

RESOLUTION NO. 2009-69

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING THE GENERAL PLAN BY
ADOPTING GENERAL PLAN AMENDMENT
#06-01, APPROVING THE SITE PLAN REVIEW
APPLICATION, AND APPROVING THE
DEVELOPER AGREEMENT FOR THE
WAL-MART DISTRIBUTION CENTER**

WHEREAS, The Planning Commission of the City of Merced held a duly noticed public hearing on August 24, 2009 (and continued to August 26, 2009) to consider General Plan Amendment #06-01, vacation/abandonment of the Kibby Road right-of-way between Gerard Avenue and Childs Avenue, a finding of conformity with the General Plan for the vacation/abandonment of the Kibby Road right-of-way, and Site Plan Review Application #260 for the Wal-Mart Distribution Center (the "Project"); and,

WHEREAS, The Planning Commission of the City of Merced adopted Resolution #2959 recommending to the City Council approval of the General Plan Amendment, adopted the finding that the vacation/abandonment of the Kibby Road right-of-way was consistent with the General Plan, contingent on the General Plan Amendment being approved by the City Council, and recommending to the City Council approval of Site Plan Review Application #260; and,

WHEREAS, At a duly noticed public hearing on September 21, 2009 (and continued to September 23, 2009, September 26, 2009, and September 28, 2009, as needed), the City Council considered the recommendations of the Planning Commission and public testimony regarding the proposed Project, General Plan Amendment, and Environmental Impact Report.

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

SECTION 1. The City Council hereby approves General Plan Amendment #06-01, attached hereto as Exhibit "1" and incorporated herein by this reference, based upon the reasons and findings set forth in the Staff Report and as recommended by the Planning Commission.

SECTION 2. The City Council hereby approves Site Plan Review Application #260, for the Project, in accordance with all the terms and conditions contained in Planning Commission Resolution #2959, and as included on the Errata Sheet dated September 28, 2009, attached hereto as Exhibit "1A" and incorporated herein.

SECTION 3. The City Council hereby approves entering into the Developer Agreement for the Project.

SECTION 3. 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.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 28~~th~~ day of September 2009, by the following vote:

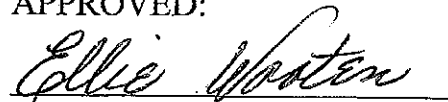
AYES: Council Members: SANDERS, CORTEZ, GABRIALT-ACOSTA,
LOR, SPRIGGS, WOOTEN

NOES: Council Members: CARLISLE

ABSENT: Council Members: NONE

ABSTAIN: Council Members: NONE

APPROVED:

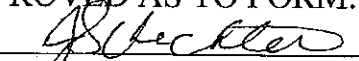

Mayor

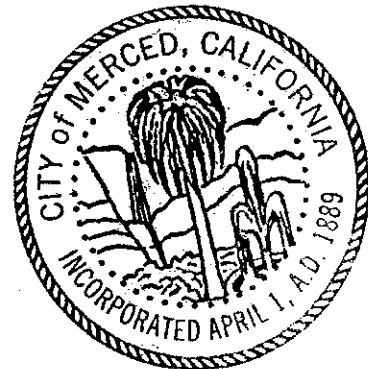
ATTEST:
CITY CLERK

BY: 
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

 9/28/09
City Attorney Date



EXHIBIT

Land Description

General Plan Amendment #06-01

A strip of land forty feet in width lying twenty feet on either side of the east line of the northeast quarter of Section 34, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, the boundary of which is more particularly described as follows:

COMMENCING at the northeast corner of said Section 34, said point also being the intersection of the centerline of Kibby Road and the centerline of Childs Avenue; thence S 00°17'48"E, coincident with the east line of the northeast quarter of said Section 34, a distance of 47.00 feet to the **POINT OF BEGINNING**; thence parallel with the north line of the northwest quarter of Section 35, Township 7, Range 14 East M.D.B.M., N 89°21'43"E a distance of 20.00 feet; thence S00°17'48"E, coincident with the easterly line of that certain 40-foot right-of-way known as Kibby Road, described in the deed to the County of Merced recorded April 1, 1929 in Volume 244 of Official Records, Page 454, a distance of 2595.74 feet; thence S88°43'59"W, parallel to and distant 37.00 feet north of the south line of said northwest quarter of Section 35, a distance of 20.00 feet to the west section line of said northwest quarter; thence S89°52'49"W, parallel to and distant 37.00 feet north of the south line of said northeast quarter of said Section 34, a distance of 20.00 feet to the westerly right-of-way line of said Kibby Road (244 OR 454); thence N00°17'48"W, coincident with said westerly line, a distance of 2595.77 feet to a point on said westerly right-of-way that bears S89°19'29"W, 20.00 feet from the Point of Beginning; thence parallel with the north line of the northeast quarter of said Section 34, N89°19'29"E, 20.00 to the **POINT OF BEGINNING**.

Containing an area of 2.4 acres more or less.

End of Description



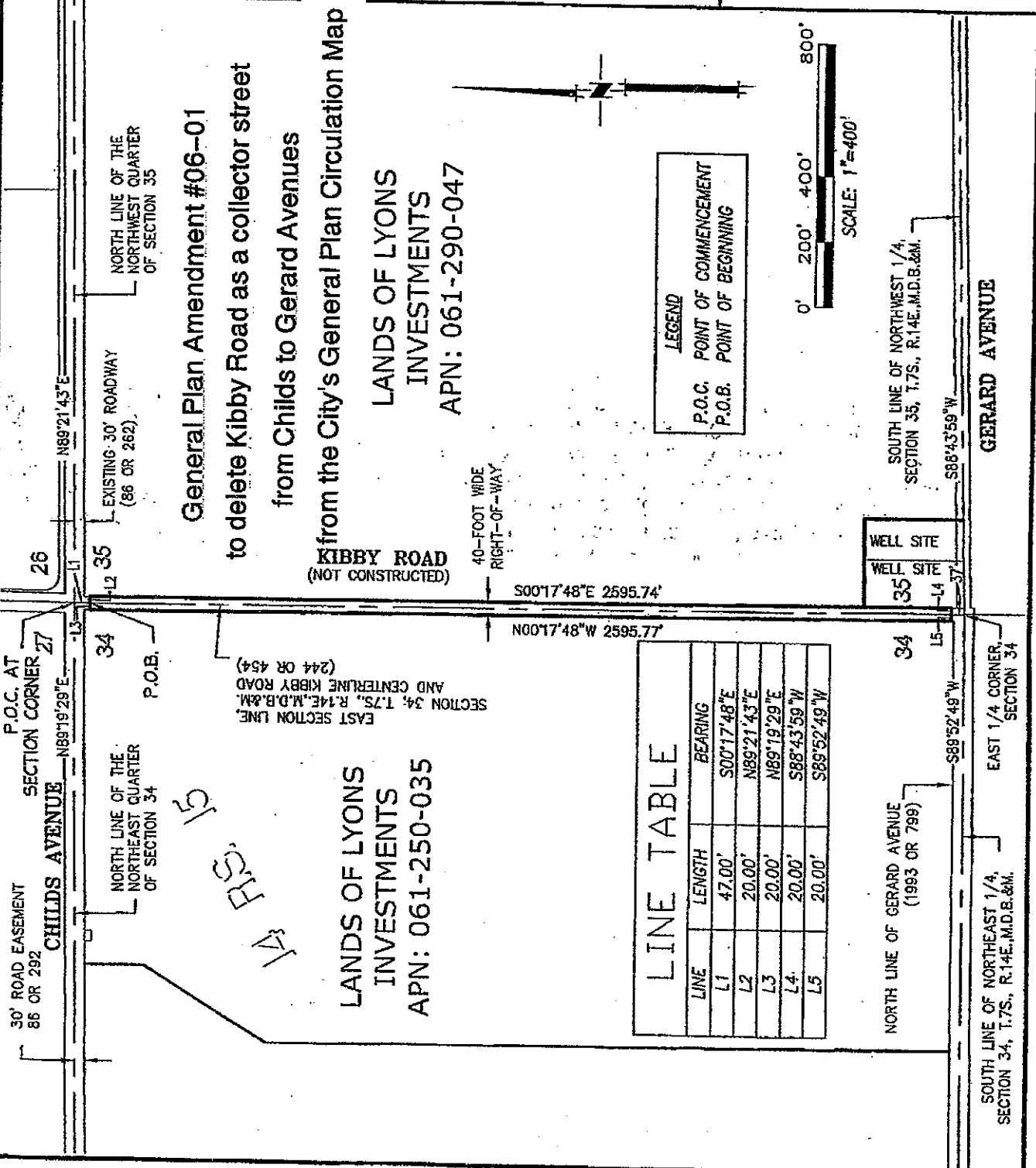
Bryn M. Wright, P.L.S. 8071
Expires 12/31/2007
5000 Executive Parkway, #125
San Ramon, Ca 94583

NO.	BY	DATE	REVISIONS

MERCED COUNTY CALIFORNIA

General Plan Amendment #06-01
 PLAT TO ACCOMPANY LAND DESCRIPTION

DAVID EVANS AND ASSOCIATES INC.
 5000 Executive Parkway, Suite 125
 San Ramon California 94583
 Phone: 925.867.3380
 Fax: 925.867.3388



LINE TABLE

LINE	LENGTH	BEARING
L1	47.00'	S00°17'48"E
L2	20.00'	N89°21'43"E
L3	20.00'	N89°19'29"E
L4	20.00'	S88°43'59"W
L5	20.00'	S89°52'49"W

30' ROAD EASEMENT 86 OR 292
 CHILD'S AVENUE
 P.O.C. AT SECTION CORNER 27
 N89°19'29"E

26
 35
 34
 35
 34

EXISTING 30' ROADWAY (86 OR 262)
 NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 35
 N89°21'43"E

LANDS OF LYONS INVESTMENTS
 APN: 061-290-047

LANDS OF LYONS INVESTMENTS
 APN: 061-250-035

EAST SECTION LINE SECTION 34; 1.75, R.14E, M.D.B.&M. (244 OR 454)
 NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 34
 N89°19'29"E

40-FOOT WIDE RIGHT-OF-WAY

S00°17'48"E 2595.74'

N00°17'48"W 2595.77'

WELL SITE

WELL SITE

14' P.O.B.

15' P.O.B.

NORTH LINE OF GERARD AVENUE (1993 OR 799)
 S89°52'49"W

EAST 1/4 CORNER SECTION 34
 S88°43'59"W

SOUTH LINE OF NORTHWEST 1/4, SECTION 35, T.7S., R.14E, M.D.B.&M.
 S88°43'59"W

GERARD AVENUE

SOUTH LINE OF NORTHEAST 1/4, SECTION 34, T.7S., R.14E, M.D.B.&M.

Errata Sheet Dated September 28, 2009
Findings of Facts and Statement of Overriding Considerations
Merced Wal-Mart Distribution Center
Supplemental Finding Regarding Urban Decay

The City Council has independently reviewed and considered the comment letters submitted indicating that the DEIR should have studied the potential that the Wal-Mart Distribution Center itself could cause urban decay, and that the construction of the Wal-Mart Distribution Center would lead to the construction of additional Wal-Mart stores and supercenters, and that those new stores and supercenters could cause urban decay. The City Council has also reviewed and considered the responses from City staff and its expert consultants, information provided by the applicant, and the testimony and written communications from the public.

After carefully considering this issue and the factual information in the record of proceedings, the City Council finds as follows:

1. It is not reasonably foreseeable that this project will directly or indirectly cause physical changes in the environment that would constitute urban decay.
2. It is not reasonably foreseeable that the construction of a distribution center will result in the construction of additional Wal-Mart Stores or Supercenters. In addition, it is not reasonably foreseeable that if future Wal-Mart Stores or Supercenters are in fact constructed in the future, that such Supercenters or Stores would cause urban decay. It is speculative to try to predict whether and where Wal-Mart may choose to build future stores, and it is also speculative to assume that such construction would lead to urban decay.
3. With regard to the direct impacts of the Merced Wal-Mart Distribution Center, it is reasonably foreseeable that the facility will help protect against the creation of urban decay, by providing employment opportunities and stimulating the local housing and commercial market.

These factual findings are based on substantial evidence submitted by staff, by the expert consultants, by the applicant, and by the members of the public, which includes, but is not limited to, the FEIR; all responses prepared by EDAW AECOM on or prior to September 28, 2009; any and all City Staff memorandum prepared on or prior to September 28, 2009. The factual findings are based in part on the nature of the project (a distribution center). The project is located in a

redevelopment project area, which has been zoned industrial use for many years. The project is consistent with the General Plan, and will further the purpose and goals of a redevelopment project area by redeveloping and revitalizing this area of the community. The opposition letters provided no factual basis or actual evidence that urban decay would result directly or indirectly from the construction and operation of the Distribution Center. Instead, the letters consist of unfounded opinions and speculation. The City Council has carefully weighed the submission by the project opponents on this issue, including the letters from Dr. King, and reject those letters as being unfounded and lacking in credible evidence.

City of Merced

MEMORANDUM

DATE: September 28, 2009
TO: City Council and City Manager
FROM: Kim Espinosa, Planning Manager *KE*
SUBJECT: Proposed Revision to Project Conditions for the Wal-Mart Project and Suggested Language if Council Wishes to Address An Issue

Recommended Change to Project Conditions

In order to clarify the project conditions and to address a minor concern that had been expressed during the course of the public hearings, staff is recommending that Condition #17 of the proposed project conditions (Exhibit B of the Developer Agreement—Attachment 13, page 264 of the Administrative Report) be amended as follows (the underlined text would be added with the rest of the condition remaining as originally proposed; ~~strikeouts~~ indicate modified text):

- 17) In accordance with Mitigation Measure 4.11-2b(c), for both the construction period and during the operation of the distribution center, the applicant shall regularly and routinely instruct its employees, contract truck drivers, and vendors that tractor trailers approaching and departing from the distribution center shall be limited to the following roadway from Highways 99 and 140: Campus Parkway, Mission Avenue ~~west~~ east of the ~~Campus Parkway-Highway 99~~, Gerard Avenue east of the Campus Parkway, and Tower Road. The truck route plan required by Mitigation Measure 4.11-2b(c) may include the use of that segment of Mission Avenue between Highway 59 and Highway 99 with the concurrence of Merced County. In addition to the requirements of Mitigation Measure 4.11-2b(c), ~~this mitigation measure~~ truck drivers shall be directed to not park their trucks within any of the residential subdivisions west of the Campus Parkway, and shall utilize the waiting area located on the site. The applicant will demonstrate to the City on a yearly basis that the truck drivers are being advised of these restrictions.

Suggested Language IF Council Wishes to Address the Landscaping Issue

During the course of the public hearings on the project (both before the City Council and the Planning Commission), the issue of possible additional landscaping along the project's western property line (parallel to the Campus Parkway) and the issue of landscape berms have been raised.

Regarding the issue of landscaping along the western boundary, staff believes that the effectiveness of any landscaping along this property line would be minimal given the distance to the Campus Parkway (approximately 1,000 feet) and the vacant land not owned by Wal-Mart in between which currently houses an orchard and will eventually be developed with industrial buildings. In preliminary discussions with City staff, the project applicants have indicated that such landscaping would be difficult to achieve given the location of an MID easement along that

property line and the location of their driveway entrance into the site. City staff does not believe that the landscaping is necessary, but if the City Council wishes to add that requirement, the addition of Section "d" to Condition #25 (see below) would be suggested.

Regarding the use of earth mounds or berms within the landscape areas around the perimeter of the project, City staff believes that the project conditions as written would NOT preclude the use of berms but would leave staff the flexibility to require them if needed and if they can be made to work with site drainage and other issues. In preliminary discussions with the project applicants on this issue, they have indicated that since they are being required by other project conditions to do upgrades to the building facades, they feel the extra berming would be unnecessary and would hide some of the aesthetic improvements they would be making. However, if the City Council should wish to add some language regarding berming, City staff would suggest the addition of Section "e" to Condition #25 below, which would make clear that berming is an option to be considered.

- 25) Prior to or concurrent with submittal of a building permit, the owner shall submit a detailed landscape and irrigation plan to the Director of Development Services, which includes at a minimum, designated planting areas as required per Mitigation Measure 4.13-2 (which addresses street trees, parking lot trees in employee parking areas, perimeter landscaping, and the preservation of existing orchard trees on site), and the following additional requirements:
- a) *Storm water Detention Basins:* Landscape plans shall be submitted by the applicant and approved by the City for all storm water detention areas. The location of these detention area shall be clearly outlined on the Project site plan and their design approved by the City Engineer prior to issuance of a building permit for the Project.
 - b) *Trailer Parking Areas:* Trees shall be planted along the perimeter of the truck and trailer parking areas but not within the parking areas to the maximum extent feasible. Details shall be worked out with City staff at the building permit review stage.
 - c) *Water Efficient Landscaping:* The Project shall be required to comply with the City's Water Efficient Landscaping and Irrigation Ordinance (MMC 17.60).
 - d) *Western Property Line Landscaping:* The developer shall plant trees (minimum 15 gallon) no further than 30 feet apart along the western project site boundary.
 - e) *Earth Mounds:* Once the design of the project buildings are finalized, City staff will determine whether earth mounds (or "berms") would be practical given the location of the Merced Irrigation District easements and whether they would enhance the appearance of the site. If City staff determines that the mounds or berms are practical and desirable, the applicant will include them within the landscape areas required around the perimeter of the project which abut public streets (Childs, Gerard, and Tower) and along the western property line to provide screening. Details shall be worked out with City staff at the building permit review stage.