

# THE MARKETPLACE PROJECT

## Draft CEQA Findings and Statement of Overriding Considerations

Prepared for  
City of Modesto

November 2013





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# **THE MARKETPLACE PROJECT**

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## **CEQA Findings and Statement of Overriding Considerations**

### **Introduction**

On behalf of the City of Modesto (the "City"), and pursuant to the California Environmental Quality Act ("CEQA"), a Final Environmental Impact Report (Final EIR) has been prepared for the Marketplace Project and other related approvals described below (collectively, the proposed project).

The City is the lead agency as defined in the CEQA Guidelines. (Public Resource Code §21067).

The "Final EIR" for the proposed project (SCH#2013022013) evaluates the environmental effects associated with implementation of the proposed project. The Final EIR serves as an informational document for public agency decision-makers and the general public regarding the environmental effects of the proposed project and identifies feasible mitigation measures (referred to as "Required Additional Mitigating Policies and Implementation Measures") and alternatives that would reduce or eliminate significant impacts of the proposed project.

The Final EIR is the primary reference document for the development and implementation of a mitigation monitoring plan for the proposed project. Environmental impacts cannot always be mitigated to a level that is considered less than significant. In accordance with the CEQA Guidelines (Cal. Code Regs., tit. 14, section 15000 et seq.), if a lead agency approves a project that has significant impacts that are not substantially mitigated (i.e., significant unavoidable impacts), the agency shall state in writing the specific reasons for approving the project based on the final CEQA documents and any other information in the public record for the project. (CEQA Guidelines, section 15093, subd. (b).) This is called a "statement of overriding considerations". (CEQA Guidelines, Section 15093.)

To support its certification of the Final EIR and approval of the proposed project, the City Council of the City of Modesto (the "City Council") makes the following findings of fact and statements of overriding considerations (collectively, the "Findings"). These Findings contain the City Council's written analysis and conclusions regarding the proposed project's environmental effects, mitigation measures, alternatives to the proposed project, and the overriding considerations which, in the City Council's view, justify the approval of the proposed project despite its potential environmental effects. These Findings are based upon the entire record of proceedings for the Final EIR, as described below.

## Summary of the Proposed Project

The proposed project includes the construction of a new shopping center with approximately 170,000 square-feet of floor area on approximately 18 acres. The proposed project is located on two parcels; the first parcel (APN 065-021-011) is twelve acres in area and is split with two General Plan land use designations. Approximately ten acres are designated Mixed-Use (MU) and two acres are designated Residential (R). The second parcel (APN 065-021-012) is six acres in area and currently designated Residential in the City of Modesto's General Plan. The proposed project includes two large buildings in the shopping center that will be partitioned into spaces for various tenants. The larger of the two buildings is 78,290 square feet and will be partitioned into approximately 5 spaces while the smaller of the two buildings is 66,230 square feet and will be partitioned into two spaces, one of which is a 51,730 square foot "Anchor" tenant. The 51,730 square foot "Anchor" space has been identified as a grocery store, none of the other uses in the shopping center have been specifically identified. Four pad buildings are also included in the shopping center; they are 6,650, 4,200, 7,670, and 6,955 square feet respectively. The proposed project includes 816 parking spaces which is 4.8 spaces per 1,000 square feet of development.

Access to the shopping center will be provided from three driveways on Oakdale Road (one is service access only), one driveway on Sylvan Avenue, and two driveways on Hashem Drive (one is service access only). The proposed project would include a new traffic signal at the intersection of Oakdale Road and the main project driveway/Post Office Drive. As part of the proposed project, right-of-way will be dedicated along the frontage to accommodate the following future roadway improvements including: the widening of Oakdale Road and Sylvan Avenue to six through-lanes, a separated right turn lane for traffic traveling east turning southbound onto Oakdale Road, a southbound right turn lane at the main Oakdale Road site access driveway, a deceleration lane along Sylvan Avenue between Hashem Drive and the site access driveway and an extended bus turnout on Oakdale Road.

## Project Approvals

The proposed project is considered a discretionary project and will require several approvals by the City:

- A General Plan Amendment to redesignate the project site from Mixed-use and Residential to Commercial;
- A Zoning Amendment to rezone the same property from Planned Development Zone, P-D(211) to a new Planned Development Zone, to allow development of a shopping center; and
- A lot line adjustment to consolidate the existing parcels into one parcel.

The Planning Commission will make a recommendation on the proposed project, which must be approved by the City Council.

Other ministerial permits and approvals required for the project by the City may include:

- Building Permit(s);
- Encroachment Permits for off-site improvements;
- Grading Permit;
- Sign Permit;
- Fire Department Permit; and
- Approval of construction plans by Public Works Department and Electric Utility Department.

## Procedural Compliance with CEQA

### Environmental Review and Public Participation

The Draft EIR (State Clearinghouse #2013022013) was circulated for public review on June 20, 2013 through August 5, 2013 (45-day public review period). The Final EIR has been prepared for the City in accordance with CEQA and the CEQA Guidelines. As allowed for in CEQA Guidelines § 15084(d) (2), the City retained a consultant to assist with the preparation of the environmental documents. The City, as the lead agency, has directed preparation of the EIR, reviewed all material prepared by the consultant, and such material reflects the City's independent judgment. The key milestones associated with the preparation of the EIR are summarized below. In addition, an extensive public involvement and agency notification effort was conducted to solicit input on the scope and content of the EIR and to solicit comment on the results of the environmental analysis presented in the Draft EIR. In general, the preparation of the EIR included the following key steps and public notification efforts:

- **The 2013 Notice of Preparation (NOP).** The City formally initiated the environmental process with circulation of an NOP, which was sent to responsible agencies and interested individuals for a 30-day review period from February 5, 2013 to March 6, 2013. While an initial study was not included as part of the NOP, the NOP identified the likely potential environmental impacts that should be studied in the EIR. The NOP was posted in the Modesto Bee, a newspaper of general circulation, and with the Clerk Recorder of the County of Stanislaus. The City also held a Scoping Meeting on February 21, 2013 to take comments regarding the scope of the EIR. The NOP and a summary of the comments received during the 30-day review period are provided in the Draft EIR (see Draft EIR, Appendix A).
- **The 2013 Draft EIR.** In June 2013, the City published the Draft EIR. The 2013 Draft EIR assessed the environmental implications of implementing the proposed project. The Draft EIR was circulated for public review and comment for 45 days (June 20, 2013 through August 5, 2013).
- **The 2013 Recirculated Draft EIR.** On August 26<sup>th</sup>, 2013, the City recirculated portions of two sections of the Draft EIR, addressing inadvertent omissions to the traffic analysis regarding City significance criteria. The Recirculated Draft EIR was circulated for public review and comment for 45 days (August 26<sup>th</sup>, 2013 through October 10<sup>th</sup>, 2013).

- **The 2013 proposed Final EIR.** A total of 3 comment letters were received on the Draft EIR during the public review period from June 20, 2013 to August 5, 2013. Three letters were received from the same commenters on the Recirculated Draft EIR during the public review period from August 26<sup>th</sup> 2013 to October 10, 2013. Letters received from governmental agencies accounted for two (2) of the comment letters received on both the Draft and Recirculated Draft EIR. City staff published a Final EIR on November 5, 2013, which included: a list of persons, organizations, and public agencies commenting on the Draft EIR; the City's written responses to all significant environmental points raised in the comments; changes to the text of the Draft and Recirculated Draft EIR made in response to comments; and other revisions and clarifications.
- **2013 Planning Commission Recommendations.** The Final EIR was reviewed by the Planning Commission in a duly noticed public hearing held on November 18, 2013. On November 18, 2013, the Planning Commission adopted a resolution containing its written recommendations to the City Council whether to certify the proposed Final EIR (Planning Commission Resolution 2013-1) and regarding whether to adopt the project.

## Record of Proceedings

For the purposes of CEQA, and these findings, the administrative record for the proposed project consists of those items listed in Public Resources Code section 21167.6, subdivision (e). The record of proceedings for the Council's decision on the proposed project includes the following documents:

- The City prepared an initial study for the proposed project in May 2012, for the purpose of considering the effects of the project within the context of the City's existing General Plan Master EIR (SCH No. 2007072023).
- The NOP (February 2013) and all other public notices issued by the City in conjunction with the proposed project;
- The Draft Environmental Impact Report for The Marketplace Project (June 20, 2013 through August 5, 2013);
- The Recirculated Draft Environmental Impact Report for the Marketplace Project (August 26, 2013 through October 10, 2013);
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR (June 20, 2013 through August 5, 2013) and the recirculated Draft EIR (August 26, 2013 through October 10, 2013);
- All comments and correspondence submitted to the City with respect to the proposed project, in addition to timely comments on the Draft EIR and the recirculated Draft EIR;
- The Final Environmental Impact Report for The Marketplace Project, including comments received on the Draft EIR, the recirculated Draft EIR, and responses to those comments;
- The mitigation monitoring plan for the proposed project;
- All findings and resolutions adopted by the City Council in connection with the proposed project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the proposed project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the proposed project;

- All documents submitted to the City (including the Planning Commission and City Council) by other public agencies or members of the public in connection with the proposed project, up through the close of the public hearing on the Final EIR;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the proposed project;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- All resolutions adopted by the City regarding the proposed project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The official custodian of the record is the City of Modesto Community and Economic Development Department. The documents and other materials, which constitute the record of proceedings for the City's approval of this project, are located at the City of Modesto, Community and Economic Development, 1010 Tenth Street, Suite 3300, Modesto, CA 95354.

### **Mitigation Monitoring and Reporting Programs**

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the proposed project, and has been approved by the City Council by the same resolution that has adopted these findings. (See Pub. Resources Code, § 21081.6, subd. (a)(1); CEQA Guidelines, § 15097.) The City will use the MMRP to track compliance with the proposed project mitigation measures. The MMRP has been published as a stand-alone document.

## **Environmental Impacts and Findings**

The City Council finds, with respect to the City's preparation, review and consideration of the Final EIR, that:

- The City retained the independent firm of Environmental Science Associates ("ESA") to prepare the Final EIR, and ESA prepared the FEIR under the supervision and at the direction of the City of Modesto Community and Economic Development Department.
- The City circulated the Draft EIR for review by responsible agencies and the public and submitted it to the State Clearinghouse for review and comment by state agencies.
- The Final EIR has been completed in compliance with CEQA.
- The proposed project will have significant, unavoidable impacts as described and discussed in the Final EIR.
- The Final EIR is adequate under CEQA to address the potential environmental impacts of the proposed project.
- The Final EIR has been presented to the City Council, and the City Council has independently reviewed and considered information contained in the Final EIR.
- The Final EIR reflects the independent judgment of the City.

By these Findings, the City Council ratifies, adopts and incorporates the analyses, explanations, findings, responses to comments, and conclusions of the Final EIR, except as specifically described in these Findings.

## Findings Regarding Less-Than-Significant Impacts.

By these Findings, the City Council ratifies and adopts the Final EIR's conclusions for the following potential environmental impacts which, based on the analyses in the Final EIR, this City Council determines to be less than significant:

### Aesthetics

***Impact 3.1.1: Implementation of the project could change the existing visual character or quality of the site and its surroundings.***

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No mitigation is required. The impact is considered *less-than-significant*.

### Land Use and Urban Decay

***Impact 3.2.1: The proposed project would not physically divide an established community.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.2.2: The proposed project would not conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.2.3: The proposed project would not result in long term commercial building vacancies and therefore would not result in increased urban decay conditions.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.2.4: The proposed project, in combination with other developments in the vicinity, would not contribute to potential cumulative land use impacts.***

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No mitigation is required. The impact is considered *less-than-significant*.

### Traffic and Circulation

***Impact 3.3.2: The proposed project would not increase hazards due to a design feature or incompatible uses.***

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No mitigation is required. The impact is considered *less-than-significant*.

***3.3.3: The proposed project would not result in inadequate emergency access.***

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No mitigation is required. The impact is considered *less-than-significant*.

***3.3.4: The proposed project would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.***

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No mitigation is required. The impact is considered *less-than-significant*.

## **Air Quality**

***Impact 3.4.3: Construction and/or operation of the project would not expose sensitive receptors to substantial pollutant concentrations.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.4.4: Operation of the project would not create objectionable odors affecting a substantial number of people.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.4.6: Construction and operation of the project would not generate toxic air contaminants that could contribute to cumulative health risks.***

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No mitigation is required. The impact is considered *less-than-significant*.

## **Noise**

***Impact 3.6.3: Traffic associated with operation of the project would not result in an increase in ambient noise levels on nearby roadways used to access the shopping center.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.6.5: The project would not expose people working in the project area to excessive airport-related noise.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.6.6: Increases in traffic from the project in combination with other development would not result in cumulative noise increases.***

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No mitigation is required. The impact is considered *less-than-significant*.

## **Hydrology and Water Quality**

***Impact 3.7.1: The proposed project would not violate water quality standards or waste discharge requirements during construction-related activities.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.7.2: The project would not result in other water quality degradation.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.7.4: The project would not substantially deplete groundwater supplies or substantially interfere with groundwater recharge.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.7.5: The project would not make a cumulatively considerable contribution to cumulative effects associated with hydrologic resources and water quality.***

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No mitigation is required. The impact is considered *less-than-significant*.

## **Hazards and Hazardous Materials**

***Impact 3.8.1: The project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.8.2: The project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.8.3: The project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.***

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No mitigation is required. The impact is considered *less-than-significant*.

***Impact 3.8.4: The project would not contribute to a significant cumulative impact related to hazards or hazardous materials.***

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No mitigation is required. The impact is considered *less-than-significant*.

## Findings Regarding Significant Environmental Impacts

A detailed analysis of the potential environmental impacts and the proposed mitigation measures for the proposed project is described in Chapter 3 “Environmental Analysis” of the Draft EIR, as incorporated into the Final EIR. The Draft EIR evaluated the Project's potential environmental impacts in 8 separate environmental topics, and also evaluated the proposed project’s potential cumulative impacts. The City Council concurs with the conclusions in the Draft EIR, as incorporated into the Final EIR, that: (i) the majority of the proposed project's significant and potentially significant impacts will be rendered less than significant by the mitigation measures described and discussed below; and (ii) for those impacts that will not be rendered less than significant by such mitigation measures, there are overriding considerations that make those impacts acceptable to the City.

### Aesthetics

***Impact 3.1.2: Implementation of the project may create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area.***

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**Potential Impact:** The impact identified above is described on page 3.1-10 of the Draft EIR.

**Mitigation Measure:** Mitigation Measure 3.1.2 “Outdoor Lighting Standards” (see page 3.1-10 of the Draft EIR) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that: Mitigation Measure 3.1.2 requires the project applicant to use outdoor light fixtures that will minimize stray light trespassing across property boundaries. Fixtures shall be full cut-off and nighttime friendly, consistent with LEED goals and Green Globes criteria for light pollution reduction. The project applicant is required to prepare a photometric plan demonstrating that lighting will not spillover onto adjacent properties. Furthermore, the project will adhere to all City regulations relating to signage and the shielding of light in order to reduce any potential negative effects from new light sources (per Municipal Code Title 10, Chapter 6). These standards shall be

included in the project conditions. With implementation of these outdoor lighting conditions, this light and glare impact is considered *less-than-significant*.

***Impact 3.1.3: The project would not contribute to a significant cumulative visual impact.***

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**Potential Impact:** The impact identified above is described on pages 3.1-10 and 3.1-11 of the Draft EIR.

**Mitigation Measure:** Mitigation Measure 3.1.2 “Outdoor Lighting Standards” (see page 3.1-10 of the Draft EIR) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that: Mitigation Measure 3.1.2 requires the project applicant to use outdoor light fixtures that will minimize stray light trespassing across property boundaries. Fixtures shall be full cut-off and nighttime friendly, consistent with LEED goals and Green Globes criteria for light pollution reduction. The project applicant is required to prepare a photometric plan demonstrating that lighting will not spillover onto adjacent properties. Furthermore, the project will adhere to all City regulations relating to signage and the shielding of light in order to reduce any potential negative effects from new light sources (per Municipal Code Title 10, Chapter 6). These standards shall be included in the project conditions. With implementation of these outdoor lighting conditions, this cumulative light and glare impact is considered *less-than-significant*.

## Traffic and Circulation

***Impact 3.3.1: The proposed project would potentially conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of study intersections and study roadway segments under Existing plus Project conditions.***

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**Potential Impact:** The impact identified above is described on pages 3.3-19 through 3.3-26 of the Draft EIR. As more fully described in the Draft EIR, implementation of the proposed project would result in unacceptable LOS conditions (LOS E or F) during the p.m. peak hour at the following four intersections along Oakdale Road:

- Oakdale Road at Claratina Avenue (Intersection #2).
- Oakdale Road at La Force Drive (Intersection #6).
- Oakdale Road at Hashem Drive (Intersection #7).
- Oakdale Road at Floyd Avenue (Intersection #8).

Similarly, under Existing plus Project Conditions, implementation of the proposed project would result in unacceptable LOS conditions (LOS E or F) during the p.m. peak hour at the following three roadway segments along Oakdale Road:

- Oakdale Road between Claribel Avenue and Claratina Avenue (Segment #1).
- Oakdale Road between Claratina Avenue and Mable Avenue (Segment #2).
- Oakdale Road between Mable Avenue and Sylvan Avenue (Segment #3).

**Mitigation Measure:** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.3.1: Applicant to Provide Fair Share Contribution to Improvements at the La Force Drive at Oakdale Road Intersection.** Consistent with the City’s CIP program, the applicant will provide a fair share contribution to the delineation of a westbound right turn lane at the Oakdale Road at LaForce Drive Intersection. Restriping the westbound La Force Drive from a shared left-right turn lane to an exclusive left-turn lane and an exclusive right-turn lane would improve LOS conditions from LOS F to LOS D during the p.m. peak hour. Because reconfiguration of the westbound approach would improve LOS conditions from unacceptable to acceptable, the project impact would be reduced to a less-than-significant level (refer to Appendix B for LOS output sheets with imposed mitigation measure).
- **Mitigation Measure 3.3.2: City Shall Restripe Eastbound Hashem Drive at Oakdale Road Intersection.** Restriping the eastbound Hashem Drive from a shared left-right turn lane to an exclusive left-turn lane and an exclusive right-turn lane would improve LOS conditions from LOS F to LOS D during the p.m. peak hour. Because reconfiguration of the eastbound approach would improve LOS conditions from unacceptable to acceptable, the project impact would be reduced to a less-than-significant level.
- **Mitigation Measure 3.3.3: Applicant to Provide Fair Share Contribution to Improvements at the Oakdale Road at Floyd Avenue Intersection.** Consistent with the City’s CIP program, the applicant will provide a fair share contribution to the installation of a southbound right turn lane at the Oakdale Road at Floyd Avenue Intersection and the installation of a third northbound through lane north of the intersection.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measure 3.3.1 “Restripe Westbound La Force Drive at Oakdale Road Intersection”, the impact at Oakdale Road at La Force Drive (Intersection #6) is considered *less-than-significant*. With implementation of Mitigation Measure 3.3.2 “City Shall Restripe Eastbound Hashem Drive at Oakdale Road Intersection”, the impact at Oakdale Road at Hashem Drive (Intersection #7) is considered *less-than-significant*.

Roadway segments #1 and #2 would also operate at LOS E under existing conditions and would continue to operate at LOS E with implementation of the proposed project. However, because the proposed project would not increase the volume-to-capacity (v/c) ratio by more than five seconds, the project would result in a *less-than-significant* impact to these study segments and no mitigation measures would be required.

Mitigation Measure 3.3.3 would require the project applicant to provide a fair share contribution to construction improvements at the Oakdale Road at Floyd Avenue Intersection (#8). Additional improvements to Intersection #2, #8, and Roadway Segment #3 have been identified as part of the City's Capital Facilities Fee (CFF) Program and build-out of the Tivoli Specific Plan. However, build-out of these improvements (including those identified under the Tivoli Specific Plan) have no specific timeline for completion and therefore do not coincide with the shorter term necessity of the improvements identified for affected intersections/roadway segments resulting from the proposed project.

Additionally, as to all affected intersections and roadway segments, this project is only responsible for a small percentage of the overall traffic impact, and thus, can only be required to pay its fair proportional share of the improvements necessary to mitigate the cumulative traffic impact. Where the proposed project only contributes to a relatively small percentage of the overall traffic impact, the City cannot lawfully require the project to pay for the entire traffic improvement, but is instead requiring the project to pay a development fee as part of the City's Capital Improvement Program (CIP). The proceeds of the CIP are programmed to be used for many (but not all) of these improvements.

Finally, as more fully described in the Draft EIR, implementation of many of the larger intersection/roadway segment improvements would adversely affect a number of existing businesses around the facilities through the acquisition of necessary right-of-way to complete these improvements. Right-of-way acquisition would affect the financial feasibility of the overall improvement and would generate a number of additional relocation and environmental impacts that may not be mitigated to a less-than-significant level. Consequently, while these larger intersection/roadway segment improvements can improve local LOS conditions, they are considered infeasible given the potential business relocation, environmental impacts, and financial feasibility associated with many of the larger improvements necessary to address LOS considerations.

Therefore, for the various reasons set forth above and as more fully described in the Draft EIR, the impacts identified under Impact 3.3.1 for Intersection #2, #8, and Roadway Segment #3 will remain significant even with mitigation. More specifically, although the mitigation measures identified above would reduce the impacts resulting from implementation of the proposed project on traffic at the study intersections/roadway segments under the Existing plus Project conditions, the impacts at the following intersections/roadway segments remains significant:

- Oakdale Road at Claratina Avenue (Intersection #2).
- Oakdale Road at Floyd Avenue (Intersection #8).
- Oakdale Road between Mable Avenue and Sylvan Avenue (Segment #3).

**Remaining Impacts:** As described above, although implementation of Mitigation Measures 3.3.1 through 3.3.3 would reduce the impacts identified above, many of the proposed larger intersection/roadway segment improvements are considered infeasible and most such impacts would thus remain significant even with mitigation. Consequently, because there are no feasible

measures available to further mitigate these significant impacts, they are considered *significant and unavoidable*.

**Overriding Considerations:** The environmental, economic, social and other benefits of the proposed project override any remaining significant adverse impacts of the proposed project on traffic at the study intersections/roadway segments under the Existing plus Project conditions, as set forth in the Statement of Overriding Considerations below.

***Impact 3.3.5: The proposed project would potentially conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of study intersections and study roadway segments under Cumulative plus Project conditions.***

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**Potential Impact:** The impact identified above is described on pages 3.3-30 through 3.3-36 of the Draft EIR and pages 2-2 through 2-9 of the Recirculated Draft EIR. As more fully described in these documents, implementation of the proposed project would result in unacceptable LOS conditions (LOS E or F) during the p.m. peak hour at the following six intersections:

- Oakdale Road at Mable Avenue (Intersection #3)
- Oakdale Road at Sylvan Avenue (Intersection #4)
- Oakdale Road at La Force Drive (Intersection #6)
- Oakdale Road at Floyd Avenue (Intersection #8)
- Coffee Road at Sylvan Avenue (Intersection #10)
- Sylvan Avenue at Hashem Drive-Carson Oak Drive (Intersection #13)

Similarly, under Cumulative plus Project Conditions, implementation of the proposed project would result in unacceptable LOS conditions (LOS E or F) during the p.m. peak hour at the following 3 roadway segments:

- Oakdale Road between Post Office Drive and La Force Drive (Segment #4)
- Oakdale Road between Hashem Drive and Floyd Avenue (Segment #5)
- Sylvan Avenue between Oakdale Road and Wood Sorrel Drive (Segment #10)

**Mitigation Measure:** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.3.5a: City to Monitor and Install Overlap Phase for the Westbound Right Turn Lane for the Oakdale Road at Sylvan Avenue Intersection.** The City will monitor operations at the intersection and add an overlap phase when deemed necessary by the City Traffic Engineer.
- **Mitigation Measure 3.3.1: Applicant to Provide Fair Share Contribution to Improvements at the La Force Drive at Oakdale Road Intersection.** Consistent with the City's CIP program, the applicant will provide a fair share contribution to the delineation of a westbound right turn lane at the Oakdale Road at LaForce Drive Intersection. Restriping

the westbound La Force Drive from a shared left-right turn lane to an exclusive left-turn lane and an exclusive right-turn lane would improve LOS conditions from LOS F to LOS D during the p.m. peak hour. Because reconfiguration of the westbound approach would improve LOS conditions from unacceptable to acceptable, the project impact would be reduced to a less-than-significant level (refer to Appendix B for LOS output sheets with imposed mitigation measure).

- **Mitigation Measure 3.3.5c: City to Monitor and Install Traffic Signal for the Sylvan Avenue at Hashem Drive-Carson Oak Drive intersection.** The City will monitor signal warrants at the intersection of Sylvan Avenue and Hashem Drive-Carson Oak Drive intersection and install a traffic signal when deemed necessary by the City Traffic Engineer. Installation of a traffic signal at the intersection would improve LOS conditions from LOS F to LOS A.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measure 3.3.5c“City to Monitor and Install Traffic Signal for the Sylvan Avenue at Hashem Drive-Carson Oak Drive Intersection”, the impact at Sylvan Avenue at Hashem Drive-Carson Oak Drive (Intersection #13) is considered *less-than-significant*.

Mitigation Measure 3.3.5a would require the City to monitor operations at the Oakdale Road at Sylvan Avenue Intersection (Intersection #4) and add an overlap phase when deemed necessary by the City Traffic Engineer. Mitigation Measure 3.3.1 would require the project applicant to provide a fair share contribution to the delineation of a westbound right turn lane at the Oakdale Road at LaForce Drive Intersection (Intersection #6) consistent with the City’s CIP program.

Additionally, as to all affected intersections and roadway segments, this project is only responsible for a small percentage of the overall traffic impact, and thus, can only be required to pay its fair proportional share of the improvements necessary to mitigate the cumulative traffic impact. Where the proposed project only contributes to a relatively small percentage of the overall traffic impact, the City cannot lawfully require the project to pay for the entire traffic improvement, but is instead requiring the project to pay a development fee as part of the City's CIP. The proceeds of the CIP are programmed to be used for many (but not all) of these improvements.

Finally, as more fully described in the Draft EIR, implementation of many of the larger intersection/roadway segment improvements would adversely affect a number of existing businesses around the facilities through the acquisition of necessary right-of-way to complete these improvements. Right-of-way acquisition would affect the financial feasibility of the overall improvement and would generate a number of additional relocation and environmental impacts that may not be mitigated to a less-than-significant level. Consequently, while these larger intersection/roadway segment improvements can improve local LOS conditions, they are considered infeasible given the potential business relocation, environmental impacts, and

financial feasibility associated with many of the larger improvements necessary to address LOS considerations.

Therefore, for the various reasons set forth above and as more fully described in the Draft EIR, the impacts identified under Impact 3.3.5 for Intersections #3, #4, #6, #8, #10 and Roadway Segments #4, #5, and #10 will remain significant even with mitigation.

**Remaining Impacts:** As described above, although implementation of Mitigation Measures 3.3.1, 3.3.5a, and 3.3.5c would reduce the impacts identified above, many of the proposed larger intersection/roadway segment improvements are considered infeasible and most such impacts would thus remain significant even with mitigation. Consequently, because there are no feasible measures available to further mitigate these significant impacts, they are considered *significant and unavoidable*.

**Overriding Considerations:** The environmental, economic, social and other benefits of the proposed project override any remaining significant adverse impacts of the proposed project on traffic at the study intersections/roadway segments under the Cumulative plus Project conditions, as set forth in the Statement of Overriding Considerations below.

## Air Quality

***Impact 3.4.1: Construction of the project could generate emissions of criteria air pollutants that could contribute to existing nonattainment conditions.***

**Potential Impact:** The impact identified above is described on pages 3.4-18 through 3.4-20 of the Draft EIR. As more fully described in the Draft EIR, construction related emissions arise from a variety of activities including (1) grading, excavation, and other earth moving activities; (2) travel by construction equipment and employee vehicles, especially on unpaved surfaces; (3) exhaust from construction equipment; (4) architectural coatings; and (5) asphalt paving. While estimated construction emissions during the years 2014 through 2016 would not exceed SJVAPCD thresholds (see Table 3.4-5 on page 3.4-19 of the Draft EIR), the project applicant will implement a number of dust control measures consistent with SJVAPCD Regulation VIII Rule 8011 (fugitive dust control measures) and Rule 9510 to ensure that construction-related emissions do not adversely affect surrounding sensitive receptors to the project site.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.4.1a: Implement Dust Control Measures During Construction Activities.** The applicant shall comply with Regulation VIII Rule 8011 and implement the following dust control measures during all construction-related activities:
  - The applicant shall submit a Dust Control Plan subject to review and approval of the SJVAPCD at least 30 days prior to the start of any construction activity on a site that includes 40 acres or more of disturbed surface area.

Specific control measures for construction, excavation, extraction, and other earthmoving activities required by the SJVAPCD include:

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover in order to comply with Regulation VIII's 20 percent opacity limitation.
  - All onsite unpaved roads and offsite unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
  - All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
  - When materials are transported offsite, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
  - All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. However, the use of blower devices is expressly forbidden, and the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.
  - Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
  - Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
  - Any site with 150 or more vehicle trips per day shall prevent carryout and trackout.
- **Mitigation Measure 3.4.1b: Implement Construction-Related Exhaust Emission Reducing Measures Consistent with Rule 9510.** The applicant shall comply with Rule 9510 Indirect Source Review. Compliance with Rule 9510 would require reductions of 20% of the NOx construction emissions and 45% of the PM10 construction exhaust emissions. If onsite (construction fleet) reductions are insufficient to meet these reduction targets, the applicant shall pay mitigation fees of \$9,350/ton for NOx emissions and \$9,011/ton for PM10 emissions.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measures 3.4.1a "Implement Dust Control Measures During Construction Activities" and 3.4.1b "Implement Construction-Related Exhaust Emission Reducing Measures Consistent with Rule 9510", Impact 3.4.1 is considered *less-than-significant*.

***Impact 3.4.2: Operation of the project would generate emissions of criteria air pollutants that could contribute to existing nonattainment conditions and degrade air quality.***

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**Potential Impact:** The impact identified above is described on pages 3.4-20 through 3.4-21 of the Draft EIR. As more fully described in the Draft EIR, the proposed project would result in an increase in operation-related emissions primarily due to motor vehicle trips generated by commercial activity of the site, with onsite stationary sources and area sources resulting in lesser quantities of criteria pollutant emissions. Based on the estimates provided in **Table 3.4-6** of the Draft EIR, estimated build out operational emissions would result in significant NO<sub>x</sub> emissions. This is a significant impact because NO<sub>x</sub> is an ozone precursor that is responsible for elevated ozone concentrations. (see ozone discussion on page 3.4-4). Consequently, the proposed project would result in a ***potentially significant*** impact.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.4.2: Implement Operation-Related Exhaust Emission Reducing Measures Consistent with Rule 9510 Indirect Source Review.** Implementation Plans prepared by the applicant, and subsequent development projects, shall comply with Rule 9510 Indirect Source Review. Compliance with Rule 9510 will require reductions of 33.2% of the NO<sub>x</sub> operational emissions and 50% of the PM<sub>10</sub> operational emissions. These reductions shall be accomplished through onsite and offsite measures, and/or through the payment of mitigation fees of \$9,350/ton for NO<sub>x</sub> emissions and \$9,011/ton for PM<sub>10</sub> emissions.

Mitigation Measure 3.4.2 would require the project applicant to implement a variety of operation-related measures designed to reduce operation-related exhaust emissions, including measures designed to reduce transport or delivery vehicle idle times and incentives for employee ride sharing programs. However, as more fully described in the Draft EIR, even with implementation of all feasible measures from Mitigation Measure 3.4.2, NO<sub>x</sub> emissions would not be reduced to a less-than-significant level. Therefore, for the various reasons set forth above and as more fully described in the Draft EIR, Impact 3.4.2 will remain significant even with mitigation.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Remaining Impacts:** As described above, although implementation of Mitigation Measure 3.4.2 would reduce the impacts identified above, operational NO<sub>x</sub> emissions would still remain significant even with mitigation. Consequently, because there are no feasible measures available to further mitigate these significant impacts, they are considered ***significant and unavoidable***.

**Overriding Considerations:** The environmental, economic, social and other benefits of the proposed project override any remaining significant adverse impacts of the proposed project on air quality impacts, as set forth in the Statement of Overriding Considerations below.

***Impact 3.4.5: Construction and operation of the project would result in a cumulatively considerable increase of criteria pollutant emissions.***

**Potential Impact:** The impact identified above is described on pages 3.4-23 through 3.4-24 of the Draft EIR. As more fully described in the Draft EIR, construction and operational emissions from the proposed project would result in the generation of air pollutants in the project area and in the immediate vicinity, and would incrementally add to cumulative emissions. The proposed project would also add to ozone precursor emissions on a regional basis and would incrementally add to PM10 and CO emissions on a local basis. Consequently, the proposed project would result in criteria pollutant emissions that would be cumulatively considerable without mitigation.

**Mitigation Measure:** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.4.1a: Implement Dust Control Measures During Construction Activities.** The applicant shall comply with Regulation VIII Rule 8011 and implement the following dust control measures during all construction-related activities:
  - The applicant shall submit a Dust Control Plan subject to review and approval of the SJVAPCD at least 30 days prior to the start of any construction activity on a site that includes 40 acres or more of disturbed surface area.

Specific control measures for construction, excavation, extraction, and other earthmoving activities required by the SJVAPCD include:

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover in order to comply with Regulation VIII's 20 percent opacity limitation.
- All onsite unpaved roads and offsite unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
- When materials are transported offsite, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
- All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. However, the use of blower devices is expressly forbidden, and the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.
- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

- Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
- Any site with 150 or more vehicle trips per day shall prevent carryout and trackout.
- **Mitigation Measure 3.4.1b: Implement Construction-Related Exhaust Emission Reducing Measures Consistent with Rule 9510.** The applicant shall comply with Rule 9510 Indirect Source Review. Compliance with Rule 9510 would require reductions of 20% of the NOx construction emissions and 45% of the PM10 construction exhaust emissions. If onsite (construction fleet) reductions are insufficient to meet these reduction targets, the applicant shall pay mitigation fees of \$9,350/ton for NOx emissions and \$9,011/ton for PM10 emissions.
- **Mitigation Measure 3.4.2: Implement Operation-Related Exhaust Emission Reducing Measures Consistent with Rule 9510 Indirect Source Review.** Implementation Plans prepared by the applicant, and subsequent development projects, shall comply with Rule 9510 Indirect Source Review. Compliance with Rule 9510 will require reductions of 33.2% of the NOx operational emissions and 50% of the PM10 operational emissions. These reductions shall be accomplished through onsite and offsite measures, and/or through the payment of mitigation fees of \$9,350/ton for NOx emissions and \$9,011/ton for PM10 emissions.

Mitigation Measures 3.4.1a, 3.4.1b, and 3.4.2 would require the project applicant to implement a variety of construction and operation-related measures designed to reduce air quality emissions. However, as more fully described in the Draft EIR, even with implementation of all feasible mitigation measures, construction and operational emissions would result in the generation of air pollutants in the project area and in the immediate vicinity and would incrementally add to cumulative emissions within an air basin that remains “nonattainment” for ozone, PM10, and PM2.5. The proposed project would add to ozone precursor emissions on a regional basis and would incrementally add to PM10 and CO emissions on a local basis. Therefore, for the various reasons set forth above and as more fully described in the Draft EIR, Impact 3.4.5 will remain significant even with mitigation.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Remaining Impacts:** As described above, although implementation of Mitigation Measures .4.1a, 3.4.1b, and 3.4.2 would reduce the impacts identified above, criteria pollutant emissions would still remain significant even with mitigation. Consequently, because there are no feasible measures available to further mitigate these significant impacts, they are considered *significant and unavoidable*.

**Overriding Considerations:** The environmental, economic, social and other benefits of the proposed project override any remaining significant adverse impacts of the proposed project on cumulative air quality impacts, as set forth in the Statement of Overriding Considerations below.

## Climate Change

***Impact 3.5.1: The project would conflict with implementation of state goals for reducing greenhouse gas emissions and thereby have a negative effect on global climate change.***

**Potential Impact:** The impact identified above is described on pages 3.5-17 through 3.5-19 of the Draft EIR. As more fully described in the Draft EIR, the project would result in a considerable increase in GHG emissions if it were to conflict with the state goals for reducing GHG emissions. Implementation of the proposed project would result in a total of 11.5 percent improvement over the state's projected 2020 business-as-usual (BAU) emissions level of 596 MMTCO<sub>2</sub>e. However, the project would still be 17.5 percent short of reaching the 29 percent reduction goal specified by SJVAPCD, consistent with the goals of AB 32. The project would result in a cumulatively considerable increase in GHG emissions such that the project would contribute to impairment of the state's ability to implement AB 32. Consequently, this impact is considered ***potentially significant***.

**Mitigation Measure:** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Measure 3.5.1a: Implement Construction-Related GHG Reduction Measures.** The project proponent shall require implementation of all feasible GHG reduction measures during construction, including but not limited to the following:
  - Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard); and
  - Limit idling time for commercial vehicles, including delivery and construction vehicles.
- **Measure 3.5.1b: Implement Operation-Related GHG Reduction and Energy Efficiency Measures.** The project proponent shall require implementation of all feasible energy efficiency and GHG reduction measures during operations, including but not limited to the following:
  - Provide Employee Ride Sharing Program
  - Exceed Title 24 (15% improvement);
  - Install high-efficiency lighting (25% lighting energy reduction);
  - Install low-flow bathroom faucets (32% reduction in flow);
  - Install low-flow kitchen faucets (18% reduction in flow);
  - Install low-flow toilets (20% reduction in flow);
  - Install low-flow showers (20% reduction in flow);
  - Use water-efficient irrigation systems (6.1% reduction in flow); and
  - Institute recycling and composting services (20% reduction in waste disposed).

Mitigation Measure 3.5.1a and 3.5.1b would require the project applicant to implement a variety of construction and operation-related measures designed to reduce GHG emissions. Construction-related measures include limiting construction vehicle idling times and the use of recycled construction materials as appropriate. Operation-related measures include the use of energy efficient project design features, recycling, and providing incentives for employee ride sharing programs, which represent the feasible range of measures available to reduce project-related GHG emissions.

As more fully described in the Draft EIR, even with implementation of all feasible measures from Mitigation Measures 3.5.1a and 3.5.1b, the proposed project would still result in substantial GHG emissions and would not achieve the 29% reduction compared to BAU. Consequently, the project would generate GHG emissions that may have a significant impact on the environment and would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. Therefore, for the various reasons set forth above and as more fully described in the Draft EIR, Impact 3.5.1 will remain significant even with mitigation.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Remaining Impacts:** As described above, although implementation of Mitigation Measures 3.5.1a through 3.5.1b would reduce the impacts identified above, GHG emission impacts would still remain significant even with mitigation. Consequently, because there are no feasible measures available to further mitigate these significant impacts, they are considered *significant and unavoidable*.

**Overriding Considerations:** The environmental, economic, social and other benefits of the proposed project override any remaining significant adverse impacts of the proposed project on climate change impacts, as set forth in the Statement of Overriding Considerations below.

## Noise

***Impact 3.6.1: Project construction could expose persons to or generate temporary noise levels in excess of standards established in the City of Modesto General Plan and Noise Ordinance.***

**Potential Impact:** The impact identified above is described on pages 3.6-16 through 3.6-19 of the Draft EIR. As more fully described in the Draft EIR, construction activity noise levels at and near the construction areas within the project site would fluctuate depending on the particular type, number, and duration of usage of various pieces of construction equipment. The closest residences to potential excavation and finishing during project construction are located 85 feet across Hashem Drive and 115 feet across Oakdale Rd. These residences would experience noise levels at about 84 dBA and 82 dBA, respectively, not accounting for the existing noise wall along Oakdale Rd, which would further reduce noise exposure by about 8 dBA. Noise generated during short-term construction activities of the proposed project would result in a substantial increase in

noise at the nearest residences. Consequently, the proposed project would result in a *potentially significant* impact.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.6.1: Implement Construction-Related Noise Reducing Measures.** The city shall ensure that the project applicant (or construction contractor) implement the following measures:
  - Construct 8-foot project screening walls as early as feasible in the construction schedule.
  - Construction activities shall be limited to the daytime hours between 7:00 a.m. and 9:00 p.m. Monday through Friday, and to between 9:00 a.m. and 9:00 p.m. on weekends and holidays to avoid noise-sensitive hours of the day.
  - Construction equipment and vehicles shall be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment shall be equipped with mufflers, and impact tools shall be equipped with shrouds or shields.
  - Equipment that is quieter than standard equipment shall be utilized where feasible and appropriate.
  - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences.
  - Haul routes that affect the fewest number of people shall be selected.
  - Signs will be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a contact number with the City of Modesto in the event of problems.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measure 3.6.1 "Implement Construction-Related Noise Reducing Measures", construction noise Impact 3.6.1 is considered *less-than-significant*.

***Impact 3.6.2: Operational activities (non-transportation) associated with the project could increase ambient noise levels at nearby existing and planned residences.***

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**Potential Impact:** The impact identified above is described on pages 3.6-19 through 3.6-21 of the Draft EIR. As more fully described in the Draft EIR, non-transportation noise generated by the project would include noise from commercial uses such as Heating Ventilation and Air Conditioning (HVAC), trash compactor use, loading/unloading activities in delivery areas, idling trucks, parking lot activities, and power equipment (e.g., leaf blowers and parking lot sweepers).

While these noise levels would not exceed the applied daytime standards, some commercial uses that include HVAC operations may exceed the nighttime standard for stationary equipment of 45 dBA Leq. Consequently, the proposed project would result in a *potentially significant* impact.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.6.2: Implement Measures to Reduce HVAC Equipment Noise.** The project applicant shall ensure that building equipment (e.g., HVAC units) will be located as far away from nearby residences as possible, on building rooftops, and properly shielded by either a rooftop parapet or an enclosure that effectively blocks the line of sight of the source from the nearest receptors.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of the HVAC noise reducing measures provided in Mitigation Measure 3.6.2 “Implement Measures to Reduce HVAC Equipment Noise”, Impact 3.6.2 is considered *less-than-significant*.

***Impact 3.6.4: Project construction could expose persons to or generate excessive ground-borne vibration or ground-borne noise levels.***

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**Potential Impact:** The impact identified above is described on page 3.6-23 of the Draft EIR. As more fully described in the Draft EIR, construction equipment operation could generate ground-borne vibration and noise levels that could exceed the 80 VdB standard for human annoyance. Consequently, this impact is considered *potentially significant*.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.6.1: Implement Construction-Related Noise Reducing Measures.** The city shall ensure that the project applicant (or construction contractor) implement the following measures:
  - Construct 8-foot project screening walls as early as feasible in the construction schedule.
  - Construction activities shall be limited to the daytime hours between 7:00 a.m. and 9:00 p.m. Monday through Friday, and to between 9:00 a.m. and 9:00 p.m. on weekends and holidays to avoid noise-sensitive hours of the day.
  - Construction equipment and vehicles shall be equipped with properly operating mufflers according to the manufacturers’ recommendations. Air compressors and pneumatic equipment shall be equipped with mufflers, and impact tools shall be equipped with shrouds or shields.
  - Equipment that is quieter than standard equipment shall be utilized where feasible and appropriate.

- Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences.
- Haul routes that affect the fewest number of people shall be selected.
- Signs will be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a contact number with the City of Modesto in the event of problems.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measure 3.6.1“Implement Construction-Related Noise Reducing Measures”, construction vibration Impact 3.6.4 is considered *less-than-significant*.

## Hydrology and Water Quality

***Impact 3.7.3: The project could substantially alter the existing drainage pattern of the site, in a manner that could result in changes in the volume of stormwater discharged from the site, exceedance of available stormwater conveyance capacity, or that could result in increased erosion on site or downstream.***

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**Potential Impact:** The impact identified above is described on pages 3.7-12 through 3.7-14 of the Draft EIR. As more fully described in the Draft EIR, project implementation would involve some grading of the existing topography, which could result in altered drainage patterns on the project site. Unless properly graded and managed, altered drainage patterns could result in unanticipated ponding of water on site, or unwanted discharges from the site into areas off site, such as into storm drains or onto roads surrounding the proposed facility. Consequently, this could result in increases in flooding and/or erosion on site or downstream, and the impact is considered *potentially significant*.

**Mitigation Measure:** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

- **Mitigation Measure 3.7.1: Prepare Comprehensive Drainage Plan and Implement Recommendations.** Prior to the initiation of construction activities, the project proponent shall complete a comprehensive drainage plan, which shall be submitted to the City Engineer for approval. The comprehensive drainage plan shall consider proposed and existing facilities, their locations, grades, stormwater flows, and shall implement measures (both on-site and off-site) to ensure flows would be managed and/or directed into stormwater drainage and other stormwater management facilities, to the extent needed to minimize localized flooding, erosion, and sedimentation to the satisfaction of the City Engineer. The comprehensive drainage plan shall also include the deployment of additional stormwater management facilities and BMPs, which may include but would not be limited to swales, detention basins, infiltration basins, increased use of pervious surfaces, and other stormwater controls as warranted.

**Findings:** Based on the Final EIR and the entire record before the City, the City Council finds that:

**Effects of Mitigation:** With implementation of Mitigation Measure 3.7.1 “Prepare Comprehensive Drainage Plan and Implement Recommendations”, Hydrology Impact 3.7.3 is considered *less-than-significant*.

## Findings Regarding Project Alternatives

### Introduction

As more fully described in Section 5.2 of the Draft EIR, the alternatives were selected in consideration of one or more of following factors:

- The extent to which the alternative would accomplish most of the basic goals and objectives of the project;
- The extent to which the alternative would avoid or lessen the identified significant and unavoidable environmental effects of the project;
- The potential feasibility of the alternative, taking into account site suitability, economic viability, and availability of infrastructure;
- Consistency with the City of Modesto General Plan and other policy or regulatory considerations;
- The requirement of the CEQA Guidelines to consider a “No-Project” alternative and to identify an “environmentally superior” alternative in addition to the no-project alternative [CEQA *Guidelines*, Section 15126.6(e)].

### Project Objectives

The CEQA Guidelines [CEQA *Guidelines*, Section 15126.6 C] state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects" of the proposed project. Thus, an evaluation of the proposed project objectives is necessary to determining which alternatives should be assessed in the EIR.

The Draft EIR lists the following objectives for the proposed project (see pages 2-5 through 2-6):

#### **Lead Agency Objectives**

The following project objectives have been identified by the City (lead agency):

#### **Land Use Objectives**

- To provide commercial services and employment opportunities on the east side of the City of Modesto.
- To provide a shopping center that is consistent with the goals and design guidelines for the City of Modesto.

- To locate a neighborhood shopping center at the intersection of two Arterial streets (Sylvan Avenue and Oakdale Road), which is consistent with Neighborhood Plan Prototype Policies provided in Section III-C(2)(d) of the Modesto Urban Area General Plan.
- To provide shopping opportunities integrated into communities with housing, schools, parks, and other facilities essential to the daily life of residents, consistent with Section III-C(3) of the Modesto Area General Plan.
- To promote development inside the existing City limits (infill development).
- To enhance the City's economic base through increased sales tax revenue.

**Circulation Objectives**

- To provide improvements to Oakdale Road and Sylvan Avenue in accordance with the General Plan and City Standards as Principal Arterial Streets.
- To design facilities that encourages pedestrian and bicycle use and link residential uses with commercial uses.
- To provide development consistent with the overall Circulation and Transportation Policies described in Section-IV(B)(6) of the Modesto Area General Plan:
  - (i) Promote development designed to encourage walking as an alternative mode to the automobile for transportation creating safe and convenient pedestrian facilities and connections
  - (l) Encourage non-motorized and vehicle trips within the development to be completed without the use of collector and arterial streets
  - (r) Promote connectivity, accessibility of all modes, increase choice, better public transit services, while also reducing trip length, traffic congestion and pollution
  - (u) Provide bus pullouts to support transit services

**Public Facilities and Services Objectives**

- To plan and provide public facilities and services with development.

**Applicant Objectives**

The following project objectives have been identified by the project applicant:

- To provide a state-of-the-art neighborhood shopping center that will offer needed commercial services to the underserved northeast quadrant of the City of Modesto that:
  - Is centrally located and integrates with the existing neighborhood and adjacent streets to provide a high level of vehicular and pedestrian circulation, with 360 degree exposure;
  - Provides a healthy and vibrant shopping experience via a full range of services and shopping opportunities, including a new, full-sized major grocery store;
  - Is economically viable, given current and anticipated future commercial needs in the local area; and
  - Takes advantage of existing and future traffic at a major City of Modesto intersection whose existing General Plan designation contemplates commercial uses.

## Alternatives Analyzed in the FEIR

The CEQA Guidelines state that the range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects of the Project. The City evaluated the alternatives listed below.

### **No Project Alternative**

**Findings:** The No Project Alternative is described on pages 5-4 and 5-5 of the Draft EIR. The No Project Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the proposed project.

**Explanation:** Under the No Project Alternative, the project site would not be developed in accordance with the proposed project; however, some level of development (multi-family residential housing) could occur on the project site under existing land use designations and zoning over the long-term. Although the No Project Alternative would lessen some of the proposed project's significant impacts (e.g., air quality, climate change), it would not further the City's project objectives related to the provision of commercial services and employment opportunities on the east side of the City of Modesto; to locate a neighborhood shopping center at the intersection of two Arterial streets (Sylvan Avenue and Oakdale Road); to provide shopping opportunities integrated into communities with housing, schools, parks, and other facilities essential to the daily life of residents, consistent with Section III-C(3) of the Modesto Area General Plan; or to enhance the City's economic base through increased sales tax revenue. Implementation of the No Project Alternative would also not further the applicant's objectives.

### **Alternative #2 - Alternative Site Plan (No Vehicular Access from Hashem Drive)**

**Findings:** Alternative #2 is described on pages 5-5 through 5-13 of the Draft EIR. While Alternative #2 would meet several of the project objectives, the alternative is rejected because it would not reduce any of the environmental impacts identified for the proposed project.

**Explanation:** Under Alternative #2, the project site would eliminate vehicular access to the project site from Hashem Drive. Additionally, the configuration of the building closest to Hashem Drive would be changed under this alternative; however, the building square footage would remain the same. Eliminating the vehicular access to the project site from Hashem Drive would not lessen or reduce any of the environmental impacts associated with the proposed project. It was expected that this alternative may lessen intersection and roadway segment impacts in the project area; however, traffic impacts would result in the same intersection impacts as those identified for the proposed project, with the same mitigation measures proposed as those identified for the proposed project, and in addition, would result in a significant unavoidable impact on the segment of Oakdale Road between Post Office Drive and LaForce Drive. Additionally, implementation of this alternative would not further the City's project objectives related to the provision of shopping opportunities integrated into communities, consistent with General Plan Policy III-C(3), and promoting connectivity and accessibility of all transportation modes, consistent with General Plan Circulation Policy IV-B(6)(r), because elimination of the driveways on Hashem Drive will force residents from the neighborhood to the west to drive further to access the shopping center.

### ***Alternative #3 - Multi-family Residential (Develop under Current Zoning)***

**Findings:** Alternative #3 is described on pages 5-14 and 5-16 of the Draft EIR. Similar to the No Project Alternative, this alternative is rejected, because it would not feasibly achieve the objectives of the proposed project.

**Explanation:** Under Alternative #3, the existing development schedule for the project site would be reinstated and multi-family residential units would be developed on the project site. Reverting to the original approvals would permit the construction of up to 371 apartments and condominium units on approximately 10 acres of the site and approximately 120 condominium or townhouse units on the remaining portions of the site. Although Alternative #3 would lessen some of the proposed project's significant impacts (e.g., air quality, climate change), it would not further the City's project objectives related to the provision of commercial services and employment opportunities on the east side of the City of Modesto; to locate a neighborhood shopping center at the intersection of two Arterial streets (Sylvan Avenue and Oakdale Road); to provide shopping opportunities integrated into communities with housing, schools, parks, and other facilities essential to the daily life of residents, consistent with Section III-C(3) of the Modesto Area General Plan; or to enhance the City's economic base through increased sales tax revenue. Implementation of Alternative #3 would also not further the applicant's objectives.

### ***Alternative #4 - Reduced Project Size (12 Acre Commercial Development)***

**Findings:** Alternative #4 is described on pages 5-16 and 5-20 of the Draft EIR. Alternative #4 is rejected, because it would not feasibly achieve the objectives of the proposed project.

**Explanation:** Under Alternative #4, the project site would be developed with both a 12-acre commercial development and 6 acres of multi-family residential development. Although Alternative #4 would slightly lessen some of the proposed project's significant impacts, it would not further the applicant's objectives related to the scope and scale of the commercial component of the project.

## **Alternatives Eliminated From Further Consideration**

CEQA Guidelines Section 15126.6(c) requires an EIR to identify and briefly discuss any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process. Alternatives considered but withdrawn from further consideration included an offsite alternative and an office development alternative.

**Findings:** Both the off-site and office development alternatives are described on pages 5-2 and 5-3 of the Draft EIR. The off-site and office development alternatives are rejected, because they would not feasibly achieve the objectives of the proposed project and would be difficult to implement given the limited number of available locations for such a project and the low market potential for similar office development land uses in the City.

**Explanation:** The off-site alternative was eliminated from further consideration because the number of potential locations for the proposed project (neighborhood shopping center) at a similar arterial corner location that would result in reduced impacts to significant environmental impacts (i.e., traffic/circulation, air quality, and noise impacts) is extremely limited within the City and no such alternative sites were found in the vicinity of the proposed project. Additionally,

it is important to note that the project applicant has ownership of the proposed project site and does not have ownership of other offsite parcels.

The office development alternative was also considered, but eliminated from further consideration given the limited market potential (low demand for office space) for similar office-related development in the City of Modesto. Additionally, the surrounding area lacks the necessary infrastructure and supporting services (i.e., restaurants, etc., within walking distance) for new office development.

## Findings on Disagreement among Experts and Recirculation

To the extent the comment letters and correspondence submitted by the public or outside agencies or organizations are considered expert opinion, the City Council finds that the assumptions, data, methodology, and analysis included in the Final EIR (not including the comment letters) prepared by the City and its Consultants, is supported by substantial evidence and was the appropriate assumption, data, methodology, and analysis to use to support the impact conclusion reached in the Final EIR.

As a result of comments received on the Draft EIR, the City has revised and recirculated for public review portions of Section 3.3 “Traffic and Circulation” and Chapter 5 “Alternatives” of the Draft EIR to address inadvertent omissions to the traffic analysis regarding City significance criteria. These omissions affected both the analysis and impact conclusions for the proposed project and Alternative #2 – Alternative Site Plan (No Vehicular Access from Hashem Drive) as originally presented in the Draft EIR. No additional changes to the Draft EIR were necessary or made as part of the recirculated Draft EIR.

The City Council further finds that the following do not change the impact conclusions reached in the Final EIR or otherwise trigger recirculation under CEQA: (1) information submitted and incorporated into the Final EIR; (2) revisions incorporated into the proposed project after release of the Recirculated Draft EIR; (3) all oral and written comments and testimony received by the City.

## Statement of Overriding Considerations

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, this City Council adopts and makes the following Statement of Overriding Considerations regarding the remaining significant unavoidable impacts of the proposed project, as discussed above, and the anticipated economic, social and other benefits of the proposed project.

The City finds and determines that: (i) the majority of the significant impacts of the proposed project will be reduced to acceptable levels by the mitigation measures recommended in these Findings; (ii) the City's approval of the proposed project as proposed will result in certain significant adverse environmental effects that cannot be avoided even with the incorporation of all feasible mitigation measures into the proposed project; and (iii) there are no other feasible mitigation measures or other feasible project alternatives that would further mitigate or avoid the

remaining significant environmental effects. The significant effects that have not been mitigated to a less-than-significant level and are therefore considered significant and unavoidable are:

## **Traffic and Circulation**

*Impact 3.3.1: The proposed project would potentially conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of study intersections and study roadway segments under Existing plus Project conditions.*

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### **Oakdale Road at Claratina Avenue (Intersection #2)**

No Feasible Mitigation Available

### **Oakdale Road at Floyd Avenue (Intersection #8)**

Mitigation Measure 3.3.3: Applicant to Provide Fair Share Contribution to Improvements at the Oakdale Road at Floyd Avenue Intersection. Consistent with the City's CIP program, the applicant will provide a fair share contribution to the installation of a southbound right turn lane at the Oakdale Road at Floyd Avenue Intersection and the installation of a third northbound through lane north of the intersection.

### **Oakdale Road between Mable Avenue and Sylvan Avenue (Segment #3)**

No Feasible Mitigation Available

*Impact 3.3.5: The proposed project would potentially conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of study intersections and study roadway segments under Cumulative plus Project conditions.*

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### **Oakdale Road at Mable Avenue (Intersection #3)**

No Feasible Mitigation Available

### **Oakdale Road at Sylvan Avenue (Intersection #4)**

Mitigation Measure 3.3.5a: City to Monitor and Install Overlap Phase for the Westbound Right Turn Lane for the Oakdale Road at Sylvan Avenue Intersection. The City will monitor operations at the intersection and add an overlap phase when deemed necessary by the City Traffic Engineer.

### **Oakdale Road at La Force Drive (Intersection #6)**

Mitigation Measure 3.3.1: Applicant to Provide Fair Share Contribution to Improvements at the La Force Drive at Oakdale Road Intersection, as more fully described above under Impact 3.3.1.

### **Oakdale Road at Floyd Avenue (Intersection #8)**

No Feasible Mitigation Available

**Coffee Road at Sylvan Avenue (Intersection #10)**

No Feasible Mitigation Available

**Oakdale Road between Post Office Drive and La Force Drive (Segment #4)**

No Feasible Mitigation Available

**Oakdale Road between Hashem Drive and Floyd Avenue (Segment #5)**

No Feasible Mitigation Available

**Sylvan Avenue between Oakdale Road and Wood Sorrel Drive (Segment #10)**

No Feasible Mitigation Available

**Air Quality**

*Impact 3.4.2: Operation of the project would generate emissions of criteria air pollutants that could contribute to existing nonattainment conditions and degrade air quality.*

*Impact 3.4.5: Construction and operation of the project would result in a cumulatively considerable increase of criteria pollutant emissions.*

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**Climate Change**

*Impact 3.5.1: The project would conflict with implementation of state goals for reducing greenhouse gas emissions and thereby have a negative effect on global climate change.*

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The following statement identifies the reasons why, in the City's judgment, the benefits of the proposed project outweigh the significant and unavoidable effects. The substantial evidence supporting the enumerated benefits of the proposed project can be found in the proposed project itself and in the record of proceedings. Each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the proposed project outweigh its significant adverse environmental effects and is an overriding consideration warranting approval.

The City finds that the proposed project, as conditionally approved, would have the following economic, social, technological, and environmental benefits:

- **Economic Development and Job Creation.** The proposed project provides for commercial development that will serve local neighborhoods, will be located along or near regional transportation corridors, and will create job opportunities for area residents.
- **Public Revenues.** The proposed project provides for new commercial development opportunities on the east side of Modesto, which in turn will enhance the City's economic base through increased property and sales tax revenue.

- **Transportation Improvements.** The proposed project will provide for transportation improvements to Oakdale Road and Sylvan Avenue in accordance with the General Plan and City Standards. In addition the project would provide needed bus transit improvements.
- The project will advance the following General Plan Policies:
  - Section II(B)(1)(a)(2) Maintain and expand the City as a regional center for financial services, medical services, shopping, entertainment, and education.
  - Section IV(B)(6):
    - (i) Promote development designed to encourage walking as an alternative mode to the automobile for transportation creating safe and convenient pedestrian facilities and connections.
    - (l) Encourage non-motorized and vehicle trips within the development to be completed without the use of collector and arterials streets.
    - (r) Promote connectivity, accessibility of all modes, increase choice, better public transit services, while also reducing trip length, traffic congestion and pollution.
    - (u) Bus pullouts are to be added to new developments to support transit passenger loading and unloading.