and public agency with jurisdiction over the resources affected by the Project; and,
- K. The Planning Commission, after considering the public comments received, the evidence and testimony before it, and after exercising its independent judgment and review, recommended to the City Council to certify the Final Environmental Impact Report, adopt the Findings and Determinations, adopt the Statement of Facts and Overriding Considerations, adopt the Mitigation Monitoring Program, and amend the General Plan; and,
- L. The City Council, after staff analysis of the same, independently reviewed and analyzed all reports and declarations which became a part of the record of this decision; and,

- M. The City Council, in adopting the Final Environmental Impact Report under the provisions of CEQA, finds that adoption of the Project's EIR requires a mandatory finding of significance for those items identified in Section C of Exhibit "1," attached hereto and incorporated by reference herein; and,
- N. The City Council finds that the following areas were reviewed in Section C of Exhibit "1," attached hereto and incorporated by reference herein: agricultural and forest resources (project and cumulative level), air quality (project and cumulative level), hydrology and water quality (cumulative level), public services: electricity and gas (cumulative level), transportation/traffic (project and cumulative level), and greenhouse gas emissions (project and cumulative level); and,
- O. The City Council made its decision to adopt the Final Environmental Impact Report for this Project in light of the record as a whole as set forth in these findings; and,
- P. The City Council, in certifying the Final Environmental Impact Report for this Project, of which these findings are a part, did so through the exercise of their independent judgment and review after finding substantial evidence, in light of the record as a whole, to support the adoption and certification of the Environmental Impact Report; and,
- Q. The City Council has made its decision to certify the Final Environmental Impact Report in the light of all the testimony and evidence presented at or prior to the close of the noticed public hearing, including all letters, reports, comments, analyses, etc., which the City Council after review and comment by its staff critically reviewed, corrected, and augmented where necessary, as set forth in the record and procedural findings on this Project; and,

- R. There is evidence in light of the record as a whole before the City that the Project would continue to have a significant impact on the environment after imposition of feasible mitigation measures or alternatives, and the potential environmental impacts will probably not be mitigated to a point where clearly no significant impact on the environment will occur. Therefore, a Statement of Facts and Overriding Considerations is required to be adopted if the Project is to be approved. Therefore, a Statement of Fact and Overriding Considerations is incorporated herein as set forth in Section E of Exhibit “1” hereto.

SECTION 2. CEQA—EIR CERTIFICATION. Based on the findings as set forth in Section 1 hereof and on the record of the public hearing, the City Council hereby certifies that the Final Environmental Impact Report, including the Errata Sheet, for the Project is an adequate and complete document prepared in compliance with the California Environmental Quality Act, as amended, and the State and local Guidelines promulgated there under. The City Council hereby adopts, certifies, and approves that document entitled “CEQA Findings of Fact and Statement of Overriding Considerations for the Merced Vision 2030 General Plan” identified as Exhibit “1,” with page 2-2 of the Final Environmental Impact Report corrected to read “Letter 22 – Thomas C. Grave” (not Thomas Lollini as noted), attached hereto and incorporated herein by this reference.

SECTION 3. FEIR—CITY COUNCIL INDEPENDENT JUDGMENT AND REVIEW. The City Council further certifies that the Final Environmental Impact Report was presented to the City Council, which reviewed and considered the information contained in said Final Environmental Impact Report prior to deciding whether to approve the proposed Project. The Final Environmental Impact Report has been thoroughly reviewed and analyzed by the City’s Staff, Planning Commission, and the City Council. The draft documents circulated for public review reflected the City’s own independent judgment and the Final Environmental Impact Report as certified by this Resolution also reflects the independent judgment of the City Council.

SECTION 4. MITIGATION MEASURES ADOPTED. The City Council hereby certifies the Final Environmental Impact Report for the Project, and adopts the Mitigation Measures in said Final Environmental Impact Report as the

mitigation measures for this Project, and that it meets the requirements of and is in compliance with Public Resources Code Section 21081.6.

SECTION 5. CONSTRUCTION MITIGATION MEASURES. The Final Environmental Impact Report identified impacts related to the Project that would be less than significant when Project activities are in compliance with reasonable policies, rules and regulations related to applicable laws, but for which would be further reduced by additional recommended measures that would further benefit activities related to construction activities.

SECTION 6. TEMPORARY CONSTRUCTION IMPACTS. Adverse impacts during construction will be temporary and short-term. Complete mitigation of construction emissions would require the imposition of schedule requirements that would essentially render construction activities infeasible, especially given their temporary nature. Adherence to the San Joaquin Valley Air Quality Control District rules and regulations will substantially reduce adverse construction emissions to the extent that is reasonably feasible.

SECTION 7. ALL FEASIBLE MITIGATION ADOPTED. All lawful, feasible mitigation measures which are within the jurisdiction of the City, as identified in the Final Environmental Impact Report have been incorporated into the Project and represent the fullest extent to which the Project-related impacts can be reasonably avoided and/or substantially lessened.

SECTION 8. STATEMENT OF FACTS & OVERRIDING CONSIDERATIONS ADOPTED. Upon considering the Final Environmental Impact Report in conjunction with the findings contained in the records, and understanding that the proposed Project will have a significant effect on the environment after imposition of feasible mitigation measures or alternatives, the City Council finds that there are social, economic, and other benefits of the proposed Project that outweigh any unavoidable adverse environmental effects that may occur. Due to such overriding benefits and considerations and, because alternatives to the proposed Project identified in the Final Environmental Impact Report which might lessen these impacts are infeasible, cannot accomplish the basic objectives of this Project, and involve unacceptable adverse consequences, the City Council finds that any unavoidable adverse environmental impacts of the proposed Project are acceptable, and adopts the Statement of Facts and Overriding Considerations based on substantial evidence in the Final Environmental Impact Report and all evidence pertaining to the Project. This determination shall constitute a Statement of Facts and Overriding Considerations within the meaning of CEQA, as set forth in

Section E of Exhibit "1," attached hereto and incorporated herein by this reference, and is based on the following benefits identified in the Final Environmental Impact Report and the record of proceedings regarding the approval of the proposed Project.

SECTION 9. FILING OF NOTICE OF DETERMINATION. The City Council hereby directs the Director of Development Services to file a Notice of Determination within five (5) working days after approval of the Project, and file the required Department of Fish and Game Environmental Review Fee pertaining to the potential impact on fish and wildlife resources.

SECTION 10. MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED. The City Council hereby adopts the Mitigation Monitoring Program associated with the Final Environmental Impact Report as set forth in Section 5 of the Final Environmental Impact Report (attached hereto as Exhibit 2), as the mitigation monitoring and reporting program for this Project, which have been adopted or made a condition of approval in order to mitigate or avoid significant environmental impacts. The City Council finds that said Mitigation Monitoring Program has been prepared in accordance with Public Resources Code Section 21081.6, and directs the Director of Development Services to oversee the implementation of the same.

SECTION 11. DIRECTION TO CITY MANAGER. The City Council hereby appoints the City Manager as its agent to conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, payment requests and so on, which may be necessary for the Project or its environmental documentation.

SECTION 12. AVAILABILITY OF FEIR. The City Council shall make the Final Environmental Impact Report and other related materials that constitute the record of the proceedings upon which its decision is based available at the Merced Civic Center, 678 West 18th Street, Merced, California.

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PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 17th day of October 2011, by the following vote:

AYES: Council Members: PEDROZO, GABRIALT-ACOSTA, LOR, SPRIGGS

NOES: Council Members: CARLISLE, RAWLING, BLAKE

ABSENT: Council Members: NONE

ABSTAIN: Council Members: NONE

APPROVED:

William Spriggs

Mayor

ATTEST:
CITY CLERK

BY: *Anna J. Davidson*

Assistant/Deputy City Clerk



(SEAL)

APPROVED AS TO FORM:

Ken Ryed 10/11/11

City Attorney Date