

**FINDINGS OF FACT
AND
STATEMENT OF OVERRIDING CONSIDERATIONS**

NORTH WASHINGTON ROAD WAREHOUSE PROJECT EIR

I. INTRODUCTION

The Environmental Impact Report (EIR) prepared for the North Washington Road Warehouse project (project) addresses the potential environmental effects associated with constructing the project and its subsequent operation. Approval of a project with significant impacts requires that findings be made by Stanislaus County (County) pursuant to the California Environmental Quality Act (CEQA, California Public Resources Code sections 21000 et seq.), and State CEQA Guidelines (California Administrative Code, Title 14, Chapter 3) Section 15043, 15091, and 15093.

The information presented herein refers to the Notice of Preparation (NOP) or Final EIR (FEIR) where the materials appear in either of those documents. Otherwise, references are to the Draft EIR (DEIR).

CEQA generally requires that a Lead Agency take reasonable efforts to mitigate or avoid significant environmental impacts when approving a project. An EIR is often prepared to evaluate any potentially significant environmental impacts of a proposed project. The EIR is an informational document that serves to inform the Lead Agency decision-making body and the public in general of any potentially significant environmental impacts. The preparation of an EIR also serves as a medium for identifying possible methods of minimizing any significant effects and assessing and describing reasonable alternatives to the project.

The EIR for this project was prepared by the County as the “Lead Agency” in accordance with CEQA to identify and assess the anticipated effects of the project. The County, as the Lead Agency, has the principal responsibility for approval of the project.

II. TERMINOLOGY OF FINDINGS

CEQA requires that a Lead Agency make reasonable efforts to either mitigate or avoid significant environmental impacts when approving a project. Significant impacts of the project would either: 1) be mitigated to a less-than-significant level pursuant to the mitigation measures identified in this DEIR; or 2) mitigation measures notwithstanding, have a residual significant impact that requires a Statement of Overriding Considerations.

The Lead Agency is responsible for the adequacy and objectivity of the EIR, and for final approval of the project. The County, as Lead Agency, has subjected the DEIR and FEIR to the agency's own review and analysis. The DEIR, FEIR, and the Findings of Fact reflect the independent judgment of the County.

III. DEFINITIONS AND ACRONYMS

These findings use the same definitions and acronyms set forth in the DEIR (reference to list of acronyms following the Table of Contents in the DEIR). In addition, the term “County” refers to

Stanislaus County, and the term “Planning Commission” refers to the Stanislaus County Planning Commission.

IV. PROJECT DESCRIPTION

Location

The project site is generally located on the west side of N. Washington Road, south of Fulkerth Road, at the western boundary of the Turlock city limits. The project site address is 1301 N. Washington Road, Turlock, California, 95380. N. Washington Road is also the western boundary of the Westside Industrial Specific Plan (WISP), a City of Turlock adopted specific plan. While the project site is not within the WISP, the entire N. Washington Road right-of-way is within the WISP. The site consists of the following two Assessor’s Parcels: APN 023-039-017 and 023-039-018.

Project Description

The proposed project consists of the adoption and implementation of the North Washington Road Warehouse project. The project proponent, Dan Avila & Sons, proposes the construction and operation of a 180,000-square-foot warehouse and associated facilities in order to conduct receiving, storage, packing, and shipping of watermelons, sweet potatoes, beans, wheat, pumpkins, and squash. Several structures would be constructed in addition to the existing buildings on the site, as described below, on a 26± acre portion of the 61.7± acre site.

A maximum of approximately 75 employees would be on the site at any time. Hours of operation would mostly be 6:00 a.m. to 6:00 p.m., but could operate 24 hours on occasion.

Produce processed at the facility, consisting primarily of watermelons and sweet potatoes, would come from the fields on the site surrounding the buildings, as well as from other sites farmed by the project proponent.

Project Objectives

The objectives of the proposed project are to:

- Positively contribute to the local economy by creating new job opportunities for local residents.
- Promote increased economic growth and economic development that is consistent with the policies of the Stanislaus County General Plan.
- Combine all aspects of the operation – including growing, storage, packing, and shipping – at one location.

- Attain financial success by selecting a facility location that has reasonable land prices, site development costs, and operating costs.
- Minimize travel distance to Highway 99.
- Develop a packing, storage, and shipping facility located in an area served by adequate roads.
- Achieve an architectural and site design that is compatible with the surrounding agricultural areas.
- Provide a development that will result in a net fiscal benefit to the County by generating increased property tax revenue.

Land Use Designations and Zoning

The project site is in the A-2-40 (General Agriculture) Zoning District and has a General Plan Designation of Agriculture (AG).

Required Discretionary Actions

Subsequent ministerial actions would be required for the implementation of the proposed project, including approval of a use permit and issuance of grading and building permits. Discretionary approvals and permits are required by Stanislaus County for implementation of the proposed project. The project application would require the following discretionary approvals and actions, including:

- Use Permit Application (Application No. PLN2012-0017) – Stanislaus County

Subsequent ministerial actions would be required for the implementation of the proposed project, including issuance of grading and building permits, improvement plans, landscape plans, and will-serve letters for potable water.

A number of other agencies in addition to Stanislaus County will serve as Responsible and Trustee Agencies, pursuant to CEQA Guidelines Section 15381 and Section 15386, respectively. This DEIR will provide environmental information to these agencies and other public agencies, which may be required to grant approvals or coordinate with other agencies, as part of project implementation. These agencies may include but are not limited to the following.

- **Regional Water Quality Control Board (RWQCB)** – Water quality certification under Section 401 of the Clean Water Act if a 401 permit is required and approval for coverage under the National Pollutant Discharge Elimination System (NPDES) General Construction Permit (General Permit) under Section 402 of the CWA. Under the General Permit, a Storm Water Pollution Prevention Plan (SWPPP) must be prepared before any construction activities begin.

- **State Water Resources Control Board** – Spill Prevention Control and Countermeasure Plan (SPCCP) will be prepared for the project in accordance with the 40 CFR 112.
- **San Joaquin Valley Air Pollution Control District (SJVAPCD)** – Construction permits and dust mitigation plan.
- **U.S. Fish & Wildlife Service (USFWS)** – Coordination with mitigation of potential impacts on San Joaquin kit fox.

V. ENVIRONMENTAL REVIEW PROCESS

Initial Study

An Initial Study was not prepared. As is permitted by CEQA, the County determined that an EIR would be required without completing an Initial Study. In accordance with CEQA Guidelines Section 15060(d), and it was determined that a project-level EIR would be required, as it was found that the proposed project may have a “potentially significant impact” or “potentially significant unless mitigated impact” on the environment. The Notice of Preparation (NOP) process is used to help determine the scope of the environmental issues to be addressed in the DEIR. Based on this process, certain environmental categories were identified as having the potential to result in significant impacts. Issues considered Potentially Significant are addressed in this DEIR. Issues identified as Less Than Significant or having No Impact are not addressed.

The following topics were found to require analysis in the EIR:

- Aesthetics
- Agriculture Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gases
- Hazards and Hazardous Materials
- Hydrology / Water Quality
- Land Use and Planning
- Noise
- Public Services and Utilities
- Transportation and Traffic

The Stanislaus County issued a NOP for the proposed project on August 30, 2013, which circulated between August 31, 2013 and October 2, 2013 for the statutory 30-day public review period. The NOP and comments received are included as Appendix A of the DEIR.

A total of six comment letters were received in response to the NOP, all of which were from public agencies.

Environmental Issues Determined Not to be Significant

The NOP identified topical areas that were determined not to be significant. An explanation of why each area is determined not to be significant is provided in Chapter Seven, Effects Found to be Less Than Significant. These topical areas are as follows:

- Mineral Resources
- Population and Housing
- Recreation

Environmental Impact Analysis

On August 28, 2014, the Notice of Completion (NOC) was submitted to the State Clearinghouse as official notice that the DEIR was completed and the Notice of Availability (NOA) was published. This began the statutory 45-day public review period that ended on October 2, 2014.

The following agencies submitted comment letters on the DEIR (SCH No. 2013082091):

- Scott Morgan, Director, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit, with letters from the California Department of Transportation, and the Central California Regional Water Quality Control Board
- Kathleen A. Dadey, Ph.D., Department of the Army, U.S. Army Corps of Engineers
- Trevor Cleak, Central Valley Regional Water Quality Control Board
- Bella Badal, PhD, REHS, Stanislaus County Department of Environmental Resources
- Rick Furtado, Turlock Rural Fire District
- Tom Dumas, California Department of Transportation
- Rose Stillo, City of Turlock
- Todd Troglin, Turlock Water & Power, with an earlier letter from Turlock Water & Power attached
- Georgia Stewart for Arnaud Marjollet, San Joaquin Valley Air Pollution Control District

VI. RECORD OF PROCEEDINGS

For the purposes of CEQA, and the findings herein set forth, the administrative record for the proposed project consists of those items listed in Public Resources Code Section 21167.6(e). The record of proceedings for the County's decision on the project consists of the following documents, at a minimum, which are incorporated by reference and made part of the record supporting these findings:

- The NOP, dated August 30, 2013, and all other associated public notices issued by the County in conjunction with the project;
- The DEIR for the project and all documents relied upon or incorporated by reference;
- The NOC and NOA dated August 18, 2014 for the DEIR public review period, and all written and oral comments submitted by agencies or members of the public during the 45-day comment period on the DEIR;
- The FEIR for the project, including the Planning Commission staff report; minutes of the Planning Commission public hearing; Errata and Conditions of Approval; resolution of the Planning Commission relating to the EIR; Planning Commission staff report; minutes of the Planning Commission public hearing; comments received on the DEIR; the County's responses to those comments; technical appendices; and all documents relied upon or incorporated by reference;
- The mitigation monitoring and reporting program (MMRP) for the project;
- All reports, studies, memoranda (including internal memoranda not protected by the attorney-client privilege), maps, staff reports, or other planning documents relating to the project prepared by the County, consultants to the County, or responsible or trustee agencies with respect to the County's compliance with the requirements of CEQA; and
- All findings and resolutions adopted by the County in connection with the project, and all documents cited or referred to therein. Pursuant to CEQA Guidelines Section 15091(e), the administrative record of these proceedings is located at, and may be obtained from, the Stanislaus County Planning and Community Development Department, 1010 10th Street, Suite 3400, Modesto, CA.

The County has relied on all of the documents listed above in reaching its decisions on the proposed project even if not every document was formally presented to the Planning Commission or County staff as part of the County files generated in connection with the project. Without exception, any documents set forth above not found in the project files fall into one of two categories. Many of them reflect prior planning or legislative decisions of which the was aware in approving the project. (See *of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-391; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6.) Other documents influenced the expert advice provided to County Staff or consultants, who then provided advice to the Planning Commission as final

decision makers. For that reason, such documents form part of the underlying factual basis for the County's decisions relating to approval of the project. (See Pub. Resources Code, Section 21167.6, (e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.)

VII. FINDINGS REQUIRED UNDER CEQA

Public Resources Code Section 21002 provides that, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." The same statute provides that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." Section 21002 goes on to provide that, "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

Additionally, CEQA Guidelines Section 15091, regarding "Findings," states that:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding

has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

These findings constitute the County's best efforts to set forth the evidentiary and policy basis for its decision to approve the project in a manner consistent with the requirements of CEQA. To the extent that these findings conclude that various mitigation measures outlined in the FEIR are feasible and have not been modified, superseded or withdrawn, the County hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the County adopts a resolution approving the project. Each of the findings is individually sufficient to address the potential environmental impacts of the project. (*Flanders Foundation v. of Carmel-By-The-Sea* (2012) 202 Cal.App.4th 603.)

VIII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The DEIR identified a number of potentially significant effects that could result from the proposed project as identified and listed below. The Planning Commission finds that the inclusion of certain mitigation measures as part of the project approval will reduce some of the potential significant effects to a less-than-significant level. Other significant, unavoidable effects cannot be substantially lessened or avoided to less than significant with the imposition of all feasible mitigation measures. For reasons set forth in Section XIII, however, the County has determined that the significant, unavoidable effects of the project are outweighed by overriding economic, social, and other considerations.

As required by CEQA, a Mitigation Monitoring Program (MMRP) has been prepared for the project. The MMRP provides details on the timing and sequence of the mitigation measures identified below, the party responsible for implementing the measures, and what agency has the responsibility to monitor the implementation of the mitigation measures. A description of the significant effects and mitigation measures for the project, with the legal finding, are presented below for those resources and issues that have the potential to be impacted by the project.

Aesthetics

Impact #3.1-3 - Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

Conclusion: This impact is considered *potentially significant* and the following mitigation measures are required to address project impacts in addition to the proposed landscape screening along the North Washington Road street frontage.

Mitigation Measure #3.1-3:

- Lighting shall employ shielding that would direct light in a downward direction.
- Lighting shall generally occur at intersections, areas of pedestrian activity, and building entrances, and be minimized elsewhere.
- Lighting shall be designed and located to minimize glare and the direct view of light sources.
- Metal halide, incandescent, or color-balanced fluorescent fixtures shall be employed. Low pressure sodium fixtures are prohibited.

Effectiveness of Measures: With the implementation of the above mitigation measures impacts caused by the project from light and glare would be *less than significant*.

Air Quality

Impact #3.3-2 – Violate any air quality standard or contribute substantially to an existing or projected air quality violation.

Conclusion: The project would not exceed the SJVAPCD's regional thresholds with implementation of Mitigation Measure #3.3-2.

Mitigation Measure #3.3-2: In compliance with District Rule 9510, prior to issuance of the first grading/building permit the applicant shall submit an Indirect Source Review (ISR) – Air Impact Assessment (AIA) Application Form including payment of all applicable fees.

Effectiveness of Mitigation: With incorporation of Mitigation Measure #3.3-2, impacts would be considered by the SJVAPCD to be *less than significant*.

Biological Resources

Impact #3.4-1 – Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.

Conclusion: Project-related impacts to special-status species would be *less than significant* with mitigation incorporated.

Mitigation Measure #3.4-1a:

1. In accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012), pre-construction surveys shall be conducted to determine the presence of occupied burrows if ground clearing or construction activities will be initiated during the nesting season or during the non-breeding season. The portion of the project site on which construction is to take place and potential nesting areas within 500 feet of the proposed construction area shall be surveyed no more than 30 days prior to the initiation of construction. Surveys shall be performed by a qualified biologist or ornithologist to verify the presence or absence of nesting birds. Construction shall not occur within a 500 foot buffer surrounding active nests of raptors or a 250 foot buffer surrounding active nests of migratory birds. If construction within these buffer areas is required or if nests must be removed to allow continuation of construction, then approval and specific removal methodologies shall be obtained from CDFW.
2. If during pre-construction nest surveys, burrowing owls are found to be present, the following measures shall be implemented:
 - a. Compensation for the loss of burrowing owl habitat will be negotiated with the responsible wildlife agencies. Appropriate mitigation may include participation in an approved mitigation bank, establishing a conservation easement, or other means acceptable to the responsible agency;
 - b. Exclusion areas will be established around occupied burrows in which no construction activities would occur. During the non-breeding season (September 1 through January 31), the exclusion area would extend 160 feet around any occupied burrows. During the breeding season of burrowing owls (February 1 through August 31), exclusion areas of 250 feet surrounding occupied burrows would be installed; and
 - c. If construction must occur within these exclusion areas, passive relocation of burrowing owls may be implemented as an alternative, but only during the non-breeding season and only with the concurrence of the CDFW. Passive relocation of burrowing owls would be implemented by a qualified biologist using accepted techniques. Burrows from which owls had been relocated shall be excavated using hand tools and under direct supervision of a qualified biologist.

Effectiveness of Mitigation Measure: This mitigation measure is a standardized avoidance measure that has been approved by the CDFW. Implementation of Mitigation Measure #3.4.1a would prevent project-related disruption of occupied burrows. This measure would reduce potential impacts to the western burrowing owl to a level that is *less than significant*.

Mitigation Measure #3.4-1b: A Swainson's hawk survey shall be completed within 0.5 mile of the project site. If potential nests are located within this search radius, those nests must be monitored for activity on a routine and repeating basis throughout the breeding season, or until a Swainson's hawk or other raptor species is verified to be using each nest. A total of up to 10 visits shall be made to each nest: one between January and April to identify nests, three in April, three in May, and three between June 1 and July 15. To meet the minimum level of protection for the species, surveys shall be completed for at least two survey periods immediately prior to a project's initiation. All surveys shall be conducted in accordance with the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California* (CDFG 1994), which includes the following guidelines:

1. A pre-construction survey shall be conducted to determine the presence of nesting birds if ground clearing or construction activities will be initiated during the breeding season (February 15 through September 15). The project site and potential nesting areas within 500 feet of the site shall be surveyed 14 to 30 days prior to the initiation of construction. Surveys will be performed by a qualified biologist or ornithologist to verify the presence or absence of nesting birds. Construction shall not occur within a 500 foot buffer surrounding nests of raptors or a 250 foot buffer surrounding nests of migratory birds. If construction within these buffer areas is required or if nests must be removed to allow continuation of construction, then approval will be obtained from California Department of Fish and Wildlife (CDFW);
2. All trees which are suitable for Swainson's hawk nesting that are within 2,640 feet of construction activities shall be inspected for nests by a qualified biologist;
3. If potential Swainson's hawk nests are located, surveys to determine whether Swainson's hawks use those nests will be determined by conducting surveys at the following intensities, depending upon dates of initiation of construction:

| Construction start | Survey period | Number of surveys |
|-------------------------|-----------------------|--|
| 1 January to 20 March | 1 January to 20 March | 1 |
| 21 March to 24 March | 1 January to 20 March | 1 |
| | 21 March to 24 March | Up to 3 |
| 24 March to 5 April | 1 January to 20 March | 1 |
| | 21 March to 5 April | 3 |
| | 21 March to 5 April | 3 |
| 6 April to 9 April | 6 April to 9 April | Up to 3 |
| 10 April to 30 July | 1 January to 20 March | 1 (if all 3 surveys are performed between 6 and 9 April, then this survey need not be conducted) |
| | 21 March to 5 April | 3 |
| | 6 April to 20 April | 3 |
| 31 July to 15 September | 6 to 20 April | 3 |
| | 10 to 30 July | 3 |

4. If Swainson's hawks are detected to be nesting in trees within 600 feet of the construction area, construction will not occur within this zone until after young Swainson's hawks have fledged (this usually occurs by early June). The nest will be monitored by a qualified biologist to determine fledging date. If Swainson's hawks are found within the project area, the project site would be considered foraging habitat and compensation for foraging habitat would be required by CDFW at a ratio of 0.75 to 1 (0.75 acre for every 1.0 acre adversely affected).

Effectiveness of Mitigation Measures: This mitigation measure is a standardized avoidance measure that has been approved by the CDFW. Implementation of Mitigation Measure 3.4-1b will prevent project-related disruption of Swainson's hawk nesting activity. Implementation of this measure will reduce potential impacts to the Swainson's hawk to a level that is *less than significant*.

Mitigation Measure #3.4-1c: A pre-construction survey shall be performed on the project site in areas where there is a potential for nesting raptors and nesting migratory birds to occur if construction occurs during the breeding season (loosely defined as February 15 to August 15). These include all areas of the project site that contain or are within 500 feet of power poles or trees that are suitable for the establishment of raptor nests. These areas should also include non-native annual grassland habitat and unharvested alfalfa and grain crops, which provide potential breeding habitat for ground-nesting birds such as northern harriers, horned larks, and other migratory ground-nesting birds. The pre-construction survey shall be performed within 14 days of construction to identify active nests and mark those nests for avoidance. During the nesting period, raptor nests should be avoided by 500 feet and all other migratory bird nests should be avoided by 250 feet.

Effectiveness of Mitigation Measure: This mitigation measure is a standardized avoidance measure that has been approved by the CDFW and USFWS. Implementation of Mitigation Measure #3.4-1c will prevent project-related disruption of raptor and migratory bird nesting activities. Implementation of this measure will reduce potential impacts to nesting raptors and other migratory birds to a level that is *less than significant*.

Mitigation Measure #3.4-1d: To preclude potential project-related impacts to the San Joaquin kit fox, a series of avoidance and minimization measures shall be implemented in accordance with the *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011). The measures that are listed below have been excerpted from these guidelines and will protect the San Joaquin kit fox from direct mortality or den destruction.

1. Pre-construction surveys shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities, or any project activity likely to impact the San Joaquin kit fox. Exclusion zones shall be placed around dens in accordance with USFWS recommendations using the following:

| | |
|---|---|
| Potential Den | 50 foot radius |
| Known Den | 100 foot radius |
| Natal/Pupping Den (Occupied and Unoccupied) | Contact U.S. Fish and Wildlife Service for guidance |

If dens must be removed, they shall be appropriately monitored and excavated by a trained wildlife biologist. Replacement dens would be required. Destruction of natal dens and other “known” kit fox dens shall not occur until authorized by USFWS.

2. Project-related vehicles shall observe a 20-mph speed limit in all project areas, except on County roads and State and federal highways; this is particularly important at night when kit foxes are most active. Nighttime construction shall be avoided, unless the construction area is appropriately fenced to exclude kit foxes. The area within any such fence shall be determined to be uninhabited by San Joaquin kit foxes prior to initiation of construction. Off-road traffic outside of designated project areas shall be prohibited.
3. To prevent inadvertent entrapment of kit foxes or other animals during the construction phase of the project, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they shall be thoroughly inspected for trapped animals.
4. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipe, becoming trapped or injured. All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in anyway. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until the USFWS has been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved once to remove it from the path of construction activity, until the fox has escaped.
5. All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from a construction or project Site.
6. No firearms shall be allowed on the project site during the construction phase.
7. To prevent harassment, mortality of kit foxes or destruction of dens by dogs or cats, no pets shall be permitted on the project site.
8. Use of rodenticides and herbicides in project areas shall be restricted. This is necessary to prevent primary or secondary poisoning of kit foxes and the depletion of prey populations on which they depend. All uses of such compounds shall observe label and other restrictions mandated by the U.S. Environmental Protection Agency, California Department of Food and Agriculture, and other State and federal legislation, as well as additional project-related restriction deemed necessary by the USFWS. If rodent control must be conducted, zinc phosphide shall be used because of a proven lower risk to kit fox.
9. A representative shall be appointed by the project proponent who will be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a

dead, injured, or entrapped kit fox. The representative will be identified during the employee education program and their name and telephone number shall be provided to the USFWS.

10. An employee education program shall be conducted for any project that has anticipated impacts to kit fox or other endangered species. The program shall consist of a brief presentation by persons knowledgeable in kit fox biology and legislative protection to explain endangered species concerns to contractors, their employees, and military and/or agency personnel involved in the project. The program shall include the following: A description of the San Joaquin kit fox and its habitat needs; a report of the occurrence of kit fox in the project area; an explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. A fact sheet conveying this information shall be prepared for distribution to the previously referenced people and anyone else who may enter the project site.
11. Upon completion of the project, all areas subject to temporary ground disturbances, including storage and staging areas, temporary roads, pipeline corridors, etc. shall be re-contoured if necessary, and revegetated to promote restoration of the area to pre-project conditions. An area subject to “temporary” disturbance means any area that is disturbed during the project, but after project completion will not be subject to further disturbance and has the potential to be revegetated. Appropriate methods and plant species used to revegetate such areas shall be determined on a site-specific basis in consultation with the USFWS, California Department of Fish and Wildlife (CDFW), and revegetation experts.
12. In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the USFWS shall be contacted for guidance.
13. Any contractor, employee, or military or agency personnel who are responsible for inadvertently killing or injuring a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFW immediately in the case of a dead, injured, or entrapped kit fox. The CDFW contact for immediate assistance is State Dispatch at (916) 445-0045. They will contact the local warden or Mr. Paul Hofmann, the wildlife biologist, at (530) 934-9309. The USFWS shall be contacted at the numbers below.
14. The Sacramento USFWS and CDFW shall be notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The USFWS contact is the Chief of the Division of Endangered Species, at the addresses and telephone numbers below. The CDFW contact is Mr. Paul Hofmann at 1701 Nimbus Road, Suite A, Rancho Cordova, California 95670, (530) 934-9309.
15. New sightings of kit foxes shall be reported to the California Natural Diversity Database (CNDDDB). A copy of the reporting form and a topographic map clearly marked with the location of where the kit fox was observed shall also be provided to the USFWS at the address below.

Any project-related information required by the USFWS or questions concerning the above conditions or their implementation may be directed in writing to the U.S. Fish and Wildlife USFWS at:

Endangered Species Division
2800 Cottage Way, Suite W2605
Sacramento, California 95825-1846
(916) 414-66200 or (916) 414-6600

Effectiveness of Mitigation Measures: This mitigation measure includes standard avoidance and minimization measures that have been approved by the CDFW and USFWS. Implementation of Mitigation Measure #3.4-1d will preclude impacts to San Joaquin kit fox adults or their young. Implementation of this measure will reduce potential impacts to the San Joaquin kit fox to a level that is *less than significant*.

Cultural Resources

Impact #3.5-1 – Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.

Impact #3.5-2 – Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.

Conclusion: Although there is no record evidence of historical or archaeological sites on the project site, there is the potential during ground disturbing activities to uncover historical resources. This impact is *potentially significant*, but can be mitigated to a *less-than-significant* level with the following mitigation measures:

Mitigation Measure #3.5-1a: In accordance with State law, if any historical resources are discovered during project-related activities, all work is to stop and the Lead Agency and a qualified professional are to be consulted to determine the importance and appropriate treatment of the find. If Native American remains are found the County Coroner and the Native American Heritage Commission, Sacramento (916-653-4082) is to be notified immediately for recommended procedures.

Mitigation Measure #3.5-1b: In the event that a historical resources consultant is retained, the firm or individual shall be responsible for submitting any report of findings prepared for the proposed project to the Central California Information Center, including one copy of the narrative report and two copies of any records that document historical resources found as a result of field work.

Effectiveness of Mitigation: Potential impact to historical and archaeological resources would be *less than significant* with implementation of the above mitigation measures.

Impact #3.5-3 – Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature of paleontological or cultural value.

Conclusion: Although there is no record evidence of paleontological resources or geologic features on the project site, there is the potential during project-related excavation and construction for the discovery of potential resources. This impact is *potentially significant*, but can be mitigated to a *less-than-significant* level as follows:

Mitigation Measures: Implementation of Mitigation Measures #3.5-1a and #3.5-1b. No additional mitigation measures are required.

Effectiveness of Mitigation: Potential impact to paleontological resources and geological features would be *less than significant* with implementation of the above mitigation measure.

Impact #3.5-4 – Disturb any human remains, including those interred outside of formal cemeteries.

Conclusion: Although there is no record evidence of human burials on the project site there is the potential during project-related excavation and construction for the discovery of such. This impact is *potentially significant*, but can be mitigated to a *less than significant* level as follows.

Mitigation Measures: Implementation of Mitigation Measures #3.5-1a and #3.5-1b. No additional mitigation measures are required.

Effectiveness of Mitigation: Potential impact to human remains would be *less than significant* with implementation of the above mitigation measure.

Hazards and Hazardous Materials

Impact #3.8-1 – Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

Impact #3.8-2 – Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

Conclusion: In summary, the proposed project would have to submit a Hazardous Materials Business Plan to the Stanislaus County Environmental Resources Department for the 500-gallon fuel storage tank. Other chemicals such as fertilizers which exceed the thresholds listed before would also have to be included in the plan. Therefore those impacts would be less than significant.

According to the Phase I/Phase II ESA, areas in and around the barn/packing shed need to be resurfaced for health reasons. Mitigation Measure 3.8-2a shall reduce impacts to less than significant.

Other hazards that could jeopardize the health of workers and consumers who will be purchasing produce (melons and sweet potatoes), could become ill from disease carried by birds and/or rats and mice. However, with Mitigation Measure 3.8-2a and 3.8-2b incorporated, and compliance with the California Retail Food Code, impacts would be less than significant.

Mitigation Measure #3.8-2a: During construction of the proposed project, work areas and areas with heavy foot traffic inside the eastern, unpaved portion of the barn/packing shed shall be surfaced to reduce worker exposure to dust in this area, where concentrations of 4,4'-DDT (2,600 micrograms per kilogram [ug/kg]) and 4,4'-DDD (240 ug/kg) were detected in soil.

Mitigation Measure #3.8-2b: Before building permit issuance, the owner shall hire a biologist to complete a Pest Management Plan which will make recommendations for addressing both pest-birds and rodents inside and around the warehouse. The plan shall be submitted to the Stanislaus County Environmental Health Department and made available to employees at the warehouse.

Effectiveness of Mitigation: The above mitigation measures would reduce hazardous health conditions both caused from dust conditions and pest-birds and rodents that may affect workers, consumers, and wildlife. A *less than significant* impact would occur with mitigation applied.

Impact #3.8-7 – Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Conclusion: Construction activities that would likely require flagmen to direct traffic may interfere with emergency vehicles. To lesson this impact mitigation would have to be incorporated into the proposed project. With mitigation, impacts would be *less than significant*.

Mitigation Measure #3.8-7: The applicant shall notify the City of Turlock's fire, sheriff, and ambulance service which serve the proposed project site, as well as the Office of Emergency Services (OES) Division (Modesto Regional Fire Authority) of the proposed project and construction dates. This notification shall occur two weeks prior to the start of construction.

Hydrology and Water Quality

Impact #3.9-3 – Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on or off-site.

Impact #3.9-4 – Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.

Impact #3.9-5 – Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

Conclusion: Compliance with the adopted regulations, which includes submitting a grading and drainage plan to the City of Turlock for improvements along North Washington Road, would reduce impacts to the City's drainage system. Mitigation Measure 3.9-5 would require that the applicant meet with the County for treatment and design of the retention basin. With regulations and mitigation applied, potential impacts associated with storm water drainage would be *less than significant*.

Mitigation Measure #3.9-5: Prior to issuance of grading and building permits, the applicant shall meet with the Stanislaus County Public Works Department to determine the appropriate BMPs for filtration of storm water and to determine the best method of treatment and required size of retention basin.

Public Services and Utilities

Impact #3.12-1 – Increased demand for fire protection services and personnel.

Conclusion: Stanislaus County has impact fees that include fire facilities. In order to implement the goals and objectives of the County's general plan, and to mitigate the impacts caused by future development in the county, fire department facilities must be constructed. The Board of Supervisors has determined that an impact fee for county facilities that include the fire department are needed in order to finance these facilities and to pay for each development's fair share of the facilities' construction and acquisition costs.

Adherence to the existing policies of the Stanislaus County General Plan and payment of fire development-related impact fees would ensure that additional fire protection services and personnel are provided in the future. The increase in fire protection resulting from construction of additional facilities is a long-term objective that cannot be fully addressed in the timeframe needed to significantly improve response to the project area in the short term. However, with the incorporation of building codes and operations' safety requirements, impacts would be *less than significant*.

Mitigation Measure #3.12-1: The access to the site from Washington Road shall be provided with radio frequency gate opening devices (i.e. "Click-to-enter") in addition to the standard police/fire bypass keyway. Manually operated gates across required fire access roadways are prohibited. (Note: The current site plan calls for no gate. This mitigation measure is not applicable of a gate is not constructed.)

Effectiveness of Mitigation Measure: Implementation of this mitigation measure, in conjunction with payment of fire development impact fees and adherence to state and federal building codes and other requirements would result in impacts from the project to fire protection services to a level that is *less than significant*.

Transportation/Traffic

Impact #3.13-1 – Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.

Impact #3.13-2 – Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.

Existing Plus Project Specific Impacts

Conclusion: The addition of the proposed project would contribute to the traffic volumes along Washington Road. All intersections and road segments would continue to operate above the LOS thresholds. The following mitigation measures are identified under this planning horizon. This impact is *potentially significant*

Mitigation Measure #3.13-1a: The project shall pay the Traffic Impact Fees as set forth by Stanislaus County.

Mitigation Measure #3.13-1b: The applicant shall pay the City of Turlock Capital Facility Development Fees which provides for the construction of Public Facilities and to purchase capital items to allow for City services. The City's fees change quarterly, therefore the amount will be determined with approval of the project.

Mitigation Measure #3.13-1c: The applicant shall install half street improvements along the project frontage to meet the future lane configurations along Washington Road. This will also include addition of a northbound left turn lane at the Washington Road/Blue Diamond/Project Access intersection. These improvements shall also include traffic signal modifications to the existing signal. A residential driveway should also be constructed on Washington Road to provide access for the single family residence that will remain. This residence is located about 350 feet south of the Blue Diamond/project driveway.

Effectiveness of Mitigation: With incorporation of these mitigation measures, the proposed project would comply with both Stanislaus County requirements for traffic impact fees and the City of Turlock's capital facility development fees. Improvements along Washington Avenue would reduce congestion and improve safety for passenger vehicles, transit operators, and pedestrian and bicycle circulation. With incorporation of mitigation, the impact is *less than significant*.

Impact #3.13-5 – Result in inadequate emergency access.

The proposed project has the potential to result in inadequate emergency access while road improvements are being constructed along North Washington Road.

Conclusion: This impact is *potentially significant*.

Mitigation Measure #3.13-5: Proposed project site plans shall be reviewed by the City fire and police departments to ensure adequate emergency access.

Effectiveness of Mitigation: Implementation of Mitigation Measure #3.13-5 will reduce the impact to a *less than significant* level.

Impact #3.13-6 – Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

Impact# 3.13-7 – Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

Conclusion: Transit systems would not be affected by the proposed project as they do not extend to the vicinity of the site. Improvements would be made along North Washington Road as required by Mitigation Measure #3.13-1c in accordance with the City of Turlock’s WISP. As proposed the project would increase safety for both pedestrians and bicyclists, and help to meet the City’s WISP goals and policies for road improvements along north Washington Road. With incorporation of Mitigation Measure #3.13-1c, the impact is *less than significant*.

Mitigation Measures: See Mitigation Measure #3.13-1c.

Effectiveness of Mitigation: Implementation of Mitigation Measure #3.13-1c would reduce the impact to a *less than significant* level.

IX. GROWTH INDUCEMENT

Section 15126.2(d) of the CEQA Guidelines requires a discussion of how the potential growth-inducing impacts of the proposed project could foster economic or population growth or the construction of additional housing, either directly or indirectly, in the surrounding environment. Direct population growth occurs when a project would result in the construction of a substantial amount of new housing or otherwise directly cause a substantial increase in a community’s population. Indirect growth inducement occurs when a project would extend infrastructure to undeveloped areas, remove obstacles to population growth, or otherwise encourage activities that cause significant environmental effects. Induced growth is distinguished from the direct employment, population, or housing growth of a project. If a project has characteristics that “may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively,” then these aspects of the project must be discussed as well. Induced growth is any growth that exceeds planned growth and results from new development that would not have taken place in the absence of the proposed project. For example, a project could induce growth by lowering or removing barriers to growth or by creating or allowing a use such as an industrial facility that attracts new population or economic activity. CEQA Guidelines also indicate that the topic of growth should not be assumed to be either beneficial or

detrimental.

Direct and Indirect Growth Inducement

A key consideration in evaluating growth inducement is whether the activity in question constitutes “planned growth.” A residential project that is consistent with the underlying General Plan and zoning designations would generally be considered planned growth because it was previously contemplated by these long-range documents, and, thus, would not be deemed to have a significant growth-inducing effect. Likewise, a project that requires a General Plan Amendment and re-zone to develop more intense uses than are currently allowed may be considered to have a substantial growth-inducing effect because such intensity was not contemplated by the applicable long-range documents. It should be noted that these are hypothetical examples, and conclusions about the potential for growth inducement would vary on a case-by-case basis.

Direct Population Growth and Removal of Barrier to Growth

Project implementation would not have a direct growth-inducing impact because the project does not include proposed dwellings. Also, while the project site abuts a City of Turlock industrial park, it would not rely upon public water and wastewater facilities. Furthermore, the proposed project is expected to rely upon the existing Stanislaus County labor force, and would not encourage prospective employees to relocate to the area for employment. Therefore, it is not anticipated that the Project would indirectly induce growth.

X. SIGNIFICANT AND UNAVOIDABLE AND IRREVERSIBLE ENVIRONMENTAL EFFECTS

Significant and Unavoidable Effects

Section 15126.2(b) of the CEQA Guidelines requires that the DEIR describe any significant impacts, including those that cannot be reduced to a level of insignificance. Where there are impacts that cannot be alleviated with the implementation of feasible mitigation measures, their implications and the reasons the project is being proposed, notwithstanding their effect, should be described.

The environmental impacts that would result from the proposed project are discussed in detail in Chapter Three of the DEIR. The following is a brief review of the impacts that have been found to be significant and unavoidable.

Air Quality and Noise

Cumulative Impacts

As mentioned before, the SJVAB is in non-compliance with federal and State standards for ozone and PM10. It was concluded that the project would obstruct implementation of the SJVAPCD's plans, as well as violate both federal and State standards for ozone and PM10, and result in a cumulatively considerable net increase of pollutants. In connection with the air quality effects of past projects, other current projects, and probable future projects in Stanislaus County, the project contribution to air quality impacts is considered ***cumulatively considerable***. While there are no feasible mitigation measures available to fully reduce the impact to a less-than-significant level, the measures listed below can contribute to a lowering of the impact, and these are included in the Mitigation Monitoring and Reporting Program.

Mitigation Measure #3.7-1: The applicant shall implement an employer-based trip reduction program in compliance with SJVAPCD Rule 9410. The trip reduction program may include ride-sharing information, carpools, and vanpools.

Mitigation Measure #5.3.3-1: Tractor-trailer trucks shall not be permitted to run their engines on idle while parked or staging. Signs shall be posted in designated queuing areas and job sites to remind drivers and operators of the No-Idling rule. This shall be noted on improvement plans.

Mitigation Measure #5.3.3-2: The proponent has agreed to incorporate frontage landscaping for aesthetic purposes, and this will be made a required mitigation measure to aid in particulate reduction. Though not in the City of Turlock, the project shall incorporate frontage landscaping consistent with the Westside Industrial Specific Plan. A final landscape plan shall be included with improvement plans.

Mitigation Measure #5.3.3-3: The site shall be sprinkled by watering trucks for dust control during grading and construction. A note to this effect shall appear on improvement plans.

Mitigation Measure #5.3.3-4: The "Pre-phase" (dirt surface) project activity shall be eliminated from the development plan. All parking and shipping and receiving areas shall be paved. The proposed accessway around the north, west and south sides of the proposed warehouse, which were to remain unpaved until completion of Phase 3, shall be paved during each of the three phases of development. This shall be noted on improvement plans.

Biological Resources

Cumulative Impacts

This analysis of cumulative effects on biological resources considered other development projects within Turlock. Development projects result in land use changes that are typically associated with effects including, but not limited to, habitat loss, ground disturbance, and noise. These effects can negatively impact sensitive biological resources. When combined with impacts from other past, present and reasonably foreseeable future development projects within the area, the loss and/or fragmentation of plant and wildlife habitat may be ***cumulatively considerable***.

The measure listed below can contribute to a lowering of the impact, and this is included in the Mitigation Monitoring and Reporting Program.

Mitigation Measure #5.3.4-1: A minimum of two permanent and durable bird nest boxes shall be installed and maintained on the project site in locations that will encourage their use. Nest boxes may be designed for common songbirds or birds of prey compatible with farms such as owls.

Greenhouse Gases

Impact #3.7-1 – Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.

Conclusion: Construction emissions would primarily occur prior to 2020, therefore they would be less than significant. Operational emissions would not meet the target thresholds of 29 percent below BAU. Impacts would be *potentially significant*.

Mitigation Measure #3.7-1: The applicant shall implement an employer-based trip reduction program in compliance with SJVAPCD Rule 9410. The trip reduction program may include ride-sharing information, carpools, and vanpools.

Effectiveness of Mitigation: The above mitigation measure would not achieve the required reduction of 29 percent below BAU; therefore, the residual significance of this impact is *significant and unavoidable*.

Impact #3.7-2 – Conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHG.

Conclusion: The proposed project may obstruct attainment of the goals established under AB 32. The project would comply with all present and future regulatory measures developed in accordance with AB 32 and ARB's Scoping Plan, and would incorporate a number of measures that would minimize greenhouse gas emissions beyond existing regulatory requirements, however impacts are *potentially significant*.

Mitigation Measures: Implement Mitigation Measure #3.7-1.

Effectiveness of Mitigation: The above mitigation measure would not achieve the required reduction of 29 percent below BAU; therefore, the residual significance of this impact is *significant and unavoidable*.

Cumulative Impacts

The greenhouse gas analysis in this EIR determined that project-related trips from the project would result in significant and unavoidable impacts associated with greenhouse gas emissions and that no feasible mitigation measures could be applied to the proposed project to reduce the impact to a less-than-significant level. As mentioned in the greenhouse gas analysis, the

proposed project would not meet the State's 29 percent target reduction for GHG emissions by 2020.

An individual project cannot generate enough greenhouse gas emissions to significantly influence global climate change. Consequently, any project contributes to this potential impact through its incremental contribution, combined with cumulative contributions of greenhouse gases from other projects. Therefore, as proposed, the project would result in a cumulatively considerable net increase of pollutants. In connection with the air quality effects of past projects, other current projects, and probable future projects in Stanislaus County, the project would have a *cumulatively considerable* impact on greenhouse gas emissions.

No additional mitigation measures have been identified to address the cumulative impact.

Irreversible Impacts

Section 15126.2(c) of the CEQA Guidelines requires a discussion of significant and irreversible changes that would be caused by the proposed project, if implemented. The use of nonrenewable resources during a project is irreversible when a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary and secondary impacts must also be considered, as well as the possibility of environmental accidents and commitments incurred by future generations.

Implementation of the proposed project would result in the long-term commitment of resources to serve the proposed project site. The most notable significant irreversible impacts are increased generation of air pollutants and noise from additional vehicular traffic. Implementation of the proposed project would also result in the short-term commitment of non-renewable and/or slowly renewable natural and energy resources such as lumber and other forest products, mineral resources, and water resources during construction activities. These irreversible impacts, which are currently unavoidable consequences of urban development, are described in detail in the appropriate sections of Chapter Three of the DEIR.

XI. FINDINGS REGARDING RECIRCULATION OF THE DEIR

The County adopts the following findings with respect to whether to recirculate the DEIR. Under Section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when "significant new information" is added to the EIR after public notice is given of the availability of the DEIR for public review but prior to certification of the FEIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (CEQA Guidelines Section 15088.5.)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.) "Recirculation was intended to be an exception, rather than the general rule." (*Ibid.*)

The Planning Commission recognizes that the FEIR contains additions, clarifications, modifications, and other changes to the DEIR.

CEQA case law emphasizes that "[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*Kings City Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process." In short, a project must be open for public discussion and subject to agency modification during the CEQA process." (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.) Here, the changes made to the DEIR are exactly the kind of project modifications or improvements that the case law recognizes as legitimate and proper.

The changes described in the FEIR merely supplement or clarify the existing language in the DEIR. Thus, none of these changes involves "significant new information" triggering recirculation because the changes did not result in any new significant environmental effects, any substantial increase in the severity of any previously identified significant effects that could not be mitigated to less than significant, or otherwise trigger recirculation. Instead, the modifications represent the kinds of changes that commonly occur as the environmental review process works towards its conclusion. Under such circumstances, the County finds that recirculation of the EIR is not required.

XII. PROJECT ALTERNATIVES

Basis for Alternatives

Section 15126.6 of the CEQA Guidelines requires the EIR to describe a reasonable range of alternatives to the project or to the location of the project that would reduce or avoid significant impacts and that could feasibly accomplish the basic objectives of the proposed project, and to evaluate the comparative merits of the alternatives. Alternatives that would reduce or avoid significant impacts represent an environmentally superior alternative to the proposed project. Based on the analysis contained and documented in this EIR, the No Project Alternative is the environmentally superior alternative. However, under the CEQA Guidelines Section 15126.6(e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

Project Alternatives

The alternatives to be evaluated should include both those that offer substantial environmental advantages over the proposed project, and that may feasibly be accomplished considering the various economic, environmental, technological, social, and legal factors.

The following alternatives have been determined to represent a reasonable range of alternatives, including the No Project alternative, that have the potential to feasibly or partially attain objectives of the project, but avoid or substantially lessen any of the significant effects of the project.

No Project – This assumes that the Use Permit is not granted. Land use would be that which is permitted in this Agricultural zoning district without the use permit. In this case, it would not be conversion of the site to a vacant condition.

WISP Alternative Site – This alternative assumes that the warehouse operation as proposed is moved to a parcel within Turlock's Westside Industrial Park (WISP). This site is within the Turlock city limits and therefore, not under the land use jurisdiction of Stanislaus County.

Reduced Greenhouse Gas Emissions – This alternative requires reductions in certain aspects of the proposed warehouse construction and operation in order to reduce GHG emissions below the threshold of significance.

After alternatives are summarized and compared with the proposed project, the Alternatives chapter of the DEIR concludes with an analysis of the comparative environmental superiority of the various alternatives, as required by CEQA, and the identification of the environmentally superior alternative. The threshold criteria used in Chapter Three (Appendix G of the CEQA Guidelines) are used in this section to judge the significance of, and compare, the impact

conclusions related to each criterion for the project for each alternative. Following are descriptions of the alternatives that are analyzed in the DEIR.

Analysis of Project Alternatives

The discussion below presents an analysis of each alternative. The discussion focuses on a comparison of the environmental impacts of the alternatives. CEQA does not require the alternatives to be analyzed at the same level of detail as the proposed project; rather, the alternatives discussion can be based on a qualitative analysis and comparative methodology to identify the environmentally superior alternative.

NO PROJECT

Aesthetics

Under this alternative, the existing buildings would be retained, after securing required permits from the County, but the 180,000-square-foot warehouse would not be constructed. In addition, the proposed fencing and landscape screening described in Section 3.1 would not be installed along Washington Road. Therefore, the existing structures and equipment would remain in full view of motorists. There would be a *greater* aesthetics impact under the No Project Alternative.

Agricultural Resources

Under this alternative, with the absence of the proposed 180,000-square-foot warehouse, the amount of land devoted to agricultural use would be greater than under the proposed project. Therefore, the potential impact to agricultural resources would be *less* under the No Project Alternative.

Air Quality

This alternative would result in fewer emissions associated with building construction because no new buildings would be constructed. Similarly, vehicle-related emissions would be reduced because there would be no produce shipping conducted at the site. Overall, impacts on air quality would be *less* under this alternative.

Biological Resources

Under this alternative, the project site and any related biological resources would remain in their existing conditions, and potential impacts to special-status species listed as potentially occurring in its general vicinity would be less under the No Project Alternative because there would be a

reduction in the developed area relative to the proposed project, and the activity level at the site would be less. Therefore, this alternative would have *less* potential impacts to biological resources.

Cultural Resources

Under this alternative, site disturbance would be reduced relative to that in the proposed project. As a result, potential impacts to cultural resources would be *less*.

Geology and Soils

Grading and excavation of the site would not occur under the No Project Alternative, except to comply with County permit requirements for grading that was completed in advance of required permits. Moreover, no additional structures would be constructed and no additional employees would be added. Geologic impacts, therefore, would be *less* in comparison to the proposed project.

Greenhouse Gases

Under the No Project Alternative, the 180,000-square-foot warehouse would not be constructed and associated truck deliveries would not occur. Consequently, this alternative would eliminate the significant unavoidable GHG impacts associated with the proposed project and would not generate as much mobile or stationary sources of GHG emissions. Overall, this alternative would have *less* construction and operational GHG emissions.

Hazards and Hazardous Materials

In comparison to the proposed project, the No Project Alternative would not have the potential to create greater hazardous materials impacts than those associated with the proposed project because County regulations would pertain in either case. As such impacts associated with hazards and hazardous materials would be the *same* as the No Project Alternative.

Hydrology/Water Quality

Under this alternative, the amount of impervious surface on the site would be less than that of the proposed project. However, features contained in the proposed project description that are intended to improve water quality and improve onsite detention of stormwater would not be constructed under the No Project Alternative. Therefore, the No Project Alternative would likely have *greater* potential impacts to hydrology and water quality than the proposed project.

Land Use and Planning

Under the No Project Alternative, land uses and activities currently occurring on the site would be made to conform to the A-2-40 General Agriculture zone and the warehouse and uses that are not permitted in that zone would not occur. Since the proposed project would also be consistent with County land use regulations, the potential impacts would be the *same*.

Noise

Because the No Project Alternative would eliminate construction activities, it would eliminate significant short-term construction noise impacts at nearby vibration-sensitive and noise-sensitive receptors. Similarly, long-term project traffic related noise impacts to residential dwellings adjacent to major access roads to the site would be reduced because the shipping activities associated with the warehouse under the proposed project would not exist. Under the No Project Alternative, vehicle trips or stationary noise would be similar to the existing condition, and would result in *less* vehicle noise impact on residential uses than the proposed project.

Public Services and Utilities

While impacts under the proposed project were less than significant, demand for services under No Project Alternative would be less. Accordingly, potential impact would be *less* than the proposed project.

Transportation and Traffic

Under this No Project alternative, there would be no additional traffic trips except those generated from continuing farming operations on the project site. This alternative would result in *less* traffic impacts associated with shipping as well as employee traffic associated with warehouse employees.

Impact Summary

The No Project Alternative results in nine less impacts than the proposed project, two greater impacts, and two impacts that are the same as the proposed project.

Ability to Achieve Project Objectives

The No Project Alternative would achieve one project objective listed in Section 4.1.2, which pertains to compatible architectural and site design with the surrounding agricultural uses. However, it would not achieve any of the other objectives.

WISP ALTERNATIVE SITE

Aesthetics

Under this alternative, the architectural and site design of the proposed 180,000-square-foot warehouse would be subject to design guidelines contained in the WISP; whereas, the proposed project is only subject to WISP design guidelines for Washington Road frontage improvements. There are no similar County design guidelines that would apply. However, within mitigation, there were no aesthetic impacts resulting from the proposed project, there are no impacts that would be reduced under the WISP Site alternative. Therefore, the aesthetic impacts are the *same*.

Agricultural Resources

While there were no identified potential impacts on agricultural resources under the proposed project, developing the project within the WISP would reduce the amount of agricultural land developed for the warehouse, thereby increasing the amount of land available for continued growing of crops. The potential impact would therefore be *less* under this alternative.

Air Quality

Under this alternative, air quality impacts are expected to be approximately the same as those of the proposed project. While a site in the WISP would be nominally closer to SR 99, the reduced travel distance would not be expected to measurably reduce vehicle emissions. Therefore, potential impacts on air quality associated with the WISP Site Alternative are expected to be approximately the *same* as that of the proposed project.

Biological Resources

While potential impacts to biological resources were mitigated to less than significant under the proposed project, the potential impacts to biological resources would likely be even less at a site within the WISP, since it is in an area with a higher level of activity and fewer biological resources. The potential biological resources impact is *less* than that of the proposed project.

Cultural Resources

Potential impacts to cultural resources at the proposed project site are limited to potential resources that could be encountered during site grading and construction. Those same potential impacts would apply to the WISP site; therefore, potential impacts to cultural resources are the *same* for the WISP Site Alternative.

Geology and Soils

The site development and earth disturbance that would occur at the project site for the proposed warehouse would occur at the WISP site; therefore, potential impacts to geology and soils would be the *same* under the WISP Site Alternative.

Greenhouse Gases

With the same project site size and the same levels of development, the impacts of this

alternative on greenhouse gases and global climate change would be essentially the *same*.

Hazards and Hazardous Materials

While any hazardous materials that may be used in the warehouse would be the same at WISP site, there would be no existing materials or substances, as there are at the proposed project site. Since the WISP site is assumed to be free of the on-site hazardous substances (e.g., spilled materials) found at the proposed project site, development of the WISP site can be expected to have *less* potential impacts associated with hazards and hazardous materials.

Hydrology/Water Quality

Storm water runoff and water quality impacts, which were mitigated to less-than-significant levels under the proposed project, are expected to be the *same* at a site within the WISP.

Land Use and Planning

Under this alternative, the project would be developed in full conformity with City of Turlock zoning requirements, including requirements that are specific to the WISP. Potential impacts would be the *same* as those of the proposed project.

Noise

Under this alternative, the project would be developed in full conformity with City of Turlock zoning requirements, including any noise mitigation requirements that are specific to operations within the WISP. While the number of vehicle trips that create noise impacts on nearby sensitive uses would be the same under this alternative, the access point to the site would probably not be on Washington Road, thereby potentially reducing traffic noise on the segment of Washington Road where residents would be impacted by truck traffic noise under the proposed project. Accordingly, the potential noise impact would likely be *less* under the WISP Site Alternative.

Public Services and Utilities

As noted in Chapter Two Project Description, the project does not propose connection to water, sanitary sewer, and storm drainage systems. Under this alternative, no additional demand would be generated for area utilities and service systems, even though by being with the WISP, connection to utility systems would be easier to accomplish. Since the project would not require connection to City utility systems, the impact of the WISP Site alternative would be the *same* as the proposed project.

Transportation and Traffic

Under the WISP Site Alternative, trips to and from the project site would likely use many of the same County and City streets as the proposed project, although Washington Road would likely not be used for site access. Accordingly, traffic impacts are expected to be essentially the *same* as those associated with the proposed project.

Impact Summary

The WISP Site Alternative results in four less impacts and nine impacts that are the same as the proposed project.

Ability to Achieve Project Objectives

The WISP Site Alternative achieves all but three of the project objectives listed in Section 4.4.2, as follows: 1) it would not combine growing, storage, packing, and shipping at one location, because growing would not occur in the WISP, 2) the financial success of the project at this site would be challenged by higher land acquisition and site development costs associated with the WISP, and 3) the project would not generate property taxes for the County.

REDUCED GREENHOUSE GAS EMISSIONS ALTERNATIVE

Aesthetics

It is unlikely that the project appearance would be noticeably different under this alternative as a result of incorporating one of more of the measures described above for reducing greenhouse gas emissions. If additional trees were planted under this alternative, there could be an improved appearance on the site. Therefore, the potential impact on aesthetics would *less* than that of the proposed project.

Agricultural Resources

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in an impact on agricultural resources that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on agricultural resources as the proposed project.

Air Quality

It is expected that incorporation of one or more of the greenhouse gas reduction measures described in Section 3.7 would result in a reduction on air quality impacts. Accordingly, this alternative is *less* potential impact on air quality than the proposed project.

Biological Resources

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in an impact on biological resources that is different than that of the proposed project.

Therefore, this alternative can be expected to have the *same* impact on biological resources as the proposed project.

Cultural Resources

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in an impact on cultural resources that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on cultural resources as the proposed project.

Geology and Soils

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in an impact on agricultural resources that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on geology and soils as the proposed project.

Greenhouse Gases

This alternative is specifically intended to reduce GHG emissions by requiring implementation of a menu of GHG reduction methods in various aspects of the site and architectural design and in the daily operations of the proposed project. Accordingly, this alternative would result in *less* GHG emission impacts than the proposed project. Specifically, incorporation of the listed measures would reduce GHG emissions to below the thresholds described in Section 3.7 of the DEIR.

Hazards and Hazardous Materials

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in any effect on impacts associated with hazards or hazardous materials that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on hazards and hazardous materials as the proposed project.

Hydrology/Water Quality

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in an impact on hydrology and water quality that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on hydrology and water quality as the proposed project.

Land Use and Planning

Incorporation of the greenhouse gas reduction measures described in Section 3.7 would not result in an impact on land use and planning that is different than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on land use and planning as the proposed project.

Noise

It is unlikely that any of the greenhouse gas reduction measures described in Section 3.7 would result in a different operational noise impact than that of the proposed project. Also, the greenhouse gas reduction measures would not reduce vehicle traffic noise impacts. Therefore, this alternative can be expected to have the *same* impact on noise as the proposed project.

Public Services and Utilities

It is unlikely that impacts on public services and utilities would be any different as a result of the of the greenhouse gas reduction measures described in Section 3.7 than that of the proposed project. Therefore, this alternative can be expected to have the *same* impact on public services and utilities as the proposed project.

Transportation and Traffic

Incorporation of the greenhouse gas reduction measures described in Section 3.7 would not affect the volume, trip distribution, or mix of vehicles associated with operation of the project. As such potential traffic impacts under the Reduced GHG Emissions Alternative would be the *same* as that for the proposed project.

Impact Summary

The Reduced GHG Emissions Alternative results in three less impacts and ten impacts that are the same as the proposed project.

Ability to Achieve Project Objectives

The Reduced GHG Emissions Alternative would achieve all of the project objectives listed in Section 4.2, with the possible exception of achieving financial success. This is due to the higher cost of development and operation that may result from implementing GHG reduction measures.

Environmentally Superior Alternative

CEQA requires a Lead Agency to identify the "environmentally superior alternative" and, in cases where the No Project Alternative is environmentally superior to the proposed project, the environmentally superior development alternative must be identified.

The table below summarizes the potential impacts of the alternatives analysis as follows:

- **No Project Alternative** – Results in nine less impacts than the proposed project, two greater impacts, and two impacts that are the same as the proposed project.
- **WISP Site Alternative** – Results in four less impacts and nine impacts that are the same as the proposed project.

- **Reduced GHG Alternative** – Results in three less impacts and ten impacts that are the same as the proposed project.

Among the three alternatives, the No Project Alternative results in the greatest reduction in impacts, and could be considered superior from an environmental standpoint. However, it also results in two impacts that are greater than that of the proposed project. The Reduced GHG Alternative has impacts that are most similar to the Proposed Project and results in the fewest reductions in impacts. In conclusion, other than the No Project Alternative, the WISP Site Alternative is marginally superior in terms of environmental impact.

Proposed Project vs. Project Alternatives Comparison of Environmental Impacts and Achievement of Project Objectives

| Environmental Impact | Project Alternatives | | | |
|---------------------------------|-----------------------------|-------------------------------|------------------------------|--|
| | Proposed Project | No Project Alternative | WISP Site Alternative | Reduced GHG Emissions Alternative |
| Aesthetics | LTS | Greater | Same | Less |
| Agricultural Resources | LTS | Less | Less | Same |
| Air Quality | SU | Less | Same | Less |
| Biological Resources | LTS | Less | Less | Same |
| Cultural Resources | LTS | Less | Same | Same |
| Geology and Soils | LTS | Less | Same | Same |
| Greenhouse Gases | SU | Less | Same | Less |
| Hazards and Hazardous Materials | LTS | Same | Less | Same |
| Hydrology/Water Quality | LTS | Greater | Same | Same |
| Land Use/Planning | LTS | Same | Same | Same |
| Noise | SU | Less | Less | Same |
| Public Services/Utilities | LTS | Less | Same | Same |
| Transportation/Traffic | LTS | Less | Same | Same |
| Achievement of Objectives | | 1 | 5 | 7 |

LTS Less than Significant

SU Significant and Unavoidable

With regard to achievement of the eight project objectives, the No Project Alternatives meets only one of eight, the WISP Site Alternative meets five of eight, and the Reduced GHG Alternative meets seven of eight.

XIII. STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires decision-makers to balance the benefits of the proposed project against its unavoidable environmental risks in determining whether to approve the project under consideration. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered "acceptable" (State CEQA Guidelines Section 15093[a]). However, CEQA requires the agency to explain, in writing, the specific reasons for considering a project acceptable when significant impacts are infeasible to mitigate. Such reasons must be based on substantial evidence in the EIR or elsewhere in the administrative record (State CEQA Guidelines Section 15093[b]). The agency's statement is referred to as a "Statement of Overriding Considerations."

In approving the project that is evaluated in the FEIR, the County makes the following Statement of Overriding Considerations in support of its findings on the FEIR. The Planning Commission has considered the information contained in the FEIR and has fully reviewed and considered the public testimony and record in this proceeding.

The Planning Commission has carefully balanced the benefits of the project against any adverse impacts identified in the EIR that could not be feasibly mitigated to a level of insignificance. Notwithstanding the identification and analysis of the impacts that are identified in the EIR as being significant and potentially significant that have not been eliminated, lessened, or mitigated to a level of insignificance, the Planning Commission acting pursuant to Section 15093 of the State CEQA Guidelines, hereby determines that the benefits of the project outweigh the unmitigated adverse impacts and the project should be approved.

The EIR describes certain environmental impacts that cannot be avoided if the project is implemented. In addition, the EIR describes certain potential impacts, which, although substantially mitigated or lessened, are not mitigated to a point of environmental insignificance. This Statement of Overriding Considerations applies specifically to those impacts found to be significant and unavoidable as identified in the EIR and within this document.

Specific Findings

Project Benefits Outweigh Unavoidable Impact

The unavoidable significant impacts of the proposed project are acceptable in light of the long-term economic, fiscal, social, environmental, land-use, and other benefits set forth herein.

The project would result in unavoidable significant environmental impacts. However, these significant environmental impacts are outweighed by the following project benefits:

Economic and Employment Considerations – Implementation of the project would result in an economic benefit to Stanislaus County through job creation and the generation of both sales and property tax revenues. In addition to short-term construction-related jobs, the project would also create long-term agricultural processing job types. Agricultural jobs would provide resources to sustain the area's present and projected future population.

Maintenance of Agricultural Land Use – While a relatively small portion of the project site would be developed with a warehouse building and appurtenant structures, the majority of the site would be devoted to agricultural production.

Improved Site Appearance and Function – The project site has been operating in a state of partial non-compliance with County land use regulations. Project approval would result in significant improvements to both the function and appearance of the site.

Based upon the objectives identified in the project EIR and through the public review process, the Stanislaus County Planning Commission has determined that the project should be approved and that implementation of the project would have economic, fiscal, social, environmental, land use, and other benefits that outweigh the unavoidable adverse environmental impacts of the project.

Based upon these land use and environmental considerations, the Planning Commission has determined that any significant environmental impacts caused by the project have been minimized to the extent feasible, and where not feasible, have been outweighed and counterbalanced by the benefits to be generated to the County.