FINAL

ENVIRONMENTAL IMPACT REPORT

LODI SHOPPING CENTER

STATE CLEARINGHOUSE NO. 2003042113

Prepared for

CITY OF LODI

Prepared by

PMC

PACIFIC MUNICIPAL CONSULTANTS

NOVEMBER 2004

EIR ADDENDUM
COMMENTS RECEIVED ON DRAFT EIR
REPONSES TO COMMENTS

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Prepared for

CITY OF LODI
CITY HALL, 21 WEST PINE STREET
P.O. BOX 3006
LODI, CA 95241-1919
(209) 333-6711

USE PERMIT FILE NO. U02-12

Prepared by

PACIFIC MUNICIPAL CONSULTANTS (PMC)
10461 OLD PLACERVILLE ROAD, SUITE 110
RANCHO CORDOVA, CALIFORNIA 95827

NOVEMBER 2004

PREFACE

The document, together with the Draft Environmental Impact Report (DEIR) for the Lodi Shopping Center project, constitutes the Final Environment Impact Report (FEIR) for the proposed project. The Final EIR is an informational document prepared by the Lead Agency that must be considered by the decision-makers before approving the proposed project (CEQA Guidelines Section 15090). The California Environmental Quality Act (CEQA) Guidelines (Section 15132) specify that a Final EIR shall consist of the following:

- The Draft EIR or a revision of the Draft.
- Comments and recommendations received on the Draft EIR either verbatim or in a summary.
- A list of persons, organizations, and public agencies commenting on the Draft EIR.
- The responses of the Lead Agency to the significant environmental points raised in the review and consultation process.
- Any other information added by the Lead Agency.

In conformance with the CEQA Guidelines, the Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines require that, while the information in the Final EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the Draft EIR by making written findings for each of those significant effects before it approves a project.

According to the CEQA Guidelines (§15091), no public agency shall approve or carry out a project for which an environmental impact report 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. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless *both* of the following occur:

a) The public agency makes one or more of the following findings with respect to each significant effect:

   1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

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

   3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

The Final EIR will be made available to the public ten (10) days prior to the EIR certification hearing.

All documents referenced in this EIR are available for public review at the office of the City of Lodi Community Development Department, City Hall, 21 West Pine Street, Lodi, California 95241, on weekdays during normal business hours.

TABLE OF CONTENTS

FINAL ENVIRONMENTAL IMPACT REPORT
LODI SHOPPING CENTER PROJECT

Page

I. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS RECEIVING THE DRAFT EIR 1

II. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS COMMENTING ON THE DRAFT EIR 2

III. RESPONSES TO WRITTEN COMMENTS RECEIVED ON THE DRAFT EIR 3

IV. RESPONSES TO COMMENTS PRESENTED AT THE PLANNING COMMISSION HEARING OF SEPTEMBER 9, 2004 39

V. REVISIONS TO THE TEXT OF THE DRAFT EIR 53

VI. COPIES OF COMMENTS RECEIVED ON THE DRAFT EIR 56

I. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS RECEIVING THE DRAFT EIR

State Agencies

California Department of Transportation (Caltrans), District 10
California Highway Patrol
Office of Planning and Research, State Clearinghouse
California Resources Agency
California Department of Conservation
California Department of Fish and Game
California Department of Food and Agriculture
California Air Resources Board
California Water Resources Control Board
California Solid Waste Management Board
Native American Heritage Commission

Regional Agencies

San Joaquin Valley Air Pollution Control District
Central Valley Regional Water Quality Control Board, Region 5

Local Agencies, Districts and Utilities

City of Lodi Police Department
City of Lodi Fire Department
City of Lodi Public Works Department
Lodi Unified School District
San Joaquin County Community Development Department
San Joaquin County Administration Office
City of Stockton Community Development Department
San Joaquin Mosquito and Vector Abatement District
Pacific Gas & Electric

Local Organizations and Individuals

Lodi Southwest Associates
Ann M. Cerney, Citizens for Open Government

II. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS COMMENTING ON THE LODI SHOPPING CENTER DRAFT EIR

Presented below is a list of agencies, organizations, and individuals who submitted written comments on the Draft EIR. This is followed by a list of individuals and Planning Commissioners who presented oral comments at the public hearing on the Draft EIR held by the Planning Commission on September 9, 2004.

Written Comments on the DEIR Received From

A. California Department of Transportation (Caltrans)

B. San Joaquin Valley Air Pollution Control District (SJVAPCD)

C. San Joaquin County Community Development Department

D. Ann M. Cerney

E. Richard Eklund

F. Herum Crabtree Brown

Comments on DEIR Presented at the Planning Commission Hearing of September 9, 2004

G. Tracy Elliott, Small City Preservation Committee

H. Ann M. Cerney, Citizens for Open Government

I. Bill Crow

J. Rick Salton

K. Kurt Roberts

L. Commissioner Tim Mattheis

M. Commissioner David Phillips

III. RESPONSES TO WRITTEN COMMENTS RECEIVED ON THE DRAFT EIR

This section includes all of the comments contained in the letters received during the 45-day review period advertised for the Draft EIR, and responses to those comments. The specific comments have been copied from the letters and presented as "Comment" with the "Response" directly following. Copies of the actual letters received are found in their entirety in Section VI of this document.

A. RESPONSES TO COMMENTS FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DATED SEPTEMBER 20, 2004

Comment A-1:

We have circulated this project document to our functional units and have the following comments:

Travel Forecasting

The Travel Forecasting information, including the Trip Generation, Trip Distribution, and Trip Assignment assumptions used to study impacts from the Lodi Shopping Center Project Draft EIR appear reasonable.

District 10 Planning staff will continue to monitor the information presented in the Lodi Shopping Center Project Draft EIR, specifically the project growth estimates, in our cumulative development database and will include or reference the information in all future traffic impact analyses for Caltrans or other local development projects. Project impacts from this as well as other associated development projects will be re-evaluated at the time a site-specific Encroachment Permit Project Study Report (PSR) and approved Project Report – Environmental Document requires a complete traffic study.

In the interim, your local jurisdiction should calculate and collect appropriate traffic impact fees to ensure adequate financing for any infrastructure improvements that may be needed in the future as a result of this and other related development projects. Minimally, these fees should address impacts to the State Highway System (SHS) Mainline and Interchange facilities in closest proximity to the project. Since the project also demonstrates ancillary impacts to other regional facilities, appropriate fees should be assessed to cover these radiated project impacts.

Response A-1:

Comments noted. Most of these comments do not relate specifically to the Draft EIR, and no response is necessary or required. However, it should be noted that the EIR and traffic report did analyze the impacts of the traffic improvements in the Caltrans right-of-way which will require an encroachment permit. Therefore, the EIR and traffic study provide the CEQA environmental review necessary for the encroachment permit. To the extent the second paragraph of the comment relates to the cumulative impact analysis, the EIR and traffic study analyzed cumulative impacts and the EIR requires fair share mitigation of project impacts where appropriate, and where impacts are significant.

Comment A-2:

Traffic Operations

1. *Page 71 states that the Traffic Impact Analysis (TIS) was prepared on the Lodi Shopping Center project by Fehr & Peers Associates in July 2004. A previous TIS and Synchro and SimTraffic files and simulations were submitted by Hexagon Transportation Consultants, Inc. in September 2003. Traffic operations will need to review the Synchro and SimTraffic files and simulations prepared by Fehr & Peers in order to verify the impacts and impacts.*

2. *Proposed project needs to be consistent with the alignment and striping changes being made by the Kettleman Lane Gap Closure Project, EA 10-OG5701.*

3. *The above project has not been completed. The TIS assumed that project to be completed under "Near Term Circulation Improvements" (see page 79). According to Caltrans NOP/EIR response letter dated May 15, 2003 (see Appendix A), our Travel Forecasting Branch asked that "...the TIS include two scenarios to be analyzed: one with, and one without the Kettleman Lane Gap Closure Project." The TIS does NOT include this analysis. What is the impact if this project is built and opens BEFORE the Kettleman Lane Gap Closure Project is completed?*

4. *The TIS will need to be completed in accordance with Caltrans TIS Guidelines.*

5. *Need to provide copies of all Synchro simulations files to Traffic Operations.*

6. *An encroachment permit will need to be submitted to Caltrans.*

Response A-2:

The following responses are based on information provided by Fehr & Peers, Transportation Consultants, who prepared the traffic impact study for the DEIR.

1. As requested in the comment, the technical files for the Traffic Impact Analysis will be provided to Caltrans District 10 Traffic Operations for review.

2. The project site plan was reviewed by the City of Lodi to ensure that the alignment and striping changes proposed by the Project Applicant are consistent with the Kettleman Gap Closure Project.

3. It is anticipated that, if approved, the proposed project will be completed in late 2005, which will coincide with the scheduled completion of the Gap Closure project, which is funded and programmed for construction. Since there will be little or no gap in timing between completion of the proposed project and completion of the Gap Closure project, the City of Lodi determined that it was not warranted to evaluate a "Without the Kettleman Lane Gap Closure Project" scenario for Near Term Conditions.

4. Fehr & Peers Associates used the Caltrans "Guidelines for the Preparation of Traffic Impact Studies" (dated January 2000) as a guide in the analysis and documentation of the Traffic Impact Study.

5. See response to item 1 in this comment.

6. As discussed under Response A-5, below, the DEIR includes a brief summary of the anticipated work on W. Kettleman Lane within the State right of way in order to assist the Project Applicant in the permitting process. In addition, when the permit application is developed, the approved Environmental Document for the Lodi Shopping Center will be included. (See also Response A-1 regarding the encroachment permit.)

Comment A-3:

Environmental

While this review does mention some areas of concern, this review can not identify all the potential impacts that may be discovered during the CEQA process.

Your document requests an adoption of a statement of overriding concerns with regards to impacts and the cumulative impacts on agricultural land uses. But in the document, there are discussions of various feasible mitigation measures that could reduce the cumulative loss of agricultural lands impacts. The reader is confused why this project does not include fair-share funding for implementing some, if not all, of the mitigation measures discussed if they could, at the least, limit the cumulative impacts for the loss of agricultural land.

Response A-3:

As stated in the DEIR at page 29, it is not possible to provide direct mitigation for the loss of a specific parcel of agricultural land, either in whole or in part. Unlike other natural resources such as wildlife habitat, prime farmland cannot be created where none previously existed. Therefore, replacement mitigation through the creation of equivalent acreage elsewhere is not feasible. Other techniques related to the overall protection of agricultural land, such as conservation easements, are commonly employed, and are discussed in the DEIR for informational purposes only. In the case of conservation easements, this technique is used to protect other existing agricultural lands and does not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered project-specific mitigation for agricultural conversions due to a development project. While the overall objective of preserving agricultural land may be desirable from a public policy standpoint, its implementation through the EIR process is not appropriate or required under CEQA.

In addition, the City notes that Section 21104(c) of the California Public Resources Code states that a responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency.

Comment A-4:

This project will increase the ambient air pollution problem existing in the City of Lodi area. While the mitigation measures for construction activities and some retail activities have been noted, please be

aware that any increase of negative air quality, especially with the increasing cumulative affect of Lodi area projects which have been also deemed "significant and unavoidable", may well impact negatively on future transportation projects.

Response A-4:

Comment noted. No response is required. (Please refer to DEIR Section *II. J. Air Quality* for a full discussion of project impacts to air quality and feasible mitigations identified to reduce the impact.)

Comment A-5:

This project indicates that an encroachment permit shall be required. If an encroachment is expected, the CEQA project description must include a brief summary of the anticipated work with the State right of way. The attached information is to assist the applicant in the permit process. The approved Environmental Document for the project must be included in the permit application.

Response A-5:

The roadway improvements to be undertaken in conjunction with the project are generally described on page 15 of the DEIR, and include "roadway widening and construction, curb and gutter, sidewalks, right-of-way landscaping, and street lighting, as well as installation of underground utilities and services. This includes frontage improvements along Kettleman Lane..." It is also noted on page 15 of the DEIR that "...the land area addressed in the EIR includes the future right-of-way areas for roadways along the project frontage including State Route 12/West Kettleman Lane, Lower Sacramento Road, and Westgate Drive. These future right-of-way areas are included in the land-based technical impact assessments related to geology and soils, hydrology and drainage, biological resources, cultural resources, and hazardous materials."

B. RESPONSES TO COMMENTS FROM THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT, DATED SEPTEMBER 24, 2004

Comment B-1:

Based on the information provided in the "Air Quality" section of the DEIR, the District would like to suggest the following items as additional mitigation measures and clarifications:

Rule clarification:

- *Please be advised that on August 19, 2004 and September 16, 2004, the District's Governing Board approved amendments to Regulation VIII, Rules 8011-8061 and 8071-8081; respectively, that become effective on October 1, 2004. Of particular note are amendments to Rule 8021 (see section 6.3.1); the Dust Control Plan threshold has changed from 40.0 acres to 5.0 or more acres for non-residential sites. If a non-residential site is 1.0 to less than 5.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities (see section 6.42). The applicant should contact the District's Compliance Division at (209) 557-6400 (Jennifer McKinney) to determine where requirements have changed and how rule changes may affect this project.*

Additional mitigation measures include:

- *Replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via portable generator set).*
- *Curtail construction during periods of high ambient pollutant concentrations. This may include ceasing construction activity during peak-hour vehicular traffic on adjacent roadways, and "Spare the Air Days" declared by the District.*
- *The project should require that all diesel engines be shut off when not in use on the premises to reduce emissions from idling.*
- *Have the retailer develop a policy limiting the amount of time diesel delivery vehicles can idle on site (10-15 minute).*
- *Suspend excavation and grading activity when winds exceed 20 mph.*
- *Prior to the issuance of construction contracts the City of Lodi should perform a review of new technology, as it relates to heavy-duty equipment, to determine what if any advances in emission reduction are available for use. It is anticipated that in the near future both NOx and PM_{10} control equipment will be available. The District would be available for consultation on this process.*
- *Provision of preferential parking spaces for those employees who participate in carpooling or vanpooling.*
- *Sidewalks and bikepaths should be installed throughout as much of the project as possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.*
- *The District recommends that the project ingress and egress be designed to allow for the most effective traffic flow to minimize vehicle idling.*

Additionally should the site contain fast food restaurants with a drive-through component, which can create "idling" emissions resulting from customers in running vehicles waiting to place or pick up orders. The District would recommend that the following design features be included for this type of use to reduce "idling" emissions.

- *Provision of an "escape lane" to allow customers to pull aside and wait for orders that take an extended time to prepare, thereby allowing other customers to move through the line more quickly.*
- *Careful design of exits onto adjoining streets and/or parking lots to reduce the time required to re-enter traffic from the project site.*
- *A double menu system that will allow drive through customers to formulate their order in advance and therefore reduce idling time when placing orders.*

Response B-1:

The Air District's comment letter is acknowledged. It should be noted that the comment letter is dated four days past the published closing date for receipt on comments on the DEIR; however, the City of Lodi has nonetheless accepted the comments as if they were timely.

The information on the rule clarification is duly noted and will be implemented as required.

With two exceptions, discussed below, the City of Lodi generally accepts the additional mitigation measures enumerated in the Air District's letter, with certain clarifications and revisions (see Section *V. REVISIONS TO THE TEXT OF THE DRAFT EIR* in this document). However, the City will not impose the mitigations in the first and second bullet-points for the following reasons. With respect to the first bullet-point, electrically-driven equivalents are not generally available to replace fossil-fueled equipment, and as such this mitigation is not considered feasible or practical for this project. With regard to the second bullet-point, cessation or curtailment of construction activities are not warranted because the DEIR found that the impact of construction emissions would be less than significant with the implementation of mitigation measures enumerated in the DEIR (which comprise the Air District's minimum requirements for dust control plus additional mitigations); as such, there is no requirement under CEQA for mitigation which would completely stop construction (except under high wind conditions, which is already stipulated in the DEIR mitigation measures). Moreover, this suggested mitigation appears to address the ozone problem, since the references in the suggested measure to vehicular emissions and 'Spare the Air' days relate to reduction of ozone precursors and not particulate matter, which is the pollutant of concern for construction activity. Since the limited number of construction vehicles and equipment used in project construction will result in the emission of a very small amount of ozone precursors, this mitigation is not considered to be warranted, on balance, given the logistical and cost implications of stopping construction.

C. RESPONSES TO COMMENTS FROM THE SAN JOAQUIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT, DATED SEPTEMBER 15, 2004

Comment C-1:

The Community Development Department has reviewed this item and offers the following comments:

"Right-to-Farm Deed Restrictions" Vol. 1 Page 32

On June 22, 2004, the San Joaquin County Board of Supervisors approved revisions to the Right-to-Farm Ordinance. Section 6-9004 (c) of the Right-to-Farm Ordinance requires that all applicants for building permits for new residential construction or mobile home placement be provided with the following Right-to-Farm Notice:

SAN JOAQUIN COUNTY RIGHT-TO-FARM NOTICE (Section 6-9004[e])

The County of San Joaquin recognizes and supports the right to farm agricultural lands in a manner consistent with accepted customs, practices, and standards. Residents of property on or near agricultural land should be prepared to accept the inconveniences or discomforts associated with agricultural operations or activities, including but not limited to noise, odors, insects, fumes, dust, the operation of machinery of any kind during any twenty-four (24) hour period (including aircraft), the application by spraying or otherwise of chemical fertilizers, soil amendments, seeds, herbicides, and pesticides, the storage of livestock feed and other agricultural commodities and the storage, application and disposal of manure. San Joaquin County has determined that inconveniences or discomforts associated with such agricultural operations or activities shall not be considered to be a nuisance. San Joaquin County has established a grievance committee to assist in the resolution of any disputes which might arise between residents of this County regarding agricultural operations or activities. If you have questions concerning this policy or the grievance committee, please contact the San Joaquin County Agricultural Commissioner at (209) 468-3300.

Response C-1:

The comment letter from the County Community Development Department is acknowledged. It should be noted that the comment letter was received after the published closing date for receipt on comments on the DEIR; however, the City of Lodi has nonetheless accepted the comments as if they were timely.

The revisions to the County's Right-to-Farm Ordinance, as contained in the County's comment letter, are noted. While the project site is located within the City of Lodi, and will be subject to the City's Right-to-Farm Ordinance, the information provided is of interest to the City of Lodi.

D. RESPONSES TO COMMENTS FROM ANN M. CERNEY, DATED SEPTEMBER 20, 2004

Comment D-1:

The discussion of growth inducing impact is inadequate in its address of the property location in that it describes abutting land use to the East and North as commercial, when in fact, there is a separating barrier on both sides and the reader is thereby misled.

Response D-1:

On page 1 of the DEIR, the description of surrounding uses does not state that the project is "abutting" commercial land uses to the east and north, but rather describes the lands to the east as being "across Lower Sacramento Road" and the lands to the north as being "across Kettleman Lane." The project will not have growth-inducing impacts on land north and east of the site. The lands immediately north and east of the site are within the City and are already developed with large scale commercial uses. (See also the related response to the oral comments presented by Ann Cerney at the September 9, 2004 Planning Commission hearing on the DEIR, which is contained in Response H-3 below.)

Comment D-2:

The environmental impact report fails to adequately address the impact of the project's growth inducing factor. It fails to satisfy the criteria discussion mandated in case law for a project that is a catalyst for foreseeable future development. (Antioch v. City of Antioch (1986), Cal.App.3d 1325, 1333.)

Response D-2:

The case cited (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, in which the defendant was actually the City of Pittsburg) involved the construction of a new roadway and utilities through a large vacant area of land. The circumstances of that case are not applicable to this project. Moreover, the issue in that case was not growth-inducement but rather the failure of the City of Pittsburg to evaluate the cumulative impacts of the foreseeable development which would be served by the roadway and utility extensions. The potential growth-inducing impacts of the project are analyzed in compliance with CEQA on pages 161-162 of the DEIR. The areas north and east of the project site are within the City and already developed. The areas to the immediate south and west are proposed for development as part of the Southwest Gateway Annexation proposal. That proposal is being processed by the City and the proposal is not linked to and does not depend on the project's development. The Southwest Gateway Annexation Proposal can move forward (if approved) even if this project does not. Furthermore, the project is consistent with the City Growth Management Plan. The project is in a Priority 3 area and it is appropriate for development at this time since all Priority 1 and 2 areas under the Plan are already developed. (See also Response D-1 above and the related response to the oral comments presented by Ann Cerney at the September 9, 2004 Planning Commission hearing on the DEIR, which is contained in Response H-3 below.)

Comment D-3:

This environmental impact report inadequately and cursorily discusses the cumulative impacts of the project and is thus flawed. (See guidelines 15355, 15355(a), 15355(b).)

Response D-3:

The DEIR includes a five-page presentation of cumulative impacts at pages 139 through 144, which applies the methodology prescribed in the CEQA Guidelines for the analysis of cumulative impacts. It also reflects the level of specificity prescribed by the Guidelines for cumulative analyses, which is not intended to reflect the same detail required for discussion of impacts resulting from the project itself. Although the comment cites the CEQA Guidelines, there is no specific information provided as to how the commenter believes that EIR fails to comply with the sections referenced. Without this information, it is not possible to provide further response to this comment. (See also the related response to the oral comments presented by Ann Cerney at the September 9, 2004 Planning Commission hearing on the DEIR, which is contained in Response H-4 below.)

Comment D-4:

This Draft Environmental Impact Report fails to fully address the project's impact on the City's policy to preserve a separator between the City of Stockton and the City of Lodi because it opens the quadrant of land and thus, accelerates the process of contingent loss of prime farmland. This is particularly noted when the fact that there is a proposal to develop housing on 385 acres South and West of the project, is taken into consideration. The further encroachment into areas that will make it more difficult for the City of Lodi to carry out its policy to preserve the Greenbelt is not addressed.

Response D-4:

Since the project site and adjacent lands to the west and south have long been designated for urban land uses in the City's General Plan, it is inaccurate to characterize the project as opening the quadrant of land to development. The long-standing commercial General Plan designation for the site is evidence that it is well-established City policy that this land be developed as part of the incremental growth of the City. Now that the lands to the east and north have been, or are in the process of being built-out, the time is now appropriate to consider development of the southeast portion of the City, including the project site, as the next step in the orderly growth of the City. In this context, it is important to note that since the lands to the south and west of the project are designated for urban land use in the General Plan, they could be developed at any time, with or without the project site being developed. This is underscored by the fact that the properties are not owned by the project proponents and have no connection to the development of the subject parcel. Thus it is not necessary that the approval and development of the project occur prior to the development of these adjacent lands, so it cannot be claimed that the proposed project would open up the development of these lands.

It should also be noted that that the application that has been filed for the lands to the south and west is for annexation to the City, not for a specific development proposal. However, the City has included the potential development of this area in the analysis of Cumulative Impacts, commencing at page 139 of the DEIR.

With respect to the City's greenbelt, portions of the greenbelt have been formally identified and planned for to the northwest of the project site, but not to the west or southwest of the project site. However, it is generally acknowledged that the future greenbelt would likely be planned along the edge of the existing urban growth boundary to the west. Neither the proposed project nor the approval of the Southwest Gateway Annexation would compromise the City's ability to establish such a greenbelt along the planned western edge of the urbanized area of Lodi. (See also the related responses to the oral comments presented by Ann Cerney at the September 9, 2004 Planning Commission hearing on the DEIR, which are contained in Responses H-3 and H-4 below.)

Comment D-5:

The environmental impact report is inadequate in that significant and unavoidable impacts are identified with no attempt to mitigate.

Response D-5:

There are two significant and unavoidable impacts identified in the DEIR, namely impacts related to loss of prime farmland and impacts to regional air quality. As discussed in the DEIR and under Response A-3 above, it is not possible to provide direct mitigation for the loss of prime farmland. With respect to regional air quality, it is discussed in the DEIR that the regional nature of this problem makes it difficult to mitigate on a project-specific level, particularly in commercial projects. However, a few practical and feasible mitigations are available and these have been identified as mitigations in the DEIR, although their implementation would not reduce the air quality impact of the project to a less-than-significant level. Additional air quality mitigations suggested by the Air District in their comment letter to the DEIR (see item III. B. above) have been added to the EIR, as indicated in Section *V. REVISIONS TO THE TEXT OF THE DRAFT EIR*, and will be included in the conditions of project approval. Therefore, the City has considered and imposed feasible mitigation measures to lessen the significant unavoidable air quality impacts. (See also the related responses to the oral comments presented by Ann Cerney at the September 9, 2004 Planning Commission hearing on the DEIR, which are contained in Responses H-5 and H-6 below.)

E. RESPONSES TO COMMENTS FROM RICHARD EKLUND, DATED SEPTEMBER 17, 2004

Comment E-1:

Every Environmental Impact Report must explore feasible means to mitigate pollution generated by the project. The Lodi Shopping Center Draft EIR (www.lodi.gov) has a maximum estimated 5% mitigation (on-site TSM coordinator) for the project's added air pollution. This, despite the fact that the EIR Air Quality Section shows the project will produce more than 300% of the maximum vehicle pollution recommended by the County Air Quality District.

While not directly mitigating vehicle pollution, there could be total removal of air pollution associated with the project's electrical power generation. Our only means of preventing additional generation pollution is increasing renewable energy to match a portion of the new power required. This can be accomplished if the builder incorporates photovoltaic electric generation at the site equal in output to their expected peak electrical load.

This project would likely see a peak electrical load during hot summer days when maximum air conditioning is required. Connected to the grid through Lodi Electric, any excess power generated would reverse the shopping center site power meter. Pollution from old peaker generating units and other fossil fueled units would be reduced since maximum solar power output would occur during sunny hot days.

The builder has the option of installing the Photovoltaic panels on the roof of the complex (least expensive) or on automobile shade structures like those at Sacramento Airport and Expo Center. The shade structures would benefit both customers and the environment. Shading black asphalt parking lots would reduce heat islanding. Some other advantages are:

1. *Photovoltaic panels are currently guaranteed to maintain 90% of their rated output for 20 years. They can provide a fixed cost of electric generation for at least 20 years.*
2. *A 10% federal tax credit and a 15% California State tax credit are available.*
3. *Accelerated depreciation is available.*
4. *Tons of greenhouse gas (CO2) is avoided per year.*
5. *Zero electric generation pollution is produced.*
6. *Peak output of the system generally matches peak demands.*
7. *With high peak rates factored in, systems can have a simple payback of less than 15 years. Life cycle costing of energy should be treated like any other capital investment.*

Although it is argued that Lodi Electric has a large renewable component (32.16% eligible renewable) of its power generation currently, I believe that this requirement would only complement that policy. Solar photovoltaic power will prevent any increase in the non-renewable power content. Any excess renewable energy saved can go to other electric customers in the San Joaquin and Sacramento valley and help our regional air quality improvement efforts. We must start to overcome the organizational resistance to sustainable energy.

By pursuing solar energy, Lodi Planning Commission and City Council can lead the way and set a positive precedent for Lodi and the Valley. We can provide REAL MITIGATION of our rising Central Valley pollution. Ignoring this feasible choice punishes valley citizens' health and life quality.

Response E-1:

As discussed in the DEIR, the regional nature of the air quality problem makes it difficult to mitigate on a project-specific level, particularly in commercial projects. However, a few practical and feasible mitigations are available and these have been identified as mitigations in the DEIR, at pages 122 and 123. Additional air quality mitigations suggested by the Air District in their comment letter to the DEIR (see item III. B. above) have been added to the EIR, as indicated in Section *V. REVISIONS TO THE TEXT OF THE DRAFT EIR*, and will be included in the conditions of project approval. However, the implementation of all of these air quality mitigations would not reduce the air quality impact of the project to a less-than-significant level.

Regarding the issue of alternative energy sources as a means of reducing air emissions, it should be noted that non-vehicular emissions would comprise less than one percent of the total emissions generated by the project (see Table 11 on page 122 of the DEIR). (These include emissions sources such as lighting and space heating and cooling which are subject to some control on the part of the user, unlike vehicular emissions which are controlled entirely by federal and state regulations and auto manufacturers.) Thus alternative sources of electrical generation, such as photovoltaic cells, would have a very small effect in terms of reduction in air emissions associated with the project.

In themselves, non-vehicular emissions associated with the project would not approach any standards of significance for air quality impacts and, taken alone, would not require mitigation. However, it should be noted that Wal-Mart employs a number of energy conservation features in the design of its Supercenters (e.g., skylights, light-colored roofing material, energy-efficient lighting and HVAC systems, reuse of heat generated by refrigeration units to heat domestic water) which provide some reduction in overall use of energy from fossil-fuel generated electricity.

F. RESPONSES TO COMMENTS FROM HERUM CRABTREE BROWN, DATED SEPTEMBER 20, 2004

Comment F-1:

This office represents several Lodi residents, voters, property owners, and taxpayers vitally interested in the environmental integrity, economic well-being, and quality of life in Lodi. Our clients are particularly interested in Lodi discharging its public duty to satisfy the requirements of the California Environmental Quality Act. Generally speaking, the Lodi Shopping Center EIR is legally deficient and does not fulfill its duty as an informational document. Rather than certify the EIR, the City is requested to conduct a sufficient evaluation of the potential environmental effects and thereafter provide a new public review comment period.

Response F-1:

The general comment regarding the DEIR's legal deficiency is taken as an introductory remark, so no specific response is necessary or required. However, as discussed in detail in the following responses, the City of Lodi firmly believes that the DEIR is legally sufficient as written, and therefore no additional period of public review is warranted.

Comment F-2:

These comments are founded on the principle that an EIR acts as an informational document identifying potentially significant impacts of a project, as well as alternatives and mitigation measures necessary for informed decision-making (Pub.Res.C. §21002.1), and that an EIR's findings and conclusions must be supported by substantial evidence. Laurel Heights Improvement Ass'n v. Regents of the University of California (1988) 47 Cal.3d 376. As the State Supreme Court explains, an adequate EIR "must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences" and "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." Id. The EIR does not meet that threshold. For this reason, the EIR is not adequate for certification. Rather, significant revisions and additional information are necessary, followed by recirculation of the document pursuant to CEQA Guidelines §15088.5.

Response F-2:

The comment generally claims that the EIR's findings and conclusions are not supported by substantial evidence. The commentator does not provide any specific examples of instances where a conclusion in the DEIR is not supported by substantial evidence. The City of Lodi stands by its position that the EIR meets the standards of adequacy for EIRs as set forth in the CEQA statute and the CEQA Guidelines. The FEIR also does not contain any new significant information of a new significant or substantially more severe project impact, or meet any other standard under CEQA Guidelines section 15088.5 which would require recirculation.

Comment F-3:

I. IMPACTS TO AGRICULTURAL LANDS ARE NOT ADEQUATELY EVALUATED OR MITIGATED

A. Loss of Prime Agricultural Land Must be Mitigated

The Draft EIR misevaluates the significant adverse impact of the loss of Prime Agricultural Land and fails to provide adequate mitigation measures available to reduce the significance of this environmental impact.

According to the EIR there are no feasible mitigation measures available to reduce the impact of agricultural land conversion to a less-than-significant level and, therefore, no mitigation is required. The feasibility of mitigation measures is dismissed for a variety of reasons. For example, the EIR observes:

- *"The City of Lodi General Plan contains no policies or implementation programs which require mitigation or offsets for the conversion of prime farmland." EIR at p. 29.*

- *"There are several project-specific measures available that address the protection of prime agricultural land. Since none of these measures can create new prime farmland, they cannot avoid or reduce the impact of farmland conversion to a less-than-significant level. Therefore, implementation of any or all of the following measures [Agricultural Conservation Easement, Farmland Security Zone, and Right-to-Farm Deed Restrictions] would not avoid the significant unavoidable impact to agricultural resources resulting from the development of the proposed project." EIR at p. 30.*

- *"Although the conversion of prime agricultural land to urban uses cannot be mitigated or lessened, there are a number of measures available for the overall protection of existing agriculture [sic]...These measures are discussed below for informational purposes only, given that none of these measures would mitigate or lessen the project's significant unmitigable impact upon agricultural resources." (Emphasis added) EIR at p. 29.*

The EIR concludes agricultural conservation easements are infeasible because: (1) "they do no constitute true mitigation since they do not create replacement acreage of prime farmland"; (2) "this requires a nexus...between the amount of the fee and the burden of the project" and involves "complex and unresolved issues"; and, (3) "The City of Lodi General Plan currently contains no policy or implementation language regarding the establishment of agricultural easements."

The evaluation and method of determining that these mitigation measures are infeasible contradicts the methodology recently embraced by the Third District Court of Appeal in a case entitled South County Citizens for Responsible Growth v. City of Elk Grove (no. C042302 (2004) WL 219789). A copy of the February 2004 opinion is attached hereto and incorporated herein as Exhibit "A" for your review.

We understand that the South County Citizens decision was not published and therefore does not amount to a binding precedent, nor do we encourage Lodi to consider it for that purpose. However, it is the most recent analysis by the Third District Court of Appeal concerning a city's conclusion that converting farmland to urban uses was a significant and unavoidable effect and that no feasible mitigation measures exist to lessen the effect. More specifically, the City of Elk Grove embraced a similar theory as advanced by Lodi's EIR and the Third District Court of Appeal directly repudiated this theory. Thus, because the City of Lodi sits within the jurisdictional boundaries of the Third District Court of Appeal, an understanding of that court's methodology should be helpful to the City in conducting an adequate analysis of the agricultural conversion issues.

Indeed, a few representative passages from the opinion point out how dramatically the draft EIR contradicts the Appellate Court:

> *"Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, conservation easements can diminish the development pressure created by conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the domino effect created by the project. In this respect, conservation easements fall well within the concept of mitigation under CEQA." (Emphasis added.)*
>
> ***
>
> *"The City need not wait to impose a fee until after it adopts an ordinance to implement a fee program. The City can impose an in-lieu fee on an ad-hoc basis provided the fee satisfies the Nollan/Dolan standard."*
>
> ***
>
> *"However, neither the City nor the County have established such a [agricultural conservation fee] program. Hence, EIR discussion and public response are necessary to determine the appropriate amount of the mitigation fee to be assessed... These are matters that can and should be addressed through an EIR with an opportunity for public response. (Emphasis added.)*

This EIR does not adequately consider the feasibility of various mitigation measures that should lessen the severity of the impact from converting agricultural land to urban uses. The conclusion that such mitigation may not reduce the impacts to "less-than-significant" levels is insufficient to eliminate the need for some form of feasible mitigation. Accordingly, additional mitigation measures should be included and the EIR should be recirculated for further review prior to certification.

Response F-3:

First, with respect to issue of partial mitigation discussed in the last paragraph of the comment, CEQA is clear that feasible mitigations to lessen the impact should be identified and implemented, even if those mitigations would not reduce the impact to a less-than-significant level. This principle is applied in the DEIR air quality analysis, where a number of mitigation measures are identified, recognizing that their implementation would not reduce the impact to less-than-significant levels. Therefore, the statement in the comment that EIR dismisses the need for mitigation because it could not fully mitigate the impact is inaccurate and misleading.

The point of the EIR discussion on this issue is that it is not possible to provide direct mitigation for the loss of a specific parcel of agricultural land, either in whole or in part. Unlike other natural resources such as wildlife habitat, prime farmland cannot be created where none previously existed. Therefore, replacement mitigation through the creation of equivalent acreage elsewhere is not feasible. Other techniques related to the overall protection of agricultural land, such as conservation easements, are commonly employed, and are discussed in the DEIR for informational purposes only. In the case of conservation easements, this technique is used to protect other existing agricultural lands and does not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land

from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Furthermore, it would be speculative to assume the conversion of some specific parcel, unless it is already proposed or planned for development. ["If the nature of future development is nonspecific and uncertain, an EIR need not engage in sheer speculation as to future environmental consequences" (*Alliance of Small Emitters/Metal Indus. v. South Coast Air Quality Mgmt. Dist.* (1997) 60 Cal.App.4th 55, 67; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112). Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered project-specific mitigation for agricultural conversions due to a development project. While the overall objective of preserving agricultural land may be desirable from a public policy standpoint, its implementation through the EIR process is not appropriate or required under CEQA.

With respect to the legal arguments surrounding the issue of whether conservation easements constitute appropriate mitigation for loss of prime farmland, the commentator's reliance on an unpublished case is inappropriate. As the commentator notes, unpublished cases have no legal significance (except to the parties in the case) and establish no legal precedent.[1] The only binding legal authority on the issue of mitigation for the loss of agricultural lands is *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, which provides legal support for the DEIR's conclusion that mitigation of the loss of agricultural land is infeasible. In *Defend the Bay*, the Court of Appeal reviewed the City of Irvine's EIR for development of a 7,743-acre site that included conversion of 3,100 acres of prime agricultural land. The EIR concluded that conversion of 3,100 acres of prime farmland is a "significant unavoidable adverse impact," and that mitigation of the impact was not feasible. Because the conclusions in the EIR were supported by evidence in the record, the court upheld the finding of infeasibility of mitigation even though project opponents presented contrary arguments and evidence. Since the DEIR's conclusion is based on detailed and substantial evidence, it will be upheld by the court under the *Defend the Bay* standard.

In conclusion, the City of Lodi stands by the DEIR as meeting the adequacy standards of CEQA with respect to the agricultural conversion issue. Therefore, revision and recirculation of the DEIR, as suggested in the comment, is not warranted or necessary.

Comment F-4:

B. The EIR's Conclusion that Land Use Compatibility Impacts Between Urban and Agricultural Uses is not Supported by Evidence

The EIR concludes that the conflict between the proposed urban use and continuing agricultural operations would be less than significant because: (1) the design of the project causes a buffer area of 400 to 600 feet (EIR at p. 33); (2) "The project itself will include a 10-foot high masonry wall along the

[1] It is interesting to note that another unpublished case supports the DEIR's conclusion (*Friends of the Kangaroo Rat v. California Department of Corrections* (2003) 111 Cal.App.4th 1400). The decision in the "Kangaroo Rat" case follows the same line of reasoning as set forth above, i.e., conservation easements do not constitute mitigation for loss of prime agricultural land because they cover land that is already being farmed and because they do not create new agricultural land. Although the "Kangaroo Rat" case was recently depublished, it nonetheless provides support for the City's position on this issue.

southerly two-thirds of the western site boundary, which will provide additional screening from windblown dust" and "potential conflicts will be reduced by the 8-foot masonry wall planned for the entire length of the southern project boundary" (EIR at p. 34): and (3) the adjoining agricultural area is "designated for residential development in the City's General Plan and are the subject of a pending annexation application...In light of the above factors and considerations, the potential impacts due to agricultural-urban conflicts associated with the project would be less-than-significant. (EIR at p.34)

This analysis is fundamentally deficient on several counts. First the EIR does not explain how a 400 to 600 foot ad hoc "buffer" will actually reduce impacts to agriculture. Stated slightly differently, the EIR does not offer any evidence to support the conclusion that a buffer zone of this size is sufficient to reduce the potential land use conflicts to less-than-significant levels.

Second, the EIR fails to cite any evidence that either a 10-foot or eight-foot masonry wall will prevent fugitive dust or pesticides from traveling to the proposed shopping center parking lot or into the stores' ventilation systems. Moreover, the EIR does not actually include construction of these walls as mitigation. (The EIR actually concludes "No mitigation required.") Therefore, assuming, arguendo, that these walls may be effective in reducing the identified impacts, if these design implements are not included as mitigation measures, how can the EIR conclude that impacts will be less-than-significant?

Finally, concerning the EIR's statement that the adjoining agricultural land is subject to development, the document fails to disclose when a development application would be filed or to discuss the timing of implementing development should this future application be approved. Thus the approval of the application and the timing of development are speculative and uncertain, and cannot support the draft EIR's conclusion that this impact is less than significant. Moreover, such logic is akin to relying on a governmental land use restriction to conclude that future development will not occur. This line of reasoning has been rejected by appellate courts (see Stanislaus Audubon Society v. County of Stanislaus (1995) 39 Cal.App.4th 144). Thus, just as a public agency may not rely on a Williamson Act contract to conclude that future growth will not occur, the City of Lodi may not rely on the fact that a residential development application has been filed to conclude that land use incompatibility between agricultural and urban uses will not be significant.

The EIR must provide additional analysis, including citations to substantial evidence, regarding its conclusions on the significance of land use conflicts prior to certification.

Response F-4:

It is worthwhile repeating the point made in the DEIR that potential agricultural-urban conflicts involve two distinct but related types of effects – first, the potential impact of agricultural operations upon adjacent urban land uses; and second, the potential impact of urban development upon adjacent agricultural operations. With respect to agricultural impacts on urban uses, it is stated in two places in the DEIR discussion that, in general, commercial retail uses are considerably less sensitive to adjacent agricultural operations than residential development. This is because individuals spend much more time at home than they do at shopping centers, and because the most sensitive or vulnerable individuals, such as children, the elderly, and the infirm are more exposed to adjacent agricultural effects such as dust and pesticide drift at home, particularly children who spend time outdoors. Similarly, the effects of commercial land uses upon adjacent agricultural operations would be generally less than residential uses because there would be a lower potential for trespassing (i.e., by children from adjacent homes), and because the level of complaints would be lower due to the transient nature of commercial shopping versus the larger amounts of time spent at home. The latter effect upon agricultural operations would be somewhat ameliorated through operation of the City's Right-to-Farm Ordinance, by which all

adjacent owners acknowledge and accept the effects associated with adjacent agricultural operations.

With respect to the proposed project, the potential for significant urban-agricultural conflicts would be minimal without any barriers or buffers. Since plowing and discing occurs about twice per year, the incidence of dust generation would be very infrequent even if it did occur on windy days. In addition, the prevailing wind direction is from the northwest, so only the southwest portion of the project site would be affected by wind-blown dust under normal conditions. Given the proximity of urban uses, application of pesticides would occur at ground level and not through aerial spraying, and again would occur one or two times per year at most. Thus, given the very infrequent potential for any effects of adjacent agricultural operations to occur at the project site, it is unlikely that these effects could be characterized as significant, even in the absence of buffers or barriers. Furthermore, if the pending Southwest Gateway Annexation proposal is approved, adjacent agricultural uses will be phased out as development occurs, so any potential project conflict will be short-term.

Regarding the second paragraph of the comment, it should be noted that agricultural setback zones or buffers with a minimum width of 150 feet are considered to provide an adequate separation between agricultural and urban uses. This is the minimum width of the agricultural buffer or greenbelt specified in the City of Davis General Plan (in which the designated greenbelt ranges in width from 150 feet to 550 feet), which is considered exemplary by the American Farmland Trust. As noted in the DEIR at page 30, the City of Lodi Westside Facilities Master Plan includes a greenbelt along the City's northwestern growth boundary. This greenbelt is intended to provide a buffer between the urbanized area of Lodi and the adjacent agricultural lands in the unincorporated County, and ranges in width from 200 feet to approximately 350 feet. In light of these facts, a *de facto* buffer of 400 to 600 feet along most of the project's western boundary would be considered to provide adequate separation between the project and nearby agricultural operations.

With respect to the third paragraph of the comment, the project as proposed includes a 10-foot masonry wall along most of the western boundary and an 8-foot masonry wall along the entire southern boundary, both of which are clearly indicated on the project site plan shown in Figure 6 (page 9) of the DEIR. Although the potential for windblown dust or pesticide drift at the project site would be minimal, as discussed above, the presence of the walls would provide some incidental blocking, particularly under windy conditions. As to the comment that the EIR failed to identify the walls as mitigation – first, it is unlikely that they would be needed as mitigation since the impact would not be significant; and second, it is not necessary to require as mitigation an element which is proposed as part of the project, since its implementation would be ensured through the City's approval of project site plans and improvement plans.

With respect to the final point of the comment, relating to the timing of future residential development adjacent to the south and west, this discussion in the DEIR was primarily provided for informational purposes and should not be construed as essential to the conclusion of less-than-significant impact, which it is not.

Comment F-5:

II. THE EIR MISEVALUATES THE URBAN DECAY IMPACT

The EIR fails to provide a good-faith analysis of the project's potential to cause physical deterioration in the form of urban decay. Rather, the EIR summarily concludes that "blight" will not result from this Project, and therefore the impact is less-than-significant. This conclusion is flawed in several ways.

A. The "Blight" Standard is Incorrectly Employed

In assessing physical impacts from over-storing Lodi, the EIR adopts a limited and constrictive Health & Safety Code definition of "Blight" as its basis for analysis. This definition (and standard) applies where a City desires to establish a redevelopment district; it is too constrictive for a CEQA assessment, which should analyze whether potential physical deterioration or decay – not the more extreme blight – may occur as a result of the project. No authority supports equating urban decay with redevelopment blight.

Response F-5:

The DEIR applies the Health & Safety Code definition because neither the CEQA statute nor the Guidelines define "physical deterioration" as such, and the "blight" definition is the closest approximation in state law. It is noted that the commentator does not offer an alternative definition, other than to repeat the CEQA language of "physical deterioration." In any event, this subject is moot with respect to the proposed project since no business closures are anticipated which could give rise to any physical deterioration, regardless of the definition. Nevertheless, in an effort to be responsive to the comment, it is noted that court cases have ruled that "significant business closures" resulting in "physical deterioration of a downtown area" should be studied as a significant environmental impact if there is substantial evidence to substantiate that these impacts are caused by economic effects of the project (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446.) Multiple business closures and physical deterioration of an area, at a minimum, are required to even consider whether the impact is significant. So, it is clear that the courts have created a high threshold for establishing a significant environmental effect based on economic impacts. There is no substantial evidence that multiple business closures concentrated in a single area would occur as a result of the economic effects of the project.

Comment F-6:

B. Substantial Evidence Indicates Store Closures Will Occur

The EIR summarily concludes, "no business closures are likely to occur as a result of the project" and states "there is no evidence to suggest that building vacancies would occur or that a chain of causation would ensue that would result in substantial physical deterioration of the properties..." (EIR at p. 25) This conclusion is not supported by evidence.

Rather, Appendix B provides, "the addition of Vintner's Square and the Lodi Shopping Center at the intersection's four corners will create an oversupply of nearly 1.1 million SF of commercial space that will include a discount store, a superstore, a big box home center, and two stand alone supermarkets"

(emphasis added). Thus, the evidence indicates that Lodi is already over-stored and the EIR is incorrect in nakedly concluding that adding 339,000+ square feet of new retail will not cause stores to close.

Substantial evidence supporting a conclusion that the store closures will occur is found in the enclosed report entitled "Wal-Mart's Impacts on the American Supermarket Industry" prepared by Dr. David Rogers of DSR Marketing Systems and dated February 10, 2004. (This document is attached as Exhibit "B.") Based on extensive studies of the Oklahoma City area market, (where Wal-Mart built 10 Supercenters between 1997 and 2003) Dr. Rogers concludes, "it is estimated that every new Wal-Mart Supercenter will ultimately close two (2) supermarkets." Thus, contrary to the EIR's conclusions, evidence does exist to indicate that "business closures are likely to occur as a result of the project" and there is a contrary conclusion is not supported by substantial evidence.

Further, assuming supermarkets do close, how will that affect anchor and non-anchor co-tenants?

Response F-6:

It is not accurate to state that there is no evidence supporting the statement in the DEIR that "no business closures are likely to occur as a result of the project." This statement is based on the detailed economic analysis contained in the economic impact report on the project prepared by Applied Development Economics (ADE) which is contained in Appendix B of the DEIR. The economic impact report contains 22 pages of analysis, based on a thorough investigation of the existing retail market in Lodi, and drawing from ADE's considerable experience and knowledge of impacts to existing businesses associated with large new commercial projects entering a given market area. The findings of the study are summarized in Table 10 of the economic report, which indicates that the proposed project will take $36.2 million of sales away from existing stores. It is estimated that the proposed project will take $15.1 million of sales away from Lodi's established grocery stores. The data in Table 10 indicates that the proposed project will take 14 percent of sales away from the established pharmacies, 13 percent of sales away from existing restaurants, 11 percent of sales away from established grocery stores, 9 percent of sales away from existing fast food establishments, 6 percent of sales away from established discount stores, and 3 percent of sales away from other retail establishments. Essentially, the data analysis indicates that the development of the proposed project will result in a relatively small loss of revenue for existing businesses. As stated in the DEIR, these small reductions in sales are unlikely to result in any business closures, and as such there would be no ensuing building vacancies which could give rise to potential physical deterioration. While the comment challenges this analysis and its findings, it provides no discussion as to the purported deficiencies of the analysis, and offers no evidence or reasoned analysis which would refute its conclusions.

In the second paragraph of the comment, the quote from the economic report is incorrect and misleading. The quoted passage, on page 8 of the report, actually states that there will be "an overall supply of nearly 1.1 million SF" not an "oversupply of nearly 1.1 million SF" as erroneously quoted (emphasis added). Since the ensuing comment is based on this mischaracterization, it has no basis and thus does not require a response.

In the third paragraph of the comment, the Oklahoma study is given great weight and is even presented as "evidence" which is purported to refute the conclusions of the EIR's economic analysis and conclusions regarding the potential for business closures. However, the data in the Oklahoma report do not indicate that there will be any supermarket closures in Lodi as a result of a Wal-Mart Supercenter. While the Oklahoma study may be valid for Oklahoma, it has no direct relevance to the proposed project or the subject EIR analysis. This is because all markets are uniquely local, each having its own mix of commercial uses, as well as distinct locational factors and dynamics of competition. If the conclusions of the Oklahoma study were so readily

transferable to the Lodi market, there would be no need to perform localized economic impact analyses of any kind.

The standard under CEQA is whether there is **substantial evidence** that economic effects of the project on specific businesses will cause reasonably foreseeable significant environmental impacts *(Friends of Davis v. City of Davis (2000) 83 Cal.App.4th 1004)*. Substantial evidence consists of "facts, reasonable assumptions predicated on facts, and expert opinion supported by facts" (Guidelines Section 15384). "Argument, speculation, or unsubstantiated opinion" is not substantial evidence (*Id*). The only reliable substantial evidence on the economic impacts of the project and its potential "blighting" impacts on Lodi is the ADE report. The Oklahoma study and commentator's non-expert argument and opinions do not meet the CEQA standard for substantial evidence. Even if the material submitted by the commentator had direct relevance to the issue, the City has the discretion to weigh the conflicting information and rely on the ADE report to support its conclusion that the project would not result in a significant physical effect.

Regarding the final statement in this comment, there is no reason to assume that any supermarket closures will occur. In fact, the economic impact report states that given the relatively small revenue losses that would be sustained by any given supermarket, it is unlikely that any of these stores would close. To assume otherwise in the absence of supporting evidence or analysis would be speculative and therefore would have no place in a CEQA document.

The analysis of sales from grocery stores in Lodi was provided using sales tax data available. However, the sales tax data which the City collects from individual businesses is confidential, which the City is prohibited from disclosing by law. Therefore, a more detailed analysis of individual supermarkets in Lodi is not possible based on the data which is publicly available. However, in an effort to obtain the necessary data, ADE requested specific sales data from each grocery company doing business in Lodi. As of late October 2004, only one company (Raley's) had provided the requested sales information, and four companies (Safeway, Albertson's, Save-Mart and Apple Market) indicated that they would not release the requested sales data. No responses were received from the remaining grocery companies.

As discussed in ADE's report (contained in Appendix B of the DEIR), the addition of 60,000 square feet of grocery sales area within the Supercenter will result in an average loss of 11 percent to the existing supermarkets in Lodi, but that this lost revenue will be regained through continued population and housing growth in the area. Since the only store-specific information available was for Raley's, it was only possible to perform a store-specific analysis for that supermarket, as follows. Based on sales figures provided by Raley's, the Lodi Raley's earns $396 per square foot, which is well above the Lodi average of $369 per square foot for supermarkets. Assuming Raley's revenue declines by 11 percent due to the Supercenter (per the average loss estimated for Lodi supermarkets), the revenue for the Lodi Raley's would decline to about $352 per square foot in the short term. This is slightly below the current average revenue for Lodi supermarkets but above the national average of $347 per square foot for supermarkets. As such, this short-term reduction in revenue would not have a substantial adverse effect on the operation of the Lodi Raley's. There is no evidence that the Lodi Raley's would cease operation as a result of competition from the Wal-Mart Supercenter. While there is no store-specific revenue data available for the other existing supermarkets in Lodi, it is expected that the analysis and conclusions would be similar for those remaining stores, and that no adverse impacts to the individual stores would occur.

Comment F-7:

C. No Evidence Supports the EIR's Assumption that the Project will Capture 100% of Lodi's Sales Leakage

The conclusion that businesses will not close is based on false and unrealistic assumptions: Section 3.2 of Appendix B assumes, without any data or authority, "the proposed Wal-Mart Supercenter will capture 100 percent of the spending leakages currently captured by Costco, at Hammer Lane in Stockton" and also assumes "the other retail space built at the proposed project will be designed to capture all remaining spending leakages..."

Thus, the EIR concludes that businesses will not close because the Project will derive much of its income from captured leakage, rather than from existing businesses. This assumption, therefore, is predicated on the notion that every Lodi resident who currently shops at Hammer Lane Costco will tear up his club membership card and do all of his retail shopping at the Lodi Supercenter instead. In addition to bordering on absurdity, this notion fails to note the major distinctions between a Costco and a Wal-Mart Supercenter: Costco is a membership warehouse club around 100,000 square feet in size which typically sells select items in bulk and does not include a supermarket component. A Wal-Mart Supercenter, on the other hand, is a non-membership discount superstore nearly twice the size of Costco which is comprised of a discount general merchandise store and a discount supermarket.

Essentially, the Project replaces the existing Lodi Wal-Mart Discount Store with a larger Supercenter that adds a supermarket and garden department. Stockton Costco does not include either of these components, therefore there is no reason to assume this store will capture any – let alone all – leakage to Stockton Costco. If the leakage is not being captured by the existing Wal-Mart Discount Store, what evidence suggests it will be captured by the Supercenter? This is akin to concluding all apparel-shopping leakage to stores such as Macy's and Dillard's in Stockton will be captured by the Supercenter. No evidence on the record supports either leakage capture conclusion. Accordingly, the EIR should be revised to make a full disclosure analysis of the Project's impacts to existing retailers.

Response F-7:

The quoted statement from the economic report is somewhat misleading because it omits the second statement in the referenced bullet point, which essentially states that if less than 100 percent of the leakage is captured, then the difference would come from businesses within Lodi. It is important to emphasize that the referenced statement only applies to the Discount Store category. As shown in Table 10 of the economic impact report (in Appendix B of the DEIR), the amount of the spending leakage to the Hammer Lane Costco is $4,050,000, all of which is assumed to be captured by the Supercenter. While Costcos and Wal-Mart Supercenters are very different in format, there is considerable overlap between them in terms of product types sold. There is no existing literature pertaining to the competitive relationship between Costco and Wal-Mart Supercenters. However, given the considerable distance from Lodi to the Hammer Lane Costco, it is reasonable to expect that the Supercenter will capture a significant amount of Lodi's current sales leakage to Costco. There is no basis for the commentator's assumption that the Supercenter will capture **none** of the leakage to the Stockton Costco. If one assumes, for the sake of discussion, that the Supercenter will capture only 50 percent of the existing sales leakage to the Hammer Lane Costco (which ADE believes is an overly conservative assumption), it follows that approximately $2,025,000 would be taken from existing businesses in Lodi, which would increase the amount taken from $6,450,000 (estimated in the ADE report) to $8,475,000. This would increase the percentage of lost revenue at existing discount stores in Lodi from 6

percent to 8 percent, which still represents a relatively small decline. The stores affected would be the existing Target and K-Mart stores, and not small locally-owned stores. There is no evidence to suggest that an 8-percent drop in revenue at these chain stores would result in their closure. (While K-Mart could be subject to closure at any time, as has occurred elsewhere, any decision to do so would be related to corporate-wide problems and would not be due to increased competition in the Lodi market.) Therefore, the report's and the EIR's conclusions with respect to business closures would remain unchanged even under the conditions discussed above.

Comment F-8:

D. Evidence Indicates the Vacated Discount Store Will Remain Vacant for an Extended Period

Finally, the EIR's analysis of the impacts of the vacant 120,000 square foot Lodi Wal-Mart Discount Store which will result from this Project is inadequate. Essentially, the EIR concludes that although the store will be vacated, and although "the other tenants of the plaza could be adversely affected by a prolonged vacancy," the space will likely be filled with new tenants because the Project Applicant also owns the Sunwest Plaza Shopping Center and "has a strong financial incentive to re-tenant the space." This conclusion is flawed in two ways. First, no evidence supports this conclusion; second, evidence indicates that the space is likely to remain vacant for an extended period of time.

The EIR does not indicate when Wal-Mart's lease in the Sunwest Plaza expires, nor does it indicate that Wal-Mart would be willing to allow a new tenant to take over the space. Moreover, even if Wal-Mart were amenable to a new tenant in the space, what evidence indicates any tenants would be willing to lease a 120,000 square foot anchor space in a shopping center forced to compete against a new Supercenter-anchored shopping center across the street? On September 15, 2004, the Wall Street Journal ran an article entitled "Wal-Mart's Surge Leaves Dead Stores Behind" (a copy of that article is attached hereto as Exhibit "C"). As the WSJ article explains:

> *"Many big boxes remain on the market for years. In Clinton, Miss., a Wal-Mart larger than two football fields [about the size of the Lodi Wal-Mart] stood vacant for four years before it recently was demolished. A Wal-Mart in Bardstown, Ky., remained empty for nearly 10 years before a flea market moved in."*

Prolonged vacancies, in fact, are sometimes caused by Wal-Mart's own economic incentive.

> *"Finding new tenants for big properties isn't easy. Sometimes the very company that abandoned a store blocks a prospective new occupant. Wal-Mart in particular sometimes creates roadblocks when other discount merchandisers or supermarkets have expressed interest in its shuttered buildings." (Emphasis added)*

Wal-Mart spokesman Bob McAdam explains that the Company is not receptive to allowing competing retailers to take over vacated space. "There are times when it's in our interest to get the property moving faster," he says, "but we're certainly not going to give a competitor an advantage."

Thus, the EIR is devoid of evidence to support its naked conclusion that the vacated Sunwest Plaza store will re-tenant quickly. No evidence indicates that Wal-Mart would not continue to pay rent for a number of years to keep the Sunwest Plaza space from falling into the hands of a "competitor." While this may provide a financial benefit to both the out-of-state tenant and the out-of-town landlord, the people of the City of Lodi are adversely impacted by the extended vacancy of this anchor store. Based on the evidence presented here, and the omission of relevant evidence in the EIR, the EIR is not adequate for certification.

Response F-8:

Browman Development Company (BDC) has agreed to buy the existing store from Wal-Mart and BDC will be responsible for re-tenanting the existing store after it is vacated by Wal-Mart upon the opening of the new Supercenter. In any event, the City staff have been very clear that it will be a condition of project approval that no building permits shall be issued for the new Wal-Mart Supercenter until a tenant has been secured for the existing Wal-Mart store. This will ensure that there will be no long-term vacancy of the existing Wal-Mart store as a result of the relocation of Wal-Mart to the new center. Since the existing Wal-Mart will not close until the new Supercenter is completed and open for business, there may be a time lag before the opening of the new retail operation to allow for internal store modifications, installation of fixtures, stocking of merchandise, and other logistical requirements. This is not expected to take more than eight months to a year (due to plan check requirements and completion of tenant improvements), which will not be sufficient time to result in physical deterioration of the building.

Comment F-9:

III. THE EIR MISEVALUATES THE TRAFFIC IMPACT

The EIR's analysis of traffic impacts is insufficient. The EIR generally under predicts the traffic that will be generated by this project. The EIR over-estimates "pass-by" rates, thereby under predicting actual traffic (Remember, the EIR also concludes that this Project will capture all Lodi retail leakage – creating a huge traffic draw to this Project). Moreover, evidence does not indicate that the EIR's traffic analysis evaluates the fact that this Project will be open for retail sales 24 hours per day, 7 days per week. This all hours format will generate more traffic than a regular retail store or even a retail use with "long hours." Moreover, the EIR touts this Project as of "regional" draw – thus, other relevant regional intersections, such as I-5 and Hwy 12 and Hwy 99 and Kettleman Lane should be evaluated. The EIR does not disclose the impacts to these intersections which will likely be affected by this Project.

In addition, the EIR's defective traffic analysis results in an inadequate analysis of air pollution and health impacts related to auto-emissions.

Also of concern, the EIR does not discuss the potential energy impacts of the proposed Project including energy consumption of various fuel types.

For these reasons, the EIR should be revised and recirculated to fulfill its role as an informational document.

Response F-9:

The following response is based on information provided by Fehr & Peers Associates, the consultants who prepared the traffic impact study for the proposed project. The Trip Generation analysis completed for the proposed project was based on a conservative approach of applying the ITE (Institute of Transportation Engineers) trip generation rates applicable to each individual land use type proposed in the project (e.g., 'Free Standing Discount Store', 'Fast Food Restaurant with Drive Through', 'Pharmacy with Drive Through', etc.) for the critical AM and PM peak hour commute periods. It is important to note that an acceptable alternative method of determining trip generation for the project would be to apply the ITE rates for 'Shopping Center' which would show significantly fewer trips generated by the project, and project-generated traffic on the

surrounding roadway network, than the more conservative method that was applied. The pass-by rates used in the analysis are industry standards and were reviewed and determined to be reasonable by the City of Lodi and Caltrans District 10. Therefore, the analysis and conclusions included in the traffic impact study are conservative.

As to the issue of hours of operation, the periods of real concern to any traffic impact study are the AM and PM peak periods, which is when the most traffic is present on surrounding roadways and when project impacts are most likely to occur. Accordingly, roadways and intersections are designed for peak operating conditions, and if project impacts occur during those periods, roadway improvements are generally identified as mitigations to restore service to acceptable levels. Although the Wal-Mart Supercenter would be open 24 hours per day, neither the background traffic volumes nor the project traffic generation during off-peak periods would approach those occurring during the peak weekday commute periods. Since the roadways and intersections are designed for peak hour conditions, they are adequate to handle traffic flows during non-peak times. As such, there is no requirement to study traffic impacts during non-peak hours since logic dictates that no impacts would occur during those periods.

Regarding the potential impacts to the freeway interchanges at Interstate 5/SR 12 and U.S. 99/Kettleman Lane, there is no doubt that a certain amount of traffic generated by the project would travel through these interchanges. However, these freeway exits are a substantial distance from the project site (8 miles west and 2 miles east, respectively), and represent only two locations among numerous intersections and routes which would be subject to some amount of project traffic. Since traffic generated by a project tends to radiate outward from the "generator," the effects of that traffic tend to be concentrated on roadways nearest to the source, and diminish with distance away from the source. The traffic impact study for the EIR determined that 8 existing intersections would receive a sufficient number of peak hour trips from the project as to warrant detailed level of service analysis. All but one of these intersections is located within ¼ mile of the project site, with the farthest intersection (Lower Sacramento Road/Harney Lane) located ¾ miles to the south. The impact analysis found that the project would not result in significant level of service impacts to any of the nearby intersections, with the exception of Lower Sacramento Road/Harney Lane in the unincorporated County, which is operating at unacceptable service levels under existing conditions due to the lack of needed traffic signals. In summary, given the very low number of project trips which would use the referenced freeway exits, and the acceptable operations of these interchanges under current conditions, the traffic generated by the project would not adversely affect levels of service at those facilities.

Regarding the comment on air quality, the traffic impact data upon which the air quality is based employs conservative (i.e., reasonable worst-case) trip generation factors, an approach which was determined to be valid by the Caltrans District 10 and the Lodi Public Works Department. As such, the air quality analysis also reflects this conservative approach, and therefore presents reasonable worst-case findings which more that meet CEQA standards of adequacy. (See Response F-10, below, for discussion of health effects.)

With regard to the energy issue, any requirements that environmental documents address energy consumption and impacts were removed from the CEQA Guidelines as part of the October 1998 amendments to the Guidelines.

Comment F-10:

IV. THE DRAFT EIR DID NOT DISCLOSE THE POTENTIAL PUBLIC HEALTH EFFECTS OF THE PROJECT

Health problems caused by projects should be discussed in an EIR [CEQA Guidelines §15126.2(a)] so that agencies can provide a "high-quality environment that at all times is healthful." Pub.Res.C §21000(b). The EIR does not perform this information disclosure responsibility. Although the EIR generally describes the characteristics of various air pollution related ailments, it makes no effort to quantify the impact to the general public.

Merely observing that air pollutants cause health problems and disclosing that the Project will increase total tonnage of such pollutant does not inform the public or decision-makers of the nature and magnitude of the public health effect flowing from the project. In particular, the EIR concludes that emissions from project-generated traffic would result in a significant effect in the form of pollution emissions affecting the entire air basin. What is the probability that members of the public will be afflicted with air pollution caused ailments due to the "significant and unavoidable effect"? The EIR does not provide enough information to tell the reader that increased tonnage by type of pollutant and the anticipated increase in public health problems resulting from this increased tonnage. As such, the EIR does not disclose the magnitude of the significant and unavoidable effect and must be significantly revises to do so.

Response F-10:

The following response is based on information provided by Donald Ballanti, Certified Consulting Meteorologist, who prepared the air quality analysis for the DEIR.

The commentator is requesting that a specific cause-and-effect linkage be established between the quantity of air pollution that will be directly or indirectly emitted by the project, and the magnitude of any public health effects which may ensue. While such linkages can be established for Toxic Air Contaminants (TACs) for which specific health risk factors have been established (e.g., diesel particulate, chlorinated compounds), no such direct correlations have been scientifically established for the air pollutants of concern to this project (e.g., ozone precursors and particulate matter). This is not to diminish the fact that pollution has well-documented health effects. For example, studies have shown that children who participated in several sports and lived in communities with high ozone levels were more likely to develop asthma than the same active children living in areas with less ozone pollution. Other studies have found a positive association between some volatile organic compounds and symptoms in asthmatic children. A large body of evidence has shown significant associations between measured levels of particulate matter outdoors and worsening of both asthma symptoms and acute and chronic bronchitis.

While these general relationships are known, it is not possible to perform a risk assessment for adverse health effect for regional pollutants such as ozone and particulate matter because no quantified causal relationship between ambient exposure and health effect has been established for these pollutants.

Quantification of direct impacts related to ozone and particulate matter is also impractical on the local scale because both pollutants are regional pollutants that are at least partially (in the case of particulate matter) or entirely (in the case of ozone) created in the atmosphere by photo-chemical reactions which are extremely complex. Thus, even if risk factors were available for ozone and

particulate matter (the pollutants most clearly documented as causing health effects in the San Joaquin Valley Air Basin), it would not be possible to estimate a project-caused ozone or particulate increment.

In addition, since the state and federal standards for ozone and particulate matter are based on regional pollutant concentrations, no individual project could result in an exceedance of these standards or even cause a measurable impact on regional pollution levels. Therefore, in order to establish quantified significance criteria for individual projects, the Air District has established mass emission thresholds for the pollutants of concern. While these thresholds represent levels which are considered by the Air District to be significant, these thresholds are not intended to imply that their exceedance would result in a public health problem or a quantifiable increase in the number of individuals adversely affected, or an increase in the frequency of air-quality related ailments.

Comment F-11:

V. THE DRAFT EIR FAILED TO ADEQUATELY CONSIDER OR DISCLOSE THE EFFECT TO PUBLIC SERVICES

The proposed project includes a 226,000+ square foot Wal-Mart Supercenter as the anchor tenant. According to recent studies, few Wal-Mart employees can afford health insurance. By industrial wide standards, Wal-Mart workers have one of the lowest rates of company sponsored health insurance coverage.

The benefits offered by Wal-Mart do not amount to a direct physical change to the environment. However, according to a San Diego County Taxpayers Association study, entitled "The Potential Economic and Fiscal Impact of Supercenters in San Diego: A Critical Analysis," each Wal-Mart worker who cannot afford health insurance will rely upon the local public health services at an annual cost of $250 to $1,300 per family member. The San Diego Taxpayers Association study concluded that this indirect demand on public services costs the taxpayers approximately $1,050,000 to $9,100,000 per year. A copy of the San Diego Taxpayers Association study is attached hereto as Exhibit "D."

This demand on public services should be, but is not, accounted for and evaluated in the EIR. Appendix G Section XIII a) of the CEQA Guidelines requires the following analysis for an adequate CEQA review:

XII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?
Police protection?
Schools?
Parks?
Other public facilities?

The San Joaquin County Hospital clearly qualifies as an "other public facility" and the evidence dictates that the demand for County hospital service will increase due to the construction of this Supercenter. Yet the EIR does not even provide a cursory mention of the potential effect to the County hospital. Assuming the San Diego Taxpayers Association study correctly indicates, an additional $1,000,000 to $9,000,000 drain on public health service resources, (and remember, no evidence indicates anything to the contrary) this may surely necessitate the need to construct, alter, or even close public health facilities in San Joaquin County.

Accordingly, by neglecting to evaluate the potential effect to the County hospital, the EIR does not serve its purpose as an informational document.

Response F-11:

In response to this comment, the following information was provided by a representative of Wal-Mart. Ninety percent of Wal-Mart employees (both full- and part-time) are covered by health insurance. Half of all employees are covered under Wal-Mart's plan and the remaining 40 percent have coverage from other sources such as spouses' plans, parents' plans (in the case of students), or Medicare (in the case of retirees who are supplementing their income by working at Wal-Mart). It is noted that of all employees covered under Wal-Mart's plan, 40 percent did not have any medical insurance before joining the company. (It should be noted that referenced San Diego study makes no attempt to identify the alternative sources of health insurance available to Wal-Mart employees, i.e., through family members' plans or Medicare, and also does not take into account how many new Wal-Mart employees may have been previously served by County health services.)

In addition, the comment is based on implicit assumptions which are highly questionable. First, it is assumed that future employees of the Wal-Mart Supercenter are currently employed elsewhere with full benefits, and that when these employees change jobs to Wal-Mart, these benefits will be lost resulting in a new burden to the County. Alternatively, future Wal-Mart employees represent individuals who currently live outside the County, and are receiving health services from other counties, and will relocate to San Joaquin County (just so they can work at the Lodi Wal-Mart) where they will demand the same health services. These assumptions are baseless and indefensible, particularly in light of the information provided in the preceding paragraph.

The information provided by Wal-Mart indicates that 10 percent of their employees do not have health insurance. For the proposed project, this would represent about 25 new employees (i.e., the Supercenter will increase Wal-Mart's local labor force by about 250 employees, from about 300 at the existing discount store to about 550 at the Supercenter). But even among those employees, some proportion would have been previously unemployed or underemployed prior to coming to Wal-Mart, and thus would not represent a new burden to the County health system. Therefore, the number of employees who may newly rely on the County for some portion of their health care would be no more than 25, and would likely be considerably fewer, since many of these employees would likely be existing County residents who already rely on the County for public health services. The impact of fewer than 25 people, on a health care system which serves a population of many thousands, would clearly not be substantial, and certainly would not trigger the need for physical expansions which could in turn result in indirect physical impacts attributable to the project (which would be the minimum requirement for an impact recognized under CEQA).

With respect to the final point, the comment refers to Appendix G of the CEQA Guidelines, which comprises the Initial Study Checklist. This checklist is a used as a screening tool to

determine which environmental topic areas and issues may be adversely affected by a given project under consideration, and to thereby narrow the range of issues which merit detailed analysis in an EIR. (This is a suggested checklist only, and all lead agencies are free to formulate their own checklists as they see fit, and many local checklists vary substantially from the sample provided in Appendix G.) In other words, analysis of all of the questions contained in the checklist is not required "for an adequate CEQA review," as stated in the comment, and it is highly misleading to suggest that it is.

In its initial scoping of issues to be evaluated in the DEIR, the City of Lodi consulted its Initial Study Checklist and concluded that "other public facilities" was a topic area that would not be subject to significant physical impacts to the environment as a result of the proposed project. As such, this topic was appropriately excluded from discussion in the DEIR. Nothing in the comment or material submitted by the commentator provides any evidence that significant impacts may occur to "other public facilities" as a result of the proposed project. As such, the City of Lodi reaffirms its original determination that this is not a subject that is necessary to be addressed in the EIR.

Comment F-12:

VI. THE EIR'S CUMULATIVE IMPACTS ANALYSIS MUST BE REVISED

The EIR omits relevant commercial projects from its analysis. CEQA Guidelines §15130(b)(1) requires that EIR establish a cumulative impacts baseline in one of two ways: Either by preparing a list of relevant projects or by using a related planning document. The standard conforms to CEQA's mandate that an EIR analyze "other closely related past, present, and reasonably foreseeable future projects." This EIR elects the "list of projects" method at page 140. However, this EIR inexplicably omits several relevant projects from its analysis. These projects include:

Relevant Projects Adjacent to Lodi Shopping Center Project Site

- *Safeway/Target shopping center located at NE corner of Lower Sacramento Road and Hwy 12.*
- *Sunwest Plaza (anchored by Wal-Mart discount store and Food-4-Less Supermarket) located at SE corner of Lower Sacramento Road and Hwy 12.*

Inclusion of these projects is necessary to provide an accurate analysis of cumulative traffic, air quality, health risks, energy consumption, urban decay, etc.

Relevant Projects Outside City Limits

The EIR states "there are no projects outside the control of the City of Lodi, i.e., unincorporated San Joaquin County, which could contribute to a considerable cumulative project effect." (EIR at p. 139) This conclusion is incorrect and is not supported by any evidence. The following projects outside the control of the City of Lodi have the potential to cause cumulatively significant impacts:

- *Wal-Mart Supercenter currently under construction at Holman Road and Hammer Lane in Stockton*

- *Park West Shopping Center recently opened at Eight Mile Road and I-5 in Stockton (anchored by Target, Kohl's, Petsmart, Sport Mart, and Borders Books)*

- *Recently approved Wal-Mart Supercenter on property adjacent to Park West Shopping Center in north Stockton*

- *Recently announced Sam's Club Membership Warehouse in north Stockton, also on property adjacent to the Park West Shopping Center*

- *Other applications and proposals to construct additional Wal-Mart Supercenters within San Joaquin County including Tracy, Manteca, and south Stockton.*

- *Recently approved Lent Ranch Mall in Elk Grove.*

Inclusion of these projects is necessary to provide an accurate analysis of cumulative regional traffic, air quality, health risks, energy consumption, etc., as well as regional and local urban decay.

Pursuant to Rural Landowners Association v. Lodi City Council (1983) 143 Cal.App.3rd 1013, 1023, omission of such information is prejudicial legal error and the EIR must be revised and recirculated prior to certification or project approval.

Response F-12:

With respect to the assertion that long-existing projects such as the nearby Safeway/Target shopping center and the Sunwest Plaza should be specifically included in the cumulative analysis, this makes little sense from a legal or practical standpoint. These shopping centers have existed for at least five years, and as such they clearly are part of the existing conditions surrounding the project. These and other existing land uses in the vicinity (including a number of other projects completed within the past five years) form part of the background or ambient condition for the EIR's analysis of traffic, air quality, noise, hydrology, and all other environmental topic areas. For example, since the traffic generated by these projects is already using the transportation network, this traffic is included in existing traffic counts which form the baseline of the traffic impact analysis and related studies of noise and air quality. To count them again as cumulative trips would represent double accounting which would be clearly erroneous and indefensible.

Contrary to the assertion of the commentator, the EIR is correct in stating that there are no projects in the unincorporated County which would contribute to a cumulatively substantial effect, when combined with the effects of the proposed project. The County Community Development Department staff was contacted for information on possible cumulative developments, and the clear response was that the County adheres scrupulously to its policy of not allowing urban density development in the unincorporated areas and that no such pending, approved, or foreseeable projects exist.

The commentator provides a list of pending and approved development projects in several cities (as far afield as western Tracy, over 30 miles from the project site) and states that these should have been included in the cumulative impact analysis, but ignores dozens of other pending and proposed projects in those rapidly growing cities. In addition, the comment fails to provide any reasoning or analysis as to how such distant projects could contribute to a cumulatively considerable effect associated with the project. This comment ignores the key CEQA phrase "closely related" which is even quoted at the outset of the comment. In fact, the search for other

cumulative projects need extend only so far as to include projects whose effects, when combined with those of the proposed project, could result in a "considerable" or significant cumulative impact. This geographic distance will vary depending on the discipline under consideration. For example, cumulatively substantial noise impacts would occur only within a very short distance of the project site, while cumulative hydrologic effects would include consideration of other projects within the project drainage area, and so forth. The DEIR considers an appropriate geographic range of projects for all of the disciplines under review.

With regard to the final point, *Rural Landowners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013 does not support the commentator's argument since it only revolves around the failure of an EIR to consider one adjacent project. That case says nothing about numerous and far-flung projects located throughout the region, and as such is not analogous or applicable to the present case, contrary to the assertion of the commentator.

Comment F-13:

VII. THE EIR'S ANALYSIS OF PROJECT ALTERNATIVES DOES NOT SATISFY THE MINIMUM REQUIREMENTS OF CEQA

Section 15126.5 of the CEQA Guidelines states, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly obtain most of the basic project objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." This EIR does not satisfy these requirements. This EIR includes only three project alternatives: (1) the "No Project Alternative" which is required by CEQA; (2) a Reduced Size Alternative; and (3) Alternative Location in an unincorporated area of San Joaquin County several miles from the City of Lodi. Simply stated, the three alternatives proposed do not provide a range of reasonable alternatives.

Response F-13:

The comment implies that there is some CEQA standard for minimum number of alternatives which should be evaluated in an EIR, which there is not. The only absolute requirement is that the No Project alternative be evaluated. Although CEQA does require consideration of alternative locations, it does not require a full evaluation of an alternative location if it can be demonstrated that none are feasible. There is certainly nothing in CEQA that indicates that the evaluation of one alternative location is inadequate.

The comment emphasizes the phrase "range of *reasonable* alternatives" – and indeed CEQA states that the alternative analysis is to be governed by the "rule of reason," which is taken to mean that the alternatives analysis is not to extend to a point that is beyond reason. In this case, the reasonable approach was to consider a broader range of six alternatives, each of which is discussed in detail on pages 146 through 148 of the DEIR. Three of these alternatives, namely: Alternative Land Use, Reduced Density Alternative, and an alternative project site within the City of Lodi, were rejected for reasons which are outlined in detail in the DEIR. The City of Lodi recognizes full well that the alternatives analysis is a key element of every EIR and does not take this matter lightly; however, the City also believes that it is not useful to engage in meaningless and unnecessary analysis in order to artificially fulfill some perceived quota. The City stands behind the EIR's alternatives analysis as being in full compliance with the letter and the spirit of CEQA.

Comment F-14:

A. The Reduced Size Alternative is not Properly Evaluated

The Reduced Size Alternative operates on the assumption that the sc would be constructed but that the remaining "pads" would not, and concludes that this alternative "would result in [only] a slight reduction in the levels of impact associated with the proposed project in several topic areas..." Why does the described reduced project alternative leave the Supercenter whole while slicing away at the remainder of the project? Under this proposal it is not surprising that many of the impacts would only be slightly reduced – the Supercenter, rather than the pads, is the principle [sic] cause of impacts such as traffic, air pollution, health risks, energy consumption, store closures, and the like. A good faith reduced project analysis would include a 40% reduction in the remaining pad development (from 113,098 square feet to 67,858 square feet) resulting in a 203,979 square foot development project. What would the impacts of this alternative be? The EIR does not provide an answer to this obvious and necessary question.

Instead of following this logical approach, the EIR keeps the Supercenter size at 100% and eliminates the remaining pad development entirely. No evidence supports this approach. In fact, because the EIR indicates that the Supercenter component of the Project is the principal source of impacts, and the pads are a secondary source of impacts, the principal component should certainly be reduced in this proposed alternative. The EIR should be revised to include a true reduced size alternative where all components of the Project – not just less profitable components are reduced in size.

Response F-14:

The Reduced Project Size Alternative includes the full Supercenter, as proposed, for one very practical reason. If the Supercenter were to be substantially reduced in size in order to accommodate ancillary retail pads on a smaller 24-acre site, it would not be significantly larger than the existing Wal-Mart (e.g., 136,000 s.f. versus 120,000 s.f.). Such an alternative might include floor areas for Wal-Mart and the retail pads which are proportionately equivalent to those in the proposed project; however, such an alternative would be impractical on its face since it would not make sense for Wal-Mart to move from one building to another nearby building which is not substantially greater in size. Without Wal-Mart as the main anchor of the project, it would be extremely difficult, if not impossible, to lease the ancillary retail pads, so the project would become entirely infeasible. The selection and evaluation of such a plainly artificial and infeasible alternative would not be reasonable or required under CEQA. Stated another way, the selection of the Supercenter as the sole occupant of the reduced project facilitated the identification of a reasonable and defensible reduced acreage (24 acres), which would also appear feasible since it is known that this is the minimum size required for the Supercenter. As such, this alternative meets the CEQA tests of reasonableness and feasibility, unlike the alternative retail configuration suggested in the comment.

As to the question of relative severity of impacts associated with the Reduced Project Size Alternative, compared to the retail configuration suggested in the comment, the response is that there would be no difference in impacts which would be significant and unavoidable (i.e., impacts to agricultural resources and regional air quality would not be reduced to less than significant levels under the suggested configuration). While the suggested configuration would likely result in a slightly lower traffic generation rate and air emissions rate than the alternative evaluated in the DEIR, this difference would not be substantial and would not change any of the conclusions of the DEIR analysis of this alternative. Therefore, the replacement of the DEIR alternative with

the suggested alternative is not necessary since it would not result in the avoidance or substantially greater reduction of impacts than the alternative evaluated in the DEIR. Moreover, it is important to note, as pointed out on page 147 of the DEIR, that under the Reduced Project Size alternative, the remaining undeveloped site acreage could (and probably would) still ultimately be developed for shopping center land use under the applicable General Plan designation and zoning district.

Comment F-15:

B. The Alternative Location Analysis is Deficient

Additionally, the alternative location analysis is flawed from the outset. Selecting only one alternative location is insufficient. The EIR claims that the only property with adequate General Plan and zoning designations is located in the unincorporated Flag City area. This is faulty logic.

First, existing land use designations should not dictate the selection of feasible alternative locations. After all, this proposed site was formerly designated for agricultural development and was not annexed (and zoned C-S) until 2001. Thus, existing land use designations can be changed and the EIR should consider alternative locations for this project. Second, the Flag City site is not located in the Lodi City Limits or its influence boundaries; therefore it could not carry the applicable General Plan and Land Use designations. Finally, it is pointless to search only for NCC designated and C-S zoned property. In fact, as discussed in greater detail below, "NCC" and "C-S" are improper designations for this Project. Thus, the EIR should be revised to evaluate potential sites where other land use designations exist or may be appropriate, and be recirculated for further public review.

Response F-15:

As discussed under Response F-14, above, there is no requirement in CEQA or the Guidelines that more than one alternative project location be evaluated. In fact, the Guidelines provide that it is acceptable for no alternative sites to be evaluated if none are feasible.

Regarding the criteria applied for the selection of potential alternative sites to be evaluated in the EIR, the existing General Plan designation is indeed a valid and appropriate consideration. The General Plan is intended as a serious and stable blueprint for future City development, and it provides certainty for both existing residents and prospective developers of vacant land. Since the City of Lodi General Plan is the product of a deliberative and comprehensive planning process, involving participation by the public and many stakeholders, it reflects the community's carefully considered intentions with respect to the future development of each parcel of land. To assert that an EIR should casually assume General Plan changes for the sake of the alternatives analysis shows lack of appreciation for the importance of the community planning process. Moreover, CEQA requires that EIRs consider each project's consistency with applicable plans and policies, with findings of inconsistency being analogous to significant impacts. So the commentator is in fact stating that it is acceptable to assume a significant impact for the sake of broadening the range of possible alternative sites. This does not comport with CEQA's purpose in requiring alternatives analyses, which is to identify alternatives for avoiding or lessening the project's impacts, not increasing or creating new impacts.

For further clarification, it should be noted that there are no undeveloped parcels of land within the Lodi City Limits which meet the 30-acre minimum parcel-size objective of the project, under any General Plan or zoning designation.

On the second point, the Flag City site was selected for evaluation because it was the nearest location to the City of Lodi which could logically accommodate the proposed development, given the presence at this location of most of the required infrastructure as well as compatible adjacent land uses. The DEIR states that although only a portion of the site has a General Plan designation (albeit not an identical designation to the proposed project site) which would allow the proposed uses, this alternative was presented nonetheless in order to "allow a comparison of locations..." There is no CEQA requirement that the search for alternative locations be confined to the jurisdiction where the proposed project is located. The City of Lodi stands by the adequacy of the EIR alternatives analysis, as written.

As to the final point regarding the appropriateness of the existing General Plan and zoning designations for the proposed project, a response to this comment is provided under Response F-16 below.

Comment F-16:

VIII. THE PROJECT IS INCONSISTENT WITH THE ZONING ORDINANCE AND GENERAL PLAN

The EIR summarily concludes that the Project is consistent with the "NCC" General Plan Designation and the "C-S" Zoning and therefore no mitigation is required. (See EIR at pp. 20-21.) Substantial evidence shows a contrary conclusion. According to the Lodi General Plan and Zoning Code, "NCC" is the incorrect General Plan designation and "C-S" is the incorrect zoning designation for this project.

A. The Project is Not Neighborhood or Locally-Oriented

Regarding the General Plan designation, the "NCC" designation "provides for neighborhood and locally oriented retail and service uses, multifamily residential units, public and quasi-public uses, and similar and compatible uses..." ([emphasis added] See Lodi General Plan at p. 2-2) To the contrary, the "GC" General Commercial designation "provides for land-intensive retail and wholesale commercial uses, public and quasi-public uses, and similar and compatible uses..." ([emphasis added] See Lodi General Plan at p. 2-3) Thus, according to the General Plan, the Project site caters to neighborhood and local commercial uses rather than land intensive retail uses.

Likewise, section 17.30.030 of the Zoning Code explains that uses permitted in the C-S zone are limited to "only those uses permitted in the C-1 neighborhood commercial district...except, that a department store, theater with a maximum seating capacity of four hundred and a cocktail lounge when operated in conjunction with a restaurant and opened only during restaurant hours..." (Emphasis added)

Thus, uses permitted in the C-S zone include uses permitted in the C-1 zone, department stores, theatres, and cocktail lounges. The uses permitted in the C-1 zone are limited to "Any retail business, trade, commercial enterprise or professional and business office use, undertaken for the purpose of rendering neighborhood service, but excluding other businesses of such character as are permitted in the C-2 commercial district or excluded therefrom." (Emphasis added)

The C-2 General Commercial District, then, is the catch-all. Uses permitted there include:

> *"Any other businesses or commercial use, but excluding industrial uses..."*

What does this mean? The C-S district allows development of commercial uses, but only for the purpose of rendering neighborhood service. This is also the case with the NCC land use designation. Substantial evidence shows that this Project does not fit that description. Specifically, at page 15, the EIR states a primary objective of the project is "to provide a commercial center that serves both the local and regional market area to attract customers and new retailers into the City of Lodi." (Emphasis added) In addition, page 6 of EIR Appendix B states as follows:

> *"The economic success of the proposed Lodi Shopping Center will depend on its ability to continue to attract customers from a very large geography that extends south to Hammer Lane in Stockton and north to the edge of the Sacramento County-San Joaquin County border." (Emphasis added)*

That is, this Project is designed to serve an intense regional, rather than a neighborhood, area, and is not appropriate for development on an NCC/C-S designated parcel. For this reason the Project is inconsistent with the General Plan and Zoning Code.

Response F-16:

It is incorrect that the DEIR "summarily concludes" that the project is consistent with the City's General Plan and Zoning Code. To the contrary, as stated on page 20 of the DEIR: "It has long been City of Lodi policy and practice that the types of retail uses proposed for the project are interpreted to be permitted under the 'NCC Neighborhood/Community Commercial" General Plan designation applicable to the site." In fact, over the past 10 years, successive Planning Commissions and City Councils have consistently approved commercial retail projects similar to the proposed project under the same General Plan and zoning designations. This includes the nearby Sunwest Plaza and Safeway/Target shopping center and the recently approved Vintner's Square project across Kettleman Lane. It is the City's position, as demonstrated by consistent practice in approving the above projects, that the applicable General Plan and zoning designations carry sufficient flexibility to encompass these projects, and that the City decision-makers have the necessary latitude to interpret these projects as being consistent with these General Plan and zoning designations. In addition, these decisions are consistent with General Plan Land Use policies such as: "City shall encourage new large-scale commercial centers to be located along major arterials and at intersections of major arterials and freeways" (General Plan Land Use and Growth Management Element, Goal E, Policy 3, p. 3-6). It is not the place of the Environmental Impact Report to second-guess these decisions, which are instead properly interpreted as policy direction by the City decision-makers, and provide ample evidence for purposes of the CEQA consistency analysis.

Comment F-17:

B. The Project is Not a "Department Store"

Moreover, although the Zoning Code says "department stores" are appropriate in the C-S zone, such statement still does not allow development of the Project in the C-S zone. Specifically, Zoning Code does not define "department store." However, the EIR states that this Project is subject to the "City's recently adopted Design Standards for Large Retail Establishments." (EIR at p. 13.) Those "recently adopted Design Standards" are codified at Chapter 17.58 of the Lodi Zoning Code and expressly apply to "Large Retail Developments" or "Superstores." They do not apply to "department stores." (See §17.58.010(a)). Thus, the City's zoning ordinance clearly distinguishes between "department stores" and "superstore" and the EIR's statements designate the anchor of this Project as the latter. Based on

this discrepancy, the proposed Project cannot be approved for development on this C-S zoned site as a "department store."

Moreover, even if the Project could be categorized as a department store, development of a regional-draw department store on NCC designated property would result in an inconsistency with the General Plan because the retail use would not be "neighborhood and locally oriented."

Response F-17

As discussed above, the City's position is that the project is consistent in all respects with General Plan and zoning designations applicable to the proposed project site. (See Response F-16, above, for further discussion.) The proposed Supercenter does constitute a "department store" under the City's interpretation of its zoning code. Department stores are allowed under the CS zoning for the site (Zoning Code section 17.30.030.) The recently enacted City Design Standards for Large Retail Establishments do not specifically exclude department stores from its application.

IV. COMMENTS ON DEIR PRESENTED AT THE PLANNING COMMISSION HEARING OF SEPTEMBER 9, 2004

G. RESPONSES TO COMMENTS FROM TREACY ELLIOTT, SMALL CITY PRESERVATION COMMITTEE

Comment G-1:

I have three concerns about the EIR. First, regarding economics, the EIR says that at least $31 Million is going to come right out of the pockets of existing businesses in Lodi.

Response G-1:

To place the numbers in perspective, it should be noted that the estimate of lost sales to the proposed project represents approximately 8.5 percent of total retail and service sales in Lodi. Some business will undergo greater losses and others will experience smaller losses. For example, it is estimated that general merchandise sales at existing stores will be reduced by 6 percent, while pharmacy sales will be reduced by 14 percent, while some retail categories will sustain little or no losses in revenue (e.g., personal services, business and professional services, financial institutions).

Comment G-2:

Second, there are two significant types of businesses not addressed that will be subject to major effects. This includes auto repair business since the project includes a 6,000 square-foot auto shop. Next, since the project use permit includes liquor sales, the project will affect wineries and liquor stores in the area. It wasn't a year ago that the Planning Commission was asking if we didn't have enough liquor licenses in town already – do we really need another one?

Response G-2:

This response was prepared in consultation with Applied Development Economics, the consultants who prepared the economic impact studies for the EIR. Since there are three tire and lube businesses and a number of additional auto repair businesses which provide tire and lube services in Lodi, the Wal-Mart "Tire and Lube Express" operation would have a small effect on any given existing business in this category. In addition, the Wal-Mart operation would be limited to tire installation, lube and oil changes, battery replacement and other incidental services, and would not perform auto repairs as such. Thus, Lodi's existing auto repair businesses, which provide a more comprehensive service than that provided at the Wal-Mart Supercenter, would not be greatly affected.

Regarding liquor sales, there are at least 10 existing liquor outlets in Lodi, in addition to grocery and convenience stores which also sell liquor. As such, Wal-Mart would have a small effect on any given existing liquor outlet. In fact, a small liquor store is a very different type of store than the Wal-Mart Supercenter. Lodi's existing small liquor stores compete with each other for convenience shopping. The Wal-Mart Supercenter will be competing with Target, Kmart,

Costco, and other big box retailers for the portion of consumer spending at big box establishments. It is true that the City reviewed the issue of capping the number of outlets that sell alcoholic beverages. However, the decision that was made was to not place a cap and review each request on a case-by-case basis. Since that time, the Planning Commission has approved all of the requests for Use Permits for the sale of alcoholic beverages.

Comment G-3:

The third concern is that there is pending legislation on the Governor's desk requiring that a thorough economic impact report be completed. I think that is crucial for Lodi – to have that thorough economic report. I don't think that what's been offered is thorough enough.

Response G-3:

The legislation referred to in the comment – SB 1056 – was vetoed by the Governor on September 18, 2004. However, as required by the City, specific studies of the economic impacts of the project were conducted (see Appendix B to Draft EIR).

As to the thoroughness of the economic analysis, the comment does not provide any specific instances of where the analysis should be more thorough. Without more information on the perceived deficiencies of the analysis, it is not possible to provide a specific response to this comment.

H. RESPONSES TO COMMENTS FROM ANN M. CERNEY, CITIZENS FOR OPEN GOVERNMENT

Comment H-1:

I am here as an individual and as a spokesperson for Citizens for Open Government. There are a great number of problems with this. I am going to address a few – I'm not going to suggest any kind of mitigation. I think that is up to the City to do as lead agency, and I believe you need to address the points that I am bringing.

Response H-1:

Since these comments are in the nature of introductory remarks, no specific response is necessary or required.

Comment H-2:

Regarding Section IV, pages 145 through 154, Alternatives to the Proposed Project. A proposed project description is at the heart of a land use proposal. There are two alternatives (that count) that are proposed; namely the size issue and the location issue. They vary considerably one from the other. In order to eliminate confusion as well as to demonstrate good faith to comply with CEQA, I and Citizens for Open Government invite the proponents to cure the EIRs flaws – fatal flaws, I believe, by withdrawing [the DEIR] from circulation, rewriting it, and reflecting thereby an accurate proposal with a specific

proposed project. It is premature and improper for the proponents of the project – and I recognize that our Planning Director has proffered this for practical purposes of procedure – however, we all know that the developer was the primary driver of the preparation. To propose the alternatives is really the job of the lead agency. The proper course is for the developer to tell us what they really want to do. Then the City can tell the developer what we really want to do.

Response H-2:

The comment addresses the issues of the Project Description and the Alternatives to the Proposed Project. It should be noted that a very detailed project description is presented on pages 2 through 15 of the DEIR, which includes figures showing the proposed site plan, building elevations, and landscape plan. This is the project which is proposed by the applicant and includes more than enough specificity and detail for the CEQA analysis of project impacts. While the project site plan and design may be refined slightly as a result of mitigations identified in the DEIR, and as a result of other modifications which may be required by City staff, such refinements will be minor and will not materially alter the analysis, conclusions, or findings of the DEIR. It should be noted that the project site plan, as presented in the DEIR, already incorporates significant modifications which were made at the request of City staff based on the recently adopted Design Standards for Large Retail Establishments as well as other considerations of site planning and design.

With respect to the identification of project alternatives, that process (as well as the remainder of the EIR impact evaluation) was directed solely by City staff without any input from the project applicant. The alternatives evaluated represent a "range of reasonable alternatives" as required by CEQA, and as such are intended to vary substantially from one another. There is no intention by either the City or the applicant to submit any of the evaluated project alternatives, or any other alternative, for approval in place of the proposed project as described in the beginning of the DEIR. (See also related discussions under Responses F-13 through F-15 above.)

It should be noted for the benefit of the commentator that the EIR was prepared at the direction of the City of Lodi with a consulting firm selected by the City and under the management of the Community Development Director. The only input received from the applicant was for the project description, associated exhibits and funding for the report.

Comment H-3:

With regard to growth-inducing factors, that analysis was not addressed correctly geographically. There are barriers to the north and east (Highway 12 and Lower Sacramento Road), while there are no barriers to the south and west, where there are no abutting roads. The EIR should acknowledge and fully discuss the growth-inducing effect of the parcel, which is located in rural area – which is surrounded on the south and west by farmland and rural County parcels. This would be the first urban development in this entire quadrant of land. The EIR should acknowledge and fully discuss this growth-inducing factor. The project essentially opens the urban use to this entire quadrant – arguably to Davis Road on the west, and certainly to Harney Lane the south, when you consider the 285 acres that there is already application for. For the EIR to ignore the proposed Gateway project of 285 acres – potentially as much as 1,500 residential units, if not more – a project with an existing application, as I have discussed, is to me incomprehensible.

Further, the tone, when discussing the growth-inducing elements, which CEQA identifies as a significant adverse effect, is a tone that suggests it is entirely a change for the better. This is after it first acknowledges, grudgingly, but glosses over the usurpation of prime agricultural land, traffic issues, loss

of habitat for species, etc., etc. The philosophy, on which it is based seems to be that to encourage more of the same is beneficial to the environment.

This section does not satisfy the criteria discussion that is mandated in case law for a project that is a catalyst for foreseeable future development. That can be found in Antioch vs. City of Antioch, a 1986 case, which is a standard case, one of the base ones for environmental reporting and preparation.

Response H-3:

The comment claims that the project would be growth-inducing by way of establishing a precedent for urban development within the southwest quadrant of Kettleman Lane and Lower Sacramento Road. In fact, the development of the project site and the anticipated near-term development of the adjacent lands to the south and west represent the implementation of a deliberate and comprehensive policy direction for the orderly development of the west side of Lodi. This policy direction was established thirteen years ago with the adoption of the current General Plan which has long designated the project site for commercial retail use and the adjacent lands for residential uses. However, given the City's strong adherence to land use policies which favor infill development and orderly expansion, the timing for development of these lands was considered premature until now. This issue is discussed in further detail in the DEIR at page 161, which concludes "the approval of the project would not establish a policy precedent for ad hoc expansion which was not planned through a comprehensive planning process." Moreover, the City's insistence on compact growth and the establishment and maintenance of a stable urban growth boundary will be far more effective in ensuring the long-term viability of agricultural operations, and preservation of rural lands beyond the City's boundaries, than blind and largely ineffectual opposition to any and all urban development.

It should also be noted that, contrary to the assertion in the comment, the effects of the Southwest Gateway Annexation are indeed considered in the DEIR. However, the effects of the development of this area are appropriately addressed under the analysis of Cumulative Impacts, commencing at page 139 of the DEIR.

The DEIR discussion of growth-inducing impact follows the analysis directed by the CEQA guidelines for such analysis. The analysis led to the conclusion that indeed the project would result in little or no growth inducement. The fact that the DEIR analysis found no significant adverse growth-inducing impacts should not be misconstrued as a "tone" that promotes the project, simply because the commentator disagrees with the analysis and its conclusions.

The reference to the Antioch vs. City of Antioch case is incorrect and should have been *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, in which the defendant was actually the City of Pittsburg. While it was a landmark case almost 20 years ago, it is based on a fairly narrow set of facts. The case involves the adoption of a Negative Declaration by the City of Pittsburg for the extension of a roadway and utilities through a large area of vacant land. The Negative Declaration was successfully challenged by the City of Antioch because it did not evaluate the cumulative impacts (not growth-inducing impacts as suggested in the comment) resulting from the foreseeable development which would be served by the roadway and utility extensions. The factual situation of the proposed project is quite different from the case cited since it involves an urban development project, along with the necessary roadway and other infrastructure improvements needed to support it, but it results in no overbuilding or extension of facilities, beyond those required for the project. While the construction of Westgate Drive on the western boundary of the proposed project would also serve future development to the west of the roadway, the cumulative impacts resulting from the foreseeable development of the entire

Southwest Gate Annexation area are addressed in the cumulative impact discussion on pages 139 through 144 of the DEIR. Without more detailed information as to how the commenter believes that the DEIR violates the principles set forth in the *Antioch* case, it is not possible to prepare further response to this comment.

Comment H-4:

The third factor I want to briefly discuss is the cumulative, which is given very cursory discussion. Again, this is flawed. The CEQA Guidelines define a cumulative effect as "two or more individual effects, which when considered together, are considered [sic] considerable, or which compound or increase other environmental impacts" (Section 15355). The individual impacts may be changes resulting from a single project or more than one project (again, CEQA Guidelines Section 15355(a)). Cumulative impacts are judged by a number of factors, each singularly to be considered. I'll give a few examples. First, a cumulative effect is created by a combination of projects, with other existing or foreseeable ones, or 2) several projects added to each other or closely related present or probable future projects, and 3) individually minor but collectively significant (Section 15355(b)). And there are other examples: 4) cumulative effects include consideration of projects outside the lead agency's control.

How can this EIR be significant when it ignores that all our counties and cities, and indeed our valley, are attempting now to grapple with an onslaught of development caused by fierce market forces, tremendously driven pace. It is an insult to our community. It doesn't even mention the City appointed task force which is attempting to creatively and fairly deal with the issue of a greenbelt encircling our cities, as well as the need and just treatment of the farmland economy. Another goal we desire is some separation by open lands from other basically unrestrained encroaching land development.

This is pretty brief, but I think they are very serious impacts.

Response H-4:

The cumulative impact discussion in the DEIR, found on pages 139 through 144, is based on close adherence to the CEQA requirements for such analyses. The basis for the analysis is a list of 20 approved and pending projects which could, when combined with the effects of the project, result in a cumulatively considerable effect. The projects considered in the DEIR analysis include the future development of 320-acre area to the west and south of the project site, known as the Southwest Gateway Annexation. As discussed in the DEIR, there are no projects within the unincorporated County which would contribute to a cumulatively considerable project effect.

Although the comment suggests that the cumulative analysis should extend far beyond Lodi to include other cities, and indeed the valley, this approach is not required under CEQA. The search for other cumulative projects need extend only so far as to include projects whose effects, when combined with those of the proposed project, could result in a "considerable" or significant cumulative impact. This geographic distance will vary depending on the discipline under consideration. For example, cumulatively substantial noise impacts would occur only within a short distance of the project site, while cumulative hydrologic effects would include consideration of other projects with the project drainage area, and so forth. The DEIR considers an appropriate geographic range of projects for all of the disciplines under review.

It should also be noted that an exhaustive analysis is not required to reach conclusions regarding cumulative impacts. For example, since the project impact to agricultural resources is significant, and since the conversion of many additional acres of prime farmland would occur as a result of

the other pending and approved projects, this is sufficient information to make a conclusion of cumulatively considerable effect. It is not the role of an EIR to present a treatise on the general threat of urban development to the agricultural economy, or the City's policy response to that threat, especially since doing so would sacrifice the conciseness of analysis which is essential to the preparation of a cogent and coherent CEQA document.

Comment H-5:

I have a few other points. It [the EIR] does not adequately provide mitigated measures to avoid significant impacts of the project. For instance, air quality – impacts that are identified as significant and unavoidable must be attempted to be mitigated, and there are some feasible mitigation measures that can be offered.

Response H-5:

There are two significant and unavoidable impacts identified in the DEIR, namely impacts related to loss of prime farmland, discussed in Response H-6 below, and impacts to regional air quality. As discussed in the DEIR, the regional nature of the air quality problem makes it difficult to mitigate on a project-specific level, particularly in commercial projects. However, a few practical and feasible mitigations are available and these have been identified as mitigations in the DEIR, at pages 122 and 123. Additional air quality mitigations suggested by the Air District in their comment letter to the DEIR (see item III. B. above) have been added to the EIR, as indicated in Section *V. REVISIONS TO THE TEXT OF THE DRAFT EIR*, and will be included in the conditions of project approval. However, the implementation of all of these air quality mitigations would not reduce the air quality impact of the project to a less-than-significant level.

Comment H-6:

Loss of prime farmland [is an impact] which is identified as significant and unavoidable. Again, mitigation measures can be offered that are feasible. One example [is] across the street, where the 22 acres was given voluntarily by the developer.

Response H-6:

As stated in the DEIR at page 29, it is not possible to provide direct mitigation for the loss of a specific parcel of agricultural land, either in whole or in part. Unlike other natural resources such as wildlife habitat, prime farmland cannot be created where none previously existed. Therefore, replacement mitigation through the creation of equivalent acreage elsewhere is not feasible. Other techniques related to the overall protection of agricultural land, such as conservation easements, are commonly employed, and are discussed in the DEIR for informational purposes only. In the case of conservation easements, this technique is used to protect other existing agricultural lands and does not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered project-specific mitigation for agricultural conversions due to a development project. While the overall objective of preserving

agricultural land may be desirable from a public policy standpoint, its implementation through the EIR process is not appropriate or required under CEQA.

It should be noted that the example used as "across the street" refers to the Vintner's Square project wherein the developer voluntarily requested a condition of their project to conserve farmland at an off-site location. This was neither a requirement of the City nor a mitigation measure of the certified EIR for that project.

H. RESPONSES TO COMMENTS FROM BILL CROW

Comment I-1:

The only thing I see as a problem is the traffic. And our City Council and our City engineers I'm sure can address that problem. I have no problem with the store. And every store in Lodi that I know of that's a grocery store sells liquor, so this is no big minus against Wal-Mart. I have no objection and I hope the Council approves the store.

Response I-1:

Comments noted. No response is necessary or required.

J. RESPONSES TO COMMENTS FROM RICK SALTON

Comment J-1:

I represent grocery workers that work in the City that a lot of you people know. Personally, [living in Galt] I prefer shopping in Lodi to Elk Grove because of traffic. Personally, I wish you could redo some of the stuff on the traffic and air quality issues, but I don't have time to go through the whole thing. [In reading the DEIR] I went right to the part that affects the people I represent – that would be workers in the area.

[The EIR] talks about sales for grocery stores, and I hope you'll be hearing from the grocery stores. It shows where 15 million dollars – no leakage – of grocery sales going out. There are some little comments in there that I wish it could go into further as far as jobs and the economic impacts.

Response J-1:

Comments noted. The comment includes general statements regarding traffic, air quality, and economic impacts; however, it does not contain a specific comment relating to the adequacy of the EIR analysis or conclusions. In the absence of a more detailed comment, it is not possible to provide a more specific response.

Comment J-2:

We have seen where a Wal-Mart across the street has moved and left a vacant building. As far as blight, the EIR says that the developer of the area, given his track record, will be able to rent that empty space. I don't know of anywhere else in Northern California where they had to go against competition like Super Wal-Mart.

Response J-2:

Browman Development Company (BDC) has agreed to buy the existing store from Wal-Mart and BDC will be responsible for re-tenanting the existing store after it is vacated by Wal-Mart upon the opening of the new Supercenter. In any event, City staff have been very clear that it will be a condition of project approval that no building permits shall be issued for the new Wal-Mart until a tenant has been secured for the existing store. This will ensure that there will be no long-term vacancy, or potential physical deterioration or blight, associated with the existing Wal-Mart store as a result of the relocation of Wal-Mart to the new center.

Comment J-3:

It [the DEIR] says $15 million will not be that great of a loss to cause closures. But there are other things that I know that will affect the people that work in these areas. Those are good paying jobs with good benefits – and so I hope you can go more into that.

Response J-3:

Comment noted. Since it is not clear what the commentator is requesting in the way of further analysis, it is not possible to provide a meaningful response. However, it should be noted that CEQA does not require the analysis of purely social or economic issues unless such analysis is needed to support a conclusion regarding the possibility of long-term store closures which could, under certain conditions, result in physical deterioration or blight.

Comment J-4:

There is a bill on the Governor's desk trying to get passed. I would really appreciate it if you guys could go into it some more.

Response J-4:

The legislation referred to in the comment – SB 1056 – was vetoed by the Governor on September 18, 2004. However, as required by the City, specific studies of the economic impacts of the project were conducted (see Appendix B to Draft EIR). The remainder of the comment is very general and vague, and as such it is not possible to provide a specific response to it.

K. RESPONSES TO COMMENTS FROM KURT ROBERTS

Comment K-1:

I just think that 226,000 to 227,000 square feet is way too big for Lodi. I think we all know that. I don't think the City can handle it, or at least sustain it without quite a few businesses going out. I would like to see it scaled-back – even 150,000 square feet might be acceptable.

Response K-1:

Comment noted. Since the comment actually relates to the proposed project and does not address the DEIR itself, no response is necessary or required.

L. RESPONSES TO COMMENTS FROM COMMISSIONER TIM MATTHEIS

Comment L-1:

On page 25, in terms of business closures – it basically jumps right to the conclusion that no business closures will happen, even though 55 percent of the revenue comes from existing businesses in Lodi. I know it says there's like 10 to 15 percent sales from those businesses will be taken, but there is no body of objective rationale which substantiates that conclusion. I would like to hear about that.

Response L-1:

The conclusion that there will be no business closures is based on the detailed analysis contained in the economic impact report on the project prepared by Applied Development Economics (ADE) which is contained in Appendix B of the DEIR. The economic impact report contains 22 pages of analysis, with the findings summarized in Table 10 of the report, which provides detailed estimates of captured sales leakages and sales taken from existing businesses for each retail and service category. The economic analysis was based on a thorough investigation of the existing retail market in Lodi, and drew from ADE's considerable experience and knowledge of impacts to existing businesses resulting from the entry of large new commercial projects into a given market area.

The analysis of sales from grocery stores in Lodi was provided using sales tax data available. However, the sales tax data which the City collects from individual businesses is confidential, which the City is prohibited from disclosing by law. Therefore, a more detailed analysis of individual supermarkets in Lodi is not possible based on the data which is publicly available. However, in an effort to obtain the necessary data, ADE requested specific sales data from each grocery company doing business in Lodi. As of late October 2004, only one company (Raley's) had provided the requested sales information, and four companies (Safeway, Albertson's, Save-Mart and Apple Market) indicated that they would not release the requested sales data. No responses were received from the remaining grocery companies.

As discussed in ADE's report (contained in Appendix B of the DEIR), the addition of 60,000 square feet of grocery sales area within the Supercenter will result in an average loss of 11

percent to the existing supermarkets in Lodi, but that this lost revenue will be regained through continued population and housing growth in the area. Since the only store-specific information available was for Raley's, it was only possible to perform a store-specific analysis for that supermarket, as follows. Based on sales figures provided by Raley's, the Lodi Raley's earns $396 per square foot, which is well above the Lodi average of $369 per square foot for supermarkets. Assuming Raley's revenue declines by 11 percent due to the Supercenter (per the average loss estimated for Lodi supermarkets), the revenue for the Lodi Raley's would decline to about $352 per square foot in the short term. This is slightly below the current average revenue for Lodi supermarkets but above the national average of $347 per square foot for supermarkets. As such, this short-term reduction in revenue would not have a substantial adverse effect on the operation of the Lodi Raley's. There is no evidence that the Lodi Raley's would cease operation as a result of competition from the Wal-Mart Supercenter. While there is no store-specific revenue data available for the other existing supermarkets in Lodi, it is expected that the analysis and conclusions would be similar for those remaining stores, and that no adverse impacts to the individual stores would occur.

Comment L-2:

Secondly, also on page 25, there is the issue of the closure of the existing Wal-Mart store. It may well be true that the existing developer has a strong economic interest to maintain the leasability of that space. However, I think in terms of the cumulative summary, that we need to take a worst-case scenario. This [the analysis] is based on some rosy assumptions about what is going to happen. And further, Wal-Mart does have a track record across the country of shutting down and blighting areas where former Wal-Marts did exist. And it is a proven track record. So, to ensure that Lodi is not another casualty on that list, I think there is a substantial or significant impact here, based on some different assumptions. And I think the mitigation is obvious, which would be a signed lease or a signed letter of intent prior to permitting of the building. I think it should be part of the EIR.

Response L-2:

Browman Development Company (BDC) has agreed to buy the existing store from Wal-Mart and BDC will be responsible for re-tenanting the existing store after it is vacated by Wal-Mart upon the opening of the new Supercenter. In any event, City staff have been very clear that it will be a condition of project approval that no building permits shall be issued for the new Wal-Mart until a tenant has been secured for the existing store. This will ensure that there will be no long-term vacancy of the existing Wal-Mart store as a result of the relocation of Wal-Mart to the new center. Since the existing Wal-Mart will not close until the new Supercenter is completed and open for business, there may be a time lag before the opening of the new retail operation to allow for internal store modifications, installation of fixtures, stocking of merchandise, and other logistical requirements. This is not expected to take more than eight months to a year (due to plan check requirements and completion of tenant improvements), which will not be sufficient time to result in physical deterioration of the building..

Comment L-3:

On page 19 and page 69, we are talking about the design standards that were recently adopted – and I understand that these [projects] are reviewed by SPARC for compliance. However, the plan that was submitted with this EIR, which is the basis for all of the studies of impacts from circulation and ingress and egress, are based on the positioning of the building within the land itself. And I don't see any

changes. I guess the question is – does it [the project] comply with the 60 percent parking in front of the store, or is repositioning necessary? And if there is repositioning necessary, then I do not want it to come back to us later to say – "Oh, we based the whole EIR on this old position, and now we can't change it." We will be too far down the road, so I want some demonstration that it [the project] is in compliance and is not going to [result in] a change in the impacts that were stated in the EIR.

Response L-3:

City staff has determined that proposed project, as depicted in Figures 6 through 8 (pages 9 through 12) of the DEIR, is in substantial conformance with the recently adopted Design Standards for Large Retail Establishments. This includes the requirement that no more than 60 percent of the parking be located between the store façade and the abutting street. If the project is approved, it is anticipated that the site plan will undergo minor refinements as directed by the Planning Commission and SPARC. However, none of these refinements are expected to be so substantial as to necessitate a revision to the analysis, findings, or conclusions of the EIR.

Comment L-4:

On page 31, in terms of loss of agricultural land mitigation, I disagree with the conclusions, or especially with the discussion in relationship to mitigation. Basically, as I read this, it is stating that mitigation is not feasible because we are not creating mitigable lands. In other words, unlike the habitat, which is actually created habitat, we are not creating farmland. But to me, this is not the issue; the issue is preservation of farmland, it is not creating new farmland. My understanding is that there are a number of mechanisms through agricultural conservation easements, or through the Nature Conservancy, where mitigation fees can be paid for preservation of farmland. If it is not in the immediate area, at least it is preserved somewhere else in this region. I think it is erroneous to say there is not a way to mitigate that.

Response L-4:

Staff believes that the position stated in the DEIR at page 29 with respect to mitigation for prime farmland is the correct position under CEQA. (This is not to say that the preservation of prime farmland is not a laudable goal, only that CEQA is not the proper mechanism for achieving this goal.) To restate the argument, it is not possible to provide direct mitigation for the loss of a specific parcel of agricultural land, either in whole or in part. Unlike other natural resources such as wildlife habitat, prime farmland cannot be created where none previously existed. Therefore, replacement mitigation through the creation of equivalent resource value elsewhere is not feasible. Conservation easements or other techniques used to protect existing agricultural lands do not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered project-specific mitigation for agricultural conversions due to a development project. Again, while the overall objective of preserving agricultural land may be desirable from a public policy standpoint, its implementation through the EIR process is not appropriate or required under CEQA.

Comment L-5:

On page 63, in item E3, there is some very specific language for mitigation to impacts on endangered species. And then under Summary there is nothing listed, there is no mitigation. Item E3 in the summary says "No mitigation required." So I'm not sure, but I think that mitigation should be there. I would like to see that addressed.

Response L-5:

Comment acknowledged. The mitigation for Impact E3 on page 63 is correct, but this mitigation was inadvertently omitted from the corresponding item E3 in the Summary section at the front of the DEIR. The EIR Summary has been revised to correct this omission and include the appropriate mitigation language from page 63, as indicated in Section *V. REVISIONS TO THE TEXT OF THE DRAFT EIR* in this document.

Comment L-6:

Lastly, I think the decision to leave out the housing issue leaves the EIR deficient. Wal-Mart is a known generator of low-income jobs, which produce folks for low-income housing. Lodi is notorious for not having those types of housing units available. And as such, this project will be generating trips of traffic as well as air quality and noise pollution outside this area. That may very well be possible. So I would like to see the housing and low-income issue addressed for its impacts, and its cumulative impacts due to traffic and pollution issues.

Response L-6:

This comment raises several issues which are addressed in turn below. The following response accepts the assumption in the comment that a substantial number of the project's employees would live outside Lodi. However, many of the future project employees may in fact already live in Lodi, and may include individuals who are currently unemployed or underemployed, and also could include people who are entering the labor force for the first time (e.g., teenagers living with parents), or who are re-entering the labor force after raising families, or who may be retirees seeking to supplement their income by working at Wal-Mart.

Housing. Potential impact to housing, including low-income housing, is a socio-economic issue which generally does not fall under the purview of CEQA. For the preparation of EIRs, it is a CEQA requirement that only significant physical impacts be considered, although socio-economic impacts may be considered if they can be shown to result in a physical impact. For example, the study of economic impacts is often relevant as evidence for a finding of whether or not a project will result in an indirect impact such as the physical deterioration of buildings. However, the economic effects themselves, even including potential business closures, are not recognized as impacts under CEQA if they do not have a physical effect. With respect to population and housing impacts, the relevant CEQA question (as contained in the CEQA Initial Study Checklist) is whether a project will "displace substantial numbers of existing people (or existing housing), necessitating the construction of replacement housing elsewhere." Thus the removal of existing dwellings for a project would be a direct physical impact upon housing. However, a project proposed on a vacant site, such as the proposed Lodi Shopping Center project, would not have a significant impact on housing or population under CEQA.

Residential projects by definition are housing projects, but their impact is usually beneficial, and CEQA is specifically concerned with adverse impacts, not beneficial impacts. The exception might be in the case of a very large residential project, which could have impacts on public services, which could in turn result in physical impacts due to the construction of new facilities such as schools, fire stations, and the like. However, these types of impacts are typically addressed under the headings of utilities and services, and not population or housing.

A large commercial project may indirectly induce demand for housing for its employees, which may in turn result in physical impacts at the locations where such housing in built. However, it would be impossible to make a direct connection between the housing demand that may be induced by a project, and the locations and nature of any specific housing constructed which may happen to meet that demand, i.e., provide housing for project workers. Thus any attempt to identify secondary impacts related to such housing demand would be speculative, and CEQA specifically directs that EIR analyses stop at the point where they become speculative. Moreover, the direct impacts resulting from new housing projects would be addressed in conjunction with the approval processes for those projects. The potential of the proposed Lodi Shopping Center project to induce secondary housing demand is discussed in the DEIR at page 162, which concludes that this impact would not be significant.

Traffic. The traffic generated by employees commuting to the project, including those traveling from outside Lodi, is accounted for in the ITE trip generation rates applied in the traffic study for the EIR. The traffic model used in the traffic report includes trips originating outside of Lodi. Given the fact that traffic radiates outward from the "generator," in this case the Lodi Shopping Center, the effects of that new traffic tend to be concentrated on roadways nearest to the source and diminish with distance outward from the source. As such, any employees commuting from other communities would have minimal impacts on roadways outside the City, since their places of residence would be scattered rather than concentrated. Their effects on traffic operations and levels of service, as part of the overall project traffic, would be confined to the southwest quadrant of Lodi and the adjacent area of unincorporated County (e.g., Harney Lane), as shown in the EIR traffic report. As discussed in the traffic report, which takes into consideration employees commuting from out of town, the project's level of service impacts would be minimal beyond the nearby roadway segments and intersections. In addition, employees would typically travel to and from work outside the AM and PM peak commute hours, and as such their contribution to congestion during these critical periods would be minimal in any event, even along roadways and intersections in the immediate project vicinity. Therefore, any out-of-town residents commuting to work at the project site would not have an adverse effect on traffic outside southwest Lodi, and likely would not contribute to congestion on the roadways and intersections near the project site.

Air Quality. The out-of-town employees would travel longer distances to work than in-town residents, and these longer trip lengths would result in greater vehicular emissions and would represent comparatively larger contributions to regional air quality impacts than local residents with shorter trip lengths. However, the longer trip lengths are already factored into the air quality analysis, which is based on average trip lengths of about 10 miles, taking into account short trips and the longer trips by out of town commuters. While longer commute lengths result in incrementally greater emissions, the phenomenon of medium and long range commuting is common throughout California. Therefore, this commute pattern is factored into the air quality analyses for all projects, including the Lodi Shopping Center project. As such, the emission of such regional pollutants by long-distance travelers is already accounted for in the EIR air quality analysis, both on a project-specific and cumulative basis.

The regional air quality impact resulting from the project is significant and unavoidable, as discussed in the EIR. The effects of regional air pollution or smog (vs. localized ground-level air pollution caused carbon monoxide concentrations at busy intersections) are spread over large areas, irrespective of City boundaries, and can be carried large distances by air currents (i.e., Bay Area smog is carried to the Central Valley, and Los Angeles smog is carried to San Bernardino County, etc.). Therefore, the pollution resulting from non-Lodi residents commuting to the project from scattered locations would be minimal at any specific location or route, and would tend to migrate or disperse. Thus while these emissions would contribute to a significant air quality impact on a regional basis, the impact of longer-range commuting would not be significant on a localized basis, either in Lodi or elsewhere.

Noise. The effects of traffic noise are generally concentrated in the immediate vicinity of a project, and as with the traffic itself, project contributions to roadway noise levels diminish rapidly as one travels outward from the source. In the case of the proposed project, the EIR noise report found that traffic generated by the project would not result in a discernable noise increase on surrounding roadways, even on the roadway segments adjacent to the project. As noted above, the EIR traffic analysis takes into account trips generated by project employees, including employees who may live outside Lodi. Since noise from project-generated traffic would diminish rapidly as one moves away from the project site, it is likely that any such noise increases would not be measurable beyond a few blocks from the project. Thus the added noise from scattered project traffic, including employee trips, at any specific location outside Lodi would not be discernable or measurable.

M. RESPONSES TO COMMENTS FROM COMMISSIONER DAVID PHILLIPS

Comment M-1:

I don't know if there is time to update the economic section of the report. My main concern being – I believe I read in the Stockton Record a couple of weeks ago that a Wal-Mart Supercenter and a Sam's Club were going into the new development out by Spanos Park – and the economic report that we have does not take that into account. It says that the success of the Lodi Shopping Center is going to rely on a lot of north Stockton customers. I don't know if they can update that, because I am concerned about the economic viability of the whole project.

Response M-1:

At the time that the economic impact analysis was prepared, the plans for Spanos Park in northwest Stockton were complete, and there were no specific tenants that were identified to be attracted to that proposed project. Therefore, the development of a Wal-Mart Supercenter and Sam's Club at Spanos Park was not included in the analysis. The Wal-Mart Supercenter at Spanos Park may compete with the Lodi Wal-Mart Supercenter. This may reduce the sales volume at the proposed Lodi Supercenter; however, the project applicant has confirmed that Wal-Mart is fully committed to proceeding with the proposed project and believes that it will be successful. In addition, the development of a Wal-Mart Supercenter and Sam's Club at Spanos Park will not alter the findings and conclusions of its report as it will not take additional sales away from existing businesses in Lodi. The addition of another Supercenter located in north Stockton, 10 miles southwest of the project site, may alter individual shopping decisions as to which Supercenter to patronize, but it will have no additional adverse impacts on other existing retailers in Lodi.

V. REVISIONS TO THE TEXT OF THE DRAFT EIR

The following section contains revisions to the Draft Environmental Impact Report for the Lodi Shopping Center. Underlining depicts text added while ~~strikeouts~~ depict text removed.

SUMMARY

Page xii **E. BIOLOGICAL RESOURCES (CONT'D)**

REVISE Mitigation E3 as follows:

E3. ~~No mitigation required~~. In accordance with the SJMSCP and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.

II. ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

Page 24 **A. LAND USE AND PLANNING**

CORRECT the second paragraph as follows:

> In the analysis of the project's economic impacts on downtown business, ADE found that the overall effect on downtown businesses would be ~~a~~ about a 5 ~~one~~ percent loss of annual sales to the Lodi Shopping Center. The study found that the effect would be confined to a few retail categories and that most retailers would not be affected, primarily because most downtown businesses have already adjusted to competition from national discount retailers by finding and occupying a niche, establishing quality customer relations, and maintaining customer loyalty. It was found that the only categories which would lose business as a result of the project include pharmacies, sit-down restaurants, and fast-food restaurants. Downtown pharmacies would lose approximately ~~2~~ 14 percent of their sales to the project. Existing sit-down restaurants in downtown would lose 4 11 percent of their business, and fast-food restaurants in the downtown area would experience ~~a 2~~ an 8 percent drop in sales as a result of competition from similar outlets at the project. These percentages of lost sales are relatively low and would not be expected to result in any business closures.

It should be noted that the above revisions are intended to bring the text of the EIR into conformity with the economic reports as contained in Appendix B of the DEIR. No changes to the economic reports in Appendix B are required

Page 24 **A. LAND USE AND PLANNING**

CORRECT the fourth paragraph as follows:

> In the aggregate, the study found that the project's retailers would take away approximately ~~8.5~~ 8.1 percent of total sales from Lodi's established stores in the near term, which would represent approximately ~~55~~ 54 percent of the new sales at the project. (The remaining ~~45~~ 46 percent of new sales at the project would represent current spending leakages to non-Lodi businesses which would be captured by the project.) The percentage of sales lost would vary by retail category as follows: discount stores – 6 percent; grocery stores/supermarkets – 11 percent; pharmacies/drugstores – ~~12~~ 14 percent; other retail – ~~5~~ 3 percent; fast-food restaurants – 9 percent; sit-down restaurants – ~~20~~ 13 percent; personal services, business and professional services, and financial institutions – 0 percent. Given the relatively low percentage of lost business for the affected retail categories, ADE concluded that the project is unlikely to result in the closure of established businesses in Lodi. With respect to the eight existing supermarkets in Lodi, it was further concluded by ADE that the lost sales would be temporary, and that future population and housing growth in Lodi should allow these established supermarkets to regain their lost sales.

It should be noted that the above revisions are intended to bring the text of the EIR into conformity with the economic reports as contained in Appendix B of the DEIR. No changes to the economic reports in Appendix B are required

---

Page 121 **J. AIR QUALITY**

ADD the following after the first bullet on the page:

- All diesel engines shall be shut off when not in use on the premises to reduce emissions from idling.

- Prior to the issuance of construction contracts, the City of Lodi shall perform a review of new technology, as it relates to heavy-duty equipment, in consultation with the construction contractor, to determine what if any advances in emission reduction are available for use and feasible (including economic feasibility).

Page 123 **J. AIR QUALITY**

ADD the following after the third bullet on the page:

- The project ingress and egress shall be designed to allow for the most effective traffic flow to minimize vehicle idling.

- The project retailers shall ensure that the amount of time diesel delivery vehicles idle on site does not exceed 10 to 15 minutes.

Additionally, the project's fast food restaurants with drive-throughs can create "idling" emissions resulting from customers in running vehicles waiting to place or pick up orders. The following design features shall be included for this type of use to reduce "idling" emissions.

- Provision of an "escape lane" to allow customers to pull aside and wait for orders that take an extended time to prepare, thereby allowing other customers to move through the line more quickly.

- Careful design of exits onto adjoining streets and/or parking lots to reduce the time required to re-enter traffic from the project site.

- A double menu system that will allow drive-through customers to formulate their order in advance and therefore reduce idling time when placing orders.

Page 123 **J. AIR QUALITY**

ADD the following after the third bullet under the heading "Transportation Demand Management":

- Provide preferential parking spaces for those employees who participate in carpooling or vanpooling.

- Sidewalks and bikepaths should be installed throughout as much of the project as possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.

VI. COPIES OF COMMENT LETTERS RECEIVED ON THE DRAFT EIR

Comment letters commence on the following page.

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

Flex your power!
Be energy efficient!

September 20, 2004

10-SJ-12PM 14.928/15.155
DEIR SCH # 2003042113
Lodi Shopping Center

Mr. Konradt Bartlam
City of Lodi
Community Development Department
221 West Pine Street
Lodi, CA 95240

Clear
9/20/04
e

RECEIVED
SEP 20 2004

Dear Mr. Bartlam:

The California Department of Transportation appreciates the opportunity to review and comment on the Draft Environmental Impact Report for the proposed Lodi Shopping Center Development Project for the City of Lodi. The project is located at the Kettleman Lane/Lower Sacramento Road Commercial Center, a 40 acre site to be developed at the corner of Kettleman Lane and Lower Sacramento Road in west Lodi.

We have circulated this project document to our functional units and have the following comments:

Travel Forecasting

A-1 The Travel Forecasting information, including the Trip Generation, Trip Distribution, and Trip Assignment assumptions used to study impacts from the Lodi Shopping Center Project Draft EIR appear reasonable.

District 10 Planning staff will continue to monitor the information presented in the Lodi Shopping Center Draft EIR, specifically the project growth estimates, in our cumulative development database and will include or reference the information in all future traffic impact analyses for Caltrans or other local development projects. Project impacts from this as well as other associated development projects will be re-evaluated at the time a site-specific Encroachment Permit Project Study Report (PSR) and approved Project Report – Environmental Document requires a complete traffic study.

A-1 In the interim, your local jurisdiction should calculate and collect appropriate traffic impact fees to ensure adequate financing for any infrastructure improvements that may be needed in the future as a result of this and other related development projects. Minimally, these fees should address impacts to State Highway System (SHS) Mainline and Interchange facilities in closest proximity to the project. Since the project also demonstrates ancillary impacts to other regional facilities, appropriate fees should be assessed to cover these radiated project impacts.

Traffic Operations

A-2

1. Page 71 states that the Traffic Impact Analysis (TIS) was prepared on the Lodi Shopping Center project by Fehr & Peers Associates in July 2004. A previous TIS and Synchro and SimTraffic files and simulations were submitted by Hexagon Transportation Consultants, Inc. in September 2003. Traffic Operations will need to review the Synchro and SimTraffic files and simulations prepared by Fehr and Peers in order to verify the impacts and mitigations.

2. Proposed project needs to be consistent with the alignment and stripping changes being made by the Kettleman Lane Gap Closure Project, EA 10-OG5701.

3. The above project has not been completed. The TIS assumed the project to be completed under the "Near Term Circulation Improvements" (see page 79). According to Caltrans NOP/EIR response letter dated May 15, 2003 (see Appendix A), our Travel Forecasting Branch asked that "...the TIS include two scenarios to be analyzed: one with, and one without the Kettleman Lane Gap Closure Project." The TIS does NOT include this analysis. What is the impact if this project is built and opens BEFORE the Kettleman Lane Gap Closure Project is completed?

4. The TIS will need to be completed in accordance with Caltrans TIS Guidelines.

5. Need to provide copies all Synchro simulations files to Traffic Operations.

6. An encroachment permit will need to be submitted to Caltrans.

Environmental

A-3 While this review does mention some areas of concern, this review can not identify all the potential impacts that may be discovered during the CEQA process.

Your document requests an adoption of a statement of overriding concerns with regards to impacts and the cumulative impacts on agricultural land uses. But in the document, there are discussions of various feasible mitigation measures that could reduce the cumulative loss of agricultural lands impacts. The reader is confused why this project

A-3 does not include fair-share funding for implementing some, if not all, of the mitigation measures discussed if they could, at the least, limit the cumulative impacts for the loss of agricultural land.

A-4 This project will increase the ambient air pollution problem existing in the City of Lodi area. While the mitigation measures for construction activities and some retail activities have been noted, please be aware that any increase of negative air quality, especially with the increasing cumulative affect of Lodi area projects which have been also deemed "significant and unavoidable", may well impact negatively on future transportation projects.

A-5 This project indicates that an encroachment permit shall be required. If an encroachment is expected, the CEQA project description must include a brief summary of the anticipated work within the State right of way. The attached information is to assist the applicant in the permit process. The approved Environmental Document for the project must be included in the permit application.

We look forward in continuing to work with you in a cooperative manner. If you have any questions or would like to discuss these comments in more detail, please contact Lynn O'Connor at (209) 948-7575 (email: loconnor@dot.ca.gov).

Sincerely,

Tom Dumas, Chief
Office of Intermodal Planning

Cc: Scott Morgan, (State Clearinghouse)

Attachment

The use of California State highways for other than normal transportation purposes may require written authorization from Caltrans in the form of an encroachment permit. The application must include the environmental document prepared for the project that addresses Caltrans right of way. At a minimum, documentation of cultural, biological, and hazardous waste studies within Caltrans right of way is required.

For cultural studies, at the minimum, a recent record search from the information center and an Archaeological Survey Report (ASR) is required.

A Natural Environment Study report shall be written documenting the results of biological surveys, this should include a record search from the California Department of Fish and Game Natural Diversity Database. A qualified biologist should conduct surveys at the appropriate time of year to determine if listed species or wetlands occur in the project area. Surveys should meet the state and federal protocol standards.

If right of way is being dedicated to Caltrans, the applicant is required to submit a copy of Attachment A, confirming that the land to be dedicated to Caltrans is free of hazardous waste. Even if right of way is not being dedicated, it is a good practice to conduct a record search to obtain known hazardous waste locations.

Caltrans encourages contacting the Native American Heritage Commission 915 Capitol Mall, Room 364, Sacramento California 95814, (916) 653-4082, (916) 657-5390 [FAX] for advice on consulting with Native Americans regarding any cultural concerns within the project area.

For more information on encroachment permits, please visit our WebPages at http://www.dot.ca.gov/doingbusiness.html then click on encroachment permits.

B

San Joaquin Valley Air Pollution Control District

September 24, 2004

Reference #: 20040383

RECEIVED
SEP 29 2004
COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

Konradt Bartlam
City of Lodi
221 West Pine Street
Lodi, Ca 95240

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE LODI SHOPPING CENTER.

Dear Mr. Bartlam:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the proposed project and offers the following comments:

B-1 Based on the information provided in the "Air Quality" section of the DEIR, the District concurs with the findings of significant impacts identified in the report. However, the District would like to suggest the following items as additional mitigation measures and clarifications:

Rule clarification:

- Please be advised that on August 19, 2004 and September 16, 2004, the District's Governing Board approved amendments to Regulation VIII, Rules 8011-8061 and 8071-8081; respectively, that become effective on October 1, 2004. Of particular note are amendments to Rule 8021 (see section 6.3.1); the Dust Control Plan threshold has changed from 40.0 acres to 5.0 or more acres for non-residential sites. If a non-residential site is 1.0 to less than 5.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities (see section 6.4.2). The applicant should contact the District's Compliance Division at (209) 557-6400 (Jennifer McKinney) to determine where requirements have changed and how rule changes may affect this project.

Additional mitigation measures include:

- Replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via portable generator set).

David L. Crow
Executive Director/Air Pollution Control Officer

Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, CA 95356-9322
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 • FAX (559) 230-6061
www.valleyair.org

Southern Region Office
2700 M Street, Suite 275
Bakersfield, CA 93301-2373
(661) 326-6900 • FAX (661) 326-6985

B-1

- Curtail construction during periods of high ambient pollutant concentrations. This may include ceasing construction activity during peak-hour vehicular traffic on adjacent roadways, and "Spare the Air Days" declared by the District.

- The project should require that all diesel engines be shut off when not in use on the premises to reduce emissions from idling.

- Have the retailer develop a policy limiting the amount of time diesel delivery vehicles can idle on site (10-15 minute).

- Suspend excavation and grading activity when winds exceed 20 mph.

- Prior to the issuance of construction contracts the City of Lodi should perform a review of new technology, as it relates to heavy-duty equipment, to determine what if any advances in emission reduction are available for use. It is anticipated that in the near future both NOx and PM10 control equipment will be available. The District would be available for consultation on this process.

- Provision of preferential parking spaces for those employees who participate in carpooling or vanpooling.

- Sidewalks and bikepaths should be installed throughout as much of the project as possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.

- The District recommends that the project ingress and egress be designed to allow for the most effective traffic flow to minimize vehicle idling.

Additionally should the site contain fast food restaurants with a drive-through component, which can create "idling" emissions resulting from customers in running vehicles waiting to place or pick up orders. The District would recommends that the following design features be included for this type of use to reduce "idling" emissions:

- Provision of two service windows (a cashier window and a food service window).

- Provision of an "escape lane" to allow customers to pull aside and wait for orders that take an extended time to prepare, thereby allowing other customers to move through the line more quickly.

B-1

- Careful design of exits onto adjoining streets and/or parking lots to reduce the time required to re-enter traffic from the project site.

- A double menu system that will allow drive through customers to formulate their order in advance and therefore reduce idling time when placing orders.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact me at (209) 557-6400.

Sincerely,

John Cadrett
Air Quality Planner
Northern Region

C

SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

1810 E. HAZELTON AVE., STOCKTON, CA 95205-6232
PHONE: 209/468-3121 FAX: 209/468-3163

RECEIVED

SEP 21 2004

COMMUNITY DEVELOPMENT DEPT.
CITY OF LODI

September 15, 2004

Konradt Bartlam, Community Development Director
Community Development Department
City of Lodi
221 W. Pine Street
Lodi, CA 95240

Re: Lodi Shopping Center Draft EIR

Dear Mr. Bartlam:

C-1 Thank you for the opportunity to comment on this item. The Community Development Department has reviewed this item and offers the following comments:

"Right-to-Farm Deed Restrictions" Vol. 1 Page 32

On June 22, 2004, the San Joaquin County Board of Supervisors approved revisions to the Right-to-Farm Ordinance. Section 6-9004 (c) of the Right-to-Farm Ordinance requires that all applicants for building permits for new residential construction or mobile home placement be provided with the following Right-to-Farm Notice:

SAN JOAQUIN COUNTY RIGHT-TO-FARM NOTICE (Section 6-9004[e])

The County of San Joaquin recognizes and supports the right to farm agricultural lands in a manner consistent with accepted customs, practices, and standards. Residents of property on or near agricultural land should be prepared to accept the inconveniences or discomforts associated with agricultural operations or activities, including but not limited to noise, odors, insects, fumes, dust, the operation of machinery of any kind during any twenty-four (24) hour period (including aircraft), the application by spraying or otherwise of chemical fertilizers, soil amendments, seeds, herbicides, and pesticides, the storage of livestock feed and other agricultural commodities and the storage, application and disposal of manure. San Joaquin County has determined that inconveniences or discomforts associated with such agricultural operations or activities shall not be considered to be a nuisance. San Joaquin County has established a grievance committee to assist in the resolution of any disputes which might arise between residents of this County regarding agricultural operations or activities. If you have questions concerning this policy or the grievance committee, please contact the San Joaquin County Agricultural Commissioner at (209) 468-3300.

Please include the Community Development Department on the EIR mailing list. Feel free to call me at 468-3164 if you have any questions.

Sincerely,

Raymond Hoo
Associate Planner

D

COMMENTS RE DRAFT
ENVIRONMENTAL IMPACT REPORT
LODI SHOPPING CENTER
STATE CLEARING HOUSE NUMBER 2003-4213

D-1 1. The discussion of the growth inducing impact is inadequate in its address of the property location in that it describes abutting land use to the East and to the North as commercial, when in fact, there is a separating barrier on both those sides and the reader is thereby misled.

D-2 2. The environmental impact report fails to adequately address the impact of the project's growth inducing factor. It fails to satisfy the criteria for discussion mandated in case law for a project that is a catalyst for foreseeable future development. (*Antioch v. City of Antioch* (1986), Cal.App.3d 1325, 1333.)

D-3 3. This environmental impact report inadequately and cursorily discusses the cumulative impacts of the project and is thus flawed. (See guidelines 15355, 15355(a), 15355(b).)

D-4 4. This Draft Environmental Impact Report fails to fully address the project's impact on the City's policy to preserve a separator between the City of Stockton and the City of Lodi because it opens the quadrant of land and thus, accelerates the process of contingent loss of prime farmland. This is particularly noted when the fact that there is a proposal to develop housing on 385 acres South and West of the project, is taken into consideration. This further encroachment into areas that will make it more difficult for the City of Lodi to carry out its policy to preserve the Greenbelt is not addressed.

D-5 5. The environmental impact report is inadequate in that significant and unavoidable impacts are identified with no attempt to mitigate.

Dated: September 20, 2004

Submitted,

Ann M. Cerney

Ann M. Cerney

RECEIVED

SEP 21 2004

COMMUNITY DEVELOPMENT DEPT.
CITY OF LODI

E

To: Rad Bartlam
Community Development Director
From: Richard Eklund

Air pollution mitigation for the Lodi Shopping Center Project

E-1 Every Environmental Impact Report must explore feasible means to mitigate pollution generated by the project. The Lodi Shopping Center Draft EIR (www.lodi.gov) has a maximum estimated 5% mitigation (on site TSM coordinator) for the project's added air pollution. This, despite the fact that the EIR Air Quality Section shows the project will produce more than 300% of the maximum vehicle pollution recommended by the County Air Quality District.

While not directly mitigating vehicle pollution, there could be total removal of air pollution associated with the project's electrical power generation. Our only means of preventing additional generation pollution is increasing renewable energy to match a portion of the new power required. This can be accomplished if the builder incorporates photovoltaic electric generation at the site equal in output to their expected peak electrical load.

This project would likely see a peak electrical load during hot summer days when maximum air conditioning is required. Connected to the grid through Lodi Electric, any excess power generated would reverse the shopping center site power meter. Pollution from old peaker generating units and other fossil fueled units would be reduced since maximum solar power output would occur during sunny hot days.

The builder has the option of installing the Photovoltaic panels on the roof of the complex (least expensive) or on automobile shade structures like those at Sacramento Airport and Expo Center. The shade structures would benefit both customers and the environment. Shading black asphalt parking lots would reduce heat islanding. Some other advantages are:

1. Photovoltaic panels are currently guaranteed to maintain 90% of their rated output for 20 years. They can provide a fixed cost of electric generation for at least 20 years.
2. A 10% federal tax credit and a 15% California State tax credit are available.
3. Accelerated depreciation is available.
4. Tons of greenhouse gas (CO2) is avoided per year.
5. Zero electric generation pollution is produced.
6. Peak output of the system generally matches peak demands.
7. With high peak rates factored in, systems can have a simple payback of less than 15 years. Life cycle costing of energy should be treated like any other capital investment.

Although it is argued that Lodi Electric has a large renewable component (32.16% eligible renewable) of its power generation currently, I believe that this requirement would only complement that policy. Solar photovoltaic power will prevent any increase in the non-renewable power content. Any excess renewable energy saved can go to other

E-1 electric customers in the San Joaquin and Sacramento valley and help our regional air quality improvement efforts. We must start to overcome the organizational resistance to sustainable energy.

By pursuing solar energy, Lodi Planning Commission and City Council can lead the way and set a positive precedent for Lodi and the Valley. We can provide REAL MITIGATION of our rising Central Valley pollution. Ignoring this feasible choice punishes valley citizens' health and life quality.

Richard Eklund
POB 1407
Lockeford, CA 95237

Richard Eklund 9/17/04

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HERUM CRABTREE BROWN
Attorneys At Law

Brett S. Jolley
bjolley@herumcrabtree.com

September 20, 2004

RECEIVED
SEP 20 2004
COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

Mr. Konradt Bartlam
Community Development Director
City of Lodi
221 W. Pine Street
Lodi, California 95241

Re: Comments on Draft Environmental Impact Report for Lodi Shopping Center (State Clearing House Number 2003042113/Use Permit File No. U 02-12)

Dear Mr. Bartlam:

F-1 This office represents several Lodi residents, voters, property owners, and taxpayers vitally interested in the environmental integrity, economic well-being, and quality of life in Lodi. Our clients are particularly interested in Lodi discharging its public duty to satisfy the requirements of the California Environmental Quality Act. Generally speaking, the Lodi Shopping Center EIR is legally deficient and does not fulfill its duty as an informational document. Rather than certify the EIR, the City is requested to conduct a sufficient evaluation of the potential environmental effects and thereafter provide a new public review comment period.

F-2 These comments are founded on the principle that an EIR acts as an informational document identifying potentially significant impacts of a project, as well as alternatives and mitigation measures necessary for informed decision-making (Pub.Res.C. §21002.1), and that an EIR's findings and conclusions must be supported by substantial evidence. *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376. As the State Supreme Court explains, an adequate EIR "must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences" and "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Id.* This EIR does not meet that threshold. For this reason, the EIR is not adequate for certification. Rather, significant revisions and additional information are necessary, followed by recirculation of the document pursuant to CEQA Guidelines § 15088.5.

F-3 **I. IMPACTS TO AGRICULTURAL LANDS ARE NOT ADEQUATELY EVALUATED OR MITIGATED.**

2291 West March Lane Suite B100 Stockton, CA 95207
• Tel 209.472.7700 • Fax 209.472.7986 • Modesto Tel. 209.525.8444
A Professional Corporation

A. Loss of Prime Agricultural Land Must be Mitigated.

F-3 The Draft EIR misevaluates the significant adverse impact of the loss of Prime Agricultural Land and fails to provide adequate mitigation measures available to reduce the significance of this environmental impact

According to the EIR there are no feasible mitigation measures available to reduce the impact of agricultural land conversion to a less-than-significant level and, therefore, no mitigation is required. The feasibility of mitigation measures is dismissed for a variety of reasons. For example, the EIR observes:

- "The City of Lodi General Plan contains no policies or implementation programs which require mitigation or offsets for the conversion of prime agricultural farmland." EIR at p. 29.

- "There are several project-specific measures available that address the protection of prime agricultural land. Since none of these measures can create new prime farmland, they cannot avoid or reduce the impact of farmland conversion to a less-than-significant level. Therefore, implementation of any or all of the following measures [Agricultural Conservation Easement, Farmland Security Zone, and Right-to-Farm Deed Restrictions] would not avoid the significant unavoidable impact to agricultural resources resulting from the development of the proposed project." EIR at p. 30.

- "Although the conversion of prime agricultural land to urban uses cannot be mitigated or lessened, there are a number of measures available for the overall protection of existing agriculture...*These measures are discussed below for informational purposes only, given that none of these measures would mitigate or lessen the project's significant unmitigable impact upon agricultural resources.*" (Emphasis added) EIR at p. 29.

The EIR concludes agricultural conservation easements are infeasible because: (1) "they do not constitute true mitigation since they do not create replacement acreage of prime farmland"; (2) "this requires a nexus...between the amount of the fee and the burden of the project" and involves "complex and unresolved issues"; and, (3) "The City of Lodi General Plan currently contains no policy or implementation language regarding the establishment of agricultural easements."

The evaluation and method of determining that these mitigation measures are infeasible contradicts the methodology recently embraced by the Third District Court of Appeal in a case entitled *South County Citizens for Responsible Growth v. City of Elk Grove* No. C042302 (2004

F-3

WL 219789). A copy of the February 2004 opinion is attached hereto and incorporated herein as Exhibit "A" for your review.

We understand that the *South County Citizens* decision was not published and therefore does not amount to binding precedent, nor do we encourage Lodi to consider it for that purpose. However, it is the most recent analysis by the Third District Court of Appeal concerning a city's conclusion that converting farmland to urban uses was a significant and unavoidable effect and that no feasible mitigation measures exist to lessen the effect. More specifically, the City of Elk Grove embraced a similar theory as advanced by Lodi's EIR and the Third District Court of Appeal directly repudiated this theory. Thus, because the City of Lodi sits within the jurisdictional boundaries of the Third District Court of Appeal, an understanding of that court's methodology should be helpful to the City in conducting an adequate analysis of the agricultural conversion issues.

Indeed, a few representative passages from the opinion point out how dramatically the draft EIR contradicts the Appellate Court:

> "Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, conservation easements can diminish the development pressure created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project. **In this respect, conservation easements fall well within the concept of mitigation under CEQA.**" (Emphasis added.)
>
> ***
>
> "The City need not wait to impose a fee until after it adopts an ordinance to implement a fee program. The City can impose an in-lieu fee on an ad-hoc basis provided the fee satisfies the *Nollan/Dolan* standard."
>
> ***
>
> "However, neither the City nor the County have established such a [agricultural conservation fee] program. Hence, EIR discussion and public response are necessary to determine the appropriate amount of the mitigation fee to be assessed....**These are matters that can and should be addressed through an EIR with an opportunity for public response.**" (Emphasis added.)

This EIR does not adequately consider the feasibility of various mitigation measures that could lessen the severity of the impact from converting agricultural land to urban uses. The conclusion that such mitigation may not reduce the impacts to "less-than-significant" levels is insufficient to

F-3 eliminate the need for some form of feasible mitigation. Accordingly, additional mitigation measures should be included and the EIR should be recirculated for further review prior to certification.

B. The EIR's Conclusion that Land Use Compatibility Impacts Between Urban and Agricultural Uses is not Supported by Evidence.

F-4 The EIR concludes that the conflict between the proposed urban use and continuing agricultural operations would be less than significant because: (1) the design of the project causes a buffer area of 400 to 600 feet (EIR at p. 33); (2) "The project itself will include a 10-foot high masonry wall along the southerly two-thirds of the western site boundary, which will provide additional screening from windblown dust" and "potential conflicts will be reduced by the 8-foot masonry walled planned for the entire length of the southern project boundary" (EIR at p. 34); and (3) the adjoining agricultural area is "designated for residential development in the City's General Plan and are the subject of a pending annexation application....In light of the above factors and considerations, the potential impacts due to agricultural-urban conflicts associated with the project would be less-than-significant. " (EIR at p. 34)

This analysis is fundamentally deficient on several counts. First, the EIR does not explain how a 400 to 600 foot *ad hoc* "buffer" will actually reduce impacts to agriculture. Stated slightly differently, the EIR does not offer any evidence to support the conclusion that a buffer of this size is sufficient to reduce the potential land use conflicts to less-than-significant levels.

Second, the EIR fails to cite to any evidence that either a ten-foot or eight-foot masonry wall will prevent fugitive dust or pesticides from traveling to the proposed shopping center parking lot or into the stores' ventilation systems. Moreover, the EIR does not actually include the construction of these walls as mitigation. (The EIR actually concludes "No mitigation required.") Therefore, assuming, arguendo, that these walls *may* be effective in reducing the identified impacts, if these design implements are not included as mitigation measures, how can the EIR conclude that impacts will be less-than-significant?

Finally, concerning the EIR's statement that the adjoining agricultural land is subject to development, the document fails to disclose when a development application would be filed or to discuss the timing of implementing development should this future application be approved. Thus the approval of the application and the timing of development are speculative and uncertain, and cannot support the draft EIR's conclusion that this impact is less than significant. Moreover, such logic is akin to relying on a governmental use restriction to conclude that future development will not occur. This line of reasoning has been rejected by appellate courts (see *Stanislaus Audubon Society v. County of Stanislaus* (1995) 39 Cal.App.4th 144). Thus, just as a public agency may not rely on a Williamson Act contract to conclude that future growth will not occur, the City of Lodi may not rely on the fact that a residential development application has been filed to conclude that land use incompatibility between agricultural and urban uses will not be significant.

F-4 The EIR must provide additional analysis, including citations to substantial evidence, regarding its conclusions on the significance of land use conflicts prior to certification.

II. THE EIR MISEVALUATES THE URBAN DECAY IMPACT.

F-5 The EIR fails provide a good-faith analysis of the project's potential to cause physical deterioration in the form of urban decay. Rather, the EIR summarily concludes that "blight" will not result from this Project, and therefore the impact is less-than-significant. This conclusion is flawed in several ways.

A. The "Blight" Standard is Incorrectly Employed

In assessing physical impacts from over-storing Lodi, the EIR adopts the limited and constrictive Health & Safety Code definition of "Blight" as its basis for analysis. This definition (and standard) applies where a City desires to establish a redevelopment district; it is too constrictive for a CEQA assessment, which should analyze whether potential *physical deterioration* or decay – not the more extreme *blight* – may occur as a result of the project. No authority supports equating urban decay with redevelopment blight.

B. Substantial Evidence Indicates Store Closures Will Occur.

F-6 The EIR summarily concludes, "no business closures are likely to occur as a result of the project" and states "there is no evidence to suggest that building vacancies would occur or that a chain of causation would ensue that would result in substantial physical deterioration of properties…"(EIR at p.25.) This conclusion is *not* supported by evidence.

Rather, Appendix B provides, "the addition of Vintner's Square and the Lodi Shopping Center at the intersection's four corners will create an *oversupply of nearly 1.1 million SF of commercial space* that will include a discount store, a superstore, a big box home center, and two stand alone supermarkets." (emphasis added). Thus, the evidence indicates that Lodi is already over-stored and the EIR is incorrect in nakedly concluding that adding 339,000+ square feet of new retail will not cause stores to close.

Substantial evidence supporting a conclusion that the store closures *will occur* is found in the enclosed report entitled "Wal-Mart's Impacts on the American Supermarket Industry" prepared by Dr. David Rogers of DSR Marketing Systems and dated February 10, 2004. (This document is attached as Exhibit "B.") Based on extensive studies of the Oklahoma City area market, (where Wal-Mart built 10 Supercenters between 1997 and 2003, and where 31 existing supermarkets and grocery stores closed between 1998 and 2003) Dr. Rogers concludes, "it is estimated that every new Wal-Mart Supercenter will ultimately close two (2) supermarkets." Thus, contrary to the EIR's conclusions, evidence *does* exist to indicate that "business closures are likely to occur as a result of the project" and there is a contrary conclusion is not supported by substantial evidence.

F-6 Further, assuming supermarkets do close, how will that affect anchor and non-anchor co-tenants? This impact is not addressed in the EIR.

C. No Evidence Supports the EIR's Assumption that the Project will Capture 100% of Lodi's Sales Leakage

F-7 The conclusion that businesses will not close is based on false and unrealistic assumptions: Section 3.2 of Appendix B assumes, without any data or authority, "the proposed Wal-Mart Supercenter will capture 100 percent of the spending leakages currently captured by Costco, at Hammer Lane in Stockton" and also assumes "the other retail space built at the proposed project will be designed to capture all remaining spending leakages..."

Thus, the EIR concludes that businesses will not close because the Project will derive much of its income from captured leakage, rather than from existing businesses. This assumption, therefore, is predicated on the notion that *every* Lodi resident who currently shops at Hammer Lane Costco will tear up his club membership card and do all of his retail shopping at the Lodi Supercenter instead. In addition to bordering on absurdity, this notion fails to note the major distinctions between a Costco and a Wal-Mart Supercenter: Costco is a membership warehouse club around 100,000 square feet in size which typically sells select items in bulk and does not include a supermarket component. A Wal-Mart Supercenter, on the other hand, is a non-membership discount superstore nearly twice the size of Costco which is comprised of a discount general merchandise store and a discount supermarket.

Essentially, the Project replaces the existing Lodi Wal-Mart Discount Store with a larger Supercenter that adds a supermarket and garden department. Stockton Costco does not include either of these components, therefore there is no reason to assume this store will capture any – *let alone all* – leakage to Stockton Costco. If the leakage is not being captured by the existing Wal-Mart Discount Store, what evidence suggests it will be captured by the Supercenter? This is akin to concluding all apparel-shopping leakage to stores such as Macy's and Dillard's in Stockton will be captured by the Supercenter. No evidence in the record supports either leakage capture conclusion. Accordingly, the EIR should be revised to make a full disclosure analysis of the Project's impacts to existing retailers.

D. Evidence Indicates the Vacated Discount Store Will Remain Vacant for an Extended Period

F-8 Finally, the EIR's analysis of the impacts of the vacant 120,000 square foot Lodi Wal-Mart Discount Store which will result from this Project is inadequate. Essentially, the EIR concludes that although the store will be vacated, and although "the other tenants of the plaza could be adversely affected by a prolonged vacancy," the space will likely be filled with new tenants because the Project Applicant also owns the Sunwest Plaza Shopping Center and "has a strong financial incentive to re-tenant the space." This conclusion is flawed in two ways. First, no

F-8 evidence supports this conclusion; second, evidence indicates that the space is likely to remain vacant for an extended period of time.

The EIR does not indicate when Wal-Mart's lease in the Sunwest Plaza expires, nor does it indicate that Wal-Mart would be willing to allow a new tenant to take over the space. Moreover, even if Wal-Mart were amenable to a new tenant in the space, what evidence indicates any tenants would be willing to lease a 120,000 square foot anchor space in a shopping center forced to compete against a new Supercenter-anchored shopping center across the street? On September 15, 2004, the *Wall Street Journal* ran an article entitled "Wal-Mart's Surge Leaves Dead Stores Behind" (a copy of that article is attached hereto as Exhibit "C"). As the *WSJ* article explains:

> "Many big boxes remain on the market for years. In Clinton, Miss., a Wal-Mart larger than two football fields [about the size of the Lodi Wal-Mart] stood vacant for four years before it recently was demolished. A Wal-Mart in Bardstown, Ky., remained empty for nearly 10 years before a flea market moved in."

Prolonged vacancies, in fact, are sometimes caused by Wal-Mart's own economic incentive.

> "Finding new tenants for big properties isn't easy. Sometimes the very company that abandoned a store blocks a prospective new occupant. *Wal-Mart in particular sometimes creates roadblocks when other discount merchandisers or supermarkets have expressed interest in its shuttered buildings*." (Emphasis added)

Wal-Mart spokesman Bob McAdam explains that the Company is not receptive to allowing competing retailers to take over vacated space. "There are times when it's in our interest to get the property moving faster," he says, "but we're certainly not going to give a competitor an advantage."

Thus, the EIR is devoid of evidence to support its naked conclusion that the vacated Sunwest Plaza store will re-tenant quickly. No evidence indicates that Wal-Mart would not continue to pay rent for a number of years to keep the Sunwest Plaza space from falling into the hands of a "competitor." While this may provide a financial benefit to both the out-of-state tenant and the out-of-town landlord, the people of the City of Lodi are adversely impacted by the extended vacancy of this anchor store. Based on the evidence presented here, and the omission of relevant evidence in the EIR, the EIR is not adequate for certification.

III. THE EIR MISEVALUATES THE TRAFFIC IMPACT.

F-9 The EIR's analysis of traffic impacts is insufficient. The EIR generally under predicts the traffic that will be generated by this Project. The EIR over-estimates "pass-by" rates, thereby under predicting actual traffic (Remember, the EIR also concludes that this Project will capture *all* Lodi retail leakage – creating a huge traffic draw to this Project). Moreover, evidence does not indicated that the EIR's traffic analysis evaluates the fact that this Project will be open for retail

F-9 sales 24 hours per day, 7 days per week. This all hours format will generate more traffic than a regular retail store or even a retail use with "long hours." Moreover, the EIR touts this Project as one of "regional" draw – thus, other relevant regional intersections, such as I-5 and Hwy 12 and Hwy 99 and Kettleman Lane should be evaluated. The EIR does not disclose the impacts to these intersections which will likely be affected by this Project.

In addition, the EIR's defective traffic analysis results in an inadequate analysis of air pollution and health impacts related to auto-emissions.

Also of concern, the EIR does not discuss the potential energy impacts of the proposed Project including energy consumption of various fuel types.

For these reasons, the EIR should be revised and recirculated to fulfill its role as an informational document.

IV. THE DRAFT EIR DID NOT DISCLOSE THE POTENTIAL PUBLIC HEALTH EFFECTS OF THE PROJECT.

F-10 Health problems caused by projects should be discussed in an EIR [CEQA Guideline §15126.2(a)] so that agencies can provide a "high-quality environment that at all times is healthful." Pub.Res.C. §21000(b). The EIR does not perform this information disclosure responsibility. Although the EIR generally describes the characteristics of various air pollution related ailments, it makes no effort to quantify the impact to the general public.

Merely observing that air pollutants cause health problems and disclosing that the Project will increase the total tonnage of such pollutants does not inform the public or decision-makers of the nature and magnitude of the public health effect flowing from the Project. In particular, the EIR concludes that emissions from project-generated traffic would result in a significant effect in the form of pollution emissions affecting the entire air basin. What is the probability that members of the public will be afflicted with air pollution caused ailments due to this "significant and unavoidable effect"? The EIR does not provide enough information to tell the reader the increased tonnage by type of pollutant and the anticipated increase in public health problems resulting from this increased tonnage. As such, the EIR does not disclose the magnitude of the significant and unavoidable effect and must be significantly revised to do so.

V. THE DRAFT EIR FAILED ADEQUATELY CONSIDER OR DISCLOSE THE EFFECT TO PUBLIC SERVICES.

F-11 The proposed Project includes a 226,000+ square foot Wal-Mart Supercenter as the anchor tenant. According to recent studies, few Wal-Mart employees can afford health insurance. By industrial wide standards, Wal-Mart workers have one of the lowest rates of company sponsored health insurance coverage.

F-11 The benefits offered by Wal-Mart do not amount to a direct physical change to the environment. However, according to the San Diego County Taxpayers Association study, entitled "The Potential Economic and Fiscal Impact of Supercenters in San Diego: A Critical Analysis", each Wal-Mart worker who cannot afford health insurance will rely upon the local public health services at an annual cost of $250 to $1,300 per family member. The San Diego Taxpayers Association study concluded that this indirect demand on public services costs the taxpayers approximately $1,050,000 to $9,100,000 per year. A copy of the San Diego County Taxpayers Association study is attached hereto as Exhibit "D."

This is a demand on public services should be, but is not, accounted for and evaluated in the EIR. Appendix G Section XIII a) of the CEQA Guidelines requires the following analysis for an adequate CEQA review:

> *XIII. PUBLIC SERVICES*
>
> *a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the public services:*
>
> *Fire protection?*
> *Police Protection?*
> *Schools?*
> *Parks?*
> *Other public facilities?*

The San Joaquin County hospital clearly qualifies as an "other public facility" and the evidence dictates that the demand for County hospital service will increase due to the construction of this Supercenter. Yet the EIR does not even provide a cursory mention of the potential effect to the County hospital. Assuming the San Diego County Taxpayers study correctly indicates, an additional $1,000,000 to $9,000,000 drain on public health service resources, (and remember, no evidence indicates anything to the contrary) this may surely necessitate the need to construct, alter, or even close public health facilities in San Joaquin County.

Accordingly, by neglecting to evaluate the potential effect to the County hospital, the EIR does not serve is purpose as an informational document.

VI. THE EIR'S CUMULATIVE IMPACTS ANALYSIS MUST BE REVISED

F-12 The EIR omits relevant commercial projects from its analysis. CEQA Guidelines §15130(b)(1) requires the EIR establish a cumulative impacts baseline in one of two ways: Either by preparing

F-12

a list of relevant projects or by using a related planning document. The standard conforms to CEQA's mandate that an EIR analyze "other closely related past, present, and reasonably foreseeable future projects." This EIR elects the "list of projects" method at page 140. However, this EIR inexplicably omits several relevant projects from its analysis. These projects include:

Relevant Projects Adjacent to Lodi Shopping Center Project Site

- Safeway/Target shopping center located at NE corner of Lower Sacramento Road and Hwy 12.
- Sunwest Plaza (anchored by Wal-Mart discount store and Food-4-Less Supermarket) located at SE corner of Lower Sacramento Road and Hwy 12.

Inclusion of these projects is necessary to provide an accurate analysis of cumulative traffic, air quality, health risks, energy consumption, urban decay, etc.

Relevant Projects Outside City Limits

The EIR states "there are no projects outside the control of the City of Lodi, i.e. unincorporated San Joaquin County, which could contribute to a considerable cumulative project effect." (EIR at p. 139). This conclusion is incorrect and is not supported by any evidence. The following projects outside of the control of the City of Lodi have the potential to cause cumulatively significant impacts:

- Wal-Mart Supercenter currently under construction in at Holman Road and Hammer Lane in Stockton
- Park West Shopping Center recently opened at Eight Mile Road and I-5 in Stockton (anchored by Target, Kohl's, Petsmart, Sport Mart, and Borders Books)
- Recently approved Wal-Mart Supercenter on property adjacent to Park West Shopping Center in north Stockton
- Recently announced Sam's Club Membership Warehouse in north Stockton, also on property adjacent to Park West Shopping Center.
- Other applications and proposals to construct additional Wal-Mart Supercenters within San Joaquin County including Tracy, Manteca, and south Stockton.
- Recently approved Lent Ranch Mall in Elk Grove.

F-12 Inclusion of these projects is necessary to provide an accurate analysis of cumulative regional traffic, air quality, health risks, energy consumption, etc., as well as regional and local urban decay.

Pursuant to *Rural Landowners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1023, omission of such information is a prejudicial legal error and the EIR must be revised and recirculated prior to certification or project approval.

VII. THE EIR'S ANALYSIS OF PROJECT ALTERNATIVES DOES NOT SATISFY THE MINIMUM REQUIEMENTS OF CEQA

F-13 Section 15126.5 of the CEQA Guidelines states, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly obtain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." This EIR does not satisfy these requirements. This EIR includes only three project alternatives: (1) the "No Project Alternative" which is required by CEQA; (2) a Reduced Size Alternative; and (3) Alternative Location in an unincorporated area of San Joaquin County several miles from the City of Lodi. Simply stated, the three alternatives proposed do not provide a range of *reasonable* alternatives.

A. The Reduced Size Alternative is not Properly Evaluated.

F-14 The Reduced Size Alternative operates on the assumption that the Supercenter would be constructed but the remaining "pads" would not, and concludes this alternative "would result in [only] a slight reduction in the levels of impact associated with the proposed project in several topic areas..." Why does the described reduced project alternative leave the Supercenter whole while slicing away the remainder of the project? Under this proposal it is not surprising that many of the impacts would only be *slightly reduced* – the Supercenter, rather than the pads, is the principle cause of impacts such as traffic, air pollution, health risks, energy consumption, store closures, and the like. A good faith reduced project analysis would include a 40% reduction in the Supercenter (from 226,868 square feet to 136,121 square feet) and a 40% reduction in the remaining pad development (from 113,098 square feet to 67,858 square feet) resulting in a 203,979 square foot development project. What would the impacts of this alternative be? The EIR does not provide an answer to this obvious and necessary question.

Instead of following this logical approach, the EIR keeps the Supercenter size at 100% and eliminates the remaining pad development entirely. No evidence supports this approach. In fact, because the EIR indicates that the Supercenter component of the Project is the principal source of impacts, and the pads are a secondary source of impacts, the principal component should certainly be reduced in this proposed alternative. The EIR should be revised to include a true reduced size alternative where *all* components of the Project – not just less profitable components –are reduced in size.

B. The Alternative Location Analysis is Deficient.

F-15 Additionally, the alternative location analysis is flawed from the outset. Selecting only one alternative location is insufficient. The EIR claims that that the only property with adequate General Plan and zoning designations is located in the unincorporated Flag City area. This is faulty logic.

First, existing land use designations should not dictate the selection of feasible alternative locations. After all, this proposed site was formerly designated for agricultural development and was not annexed (and zoned C-S) until 2001. Thus, existing land use designations can be changed and the EIR should consider alternative locations for this project. Second, the Flag City site is not located in the Lodi City Limits or within its influence boundaries; therefore it could not carry the applicable General Plan and Land Use designations. Finally, it is pointless to search only for NCC designated and C-S zoned property. In fact, as discussed in greater detail below, "NCC" and "C-S" are improper designations for this Project. Thus, the EIR should be revised to evaluate potential sites where other land use designations exist or may be appropriate, and be recirculated for further public review.

VIII. THE PROJECT IS INCONSISTENT WITH THE ZONING ORDINANCE AND GENERAL PLAN

F-16 The EIR summarily concludes that the Project is consistent with the "NCC" General Plan Designation and the "C-S" Zoning and therefore no mitigation is required. (See EIR at pp. 20-21.) Substantial evidence shows a contrary conclusion. According to the Lodi General Plan and Zoning Code, "NCC" is the incorrect General Plan designation and "C-S" is the incorrect zoning designation for this Project.

A. The Project is Not Neighborhood or Locally-Oriented

Regarding the General Plan designation, the "NCC" designation "provides for *neighborhood and locally oriented retail and service uses*, multifamily residential units, public and quasi-public uses, and similar and compatible uses..." ([emphasis added] See Lodi General Plan at p. 2-2) To the contrary, the "GC" General Commercial designation "provides for *land –intensive retail and wholesale commercial uses*, public and quasi-public uses, and similar and compatible uses..." ([emphasis added] See Lodi General Plan at p. 2-3.) Thus, according to the General Plan, the Project site caters to neighborhood and local commercial uses rather than land intensive retail uses.

Likewise, section 17.30.030 of the Zoning Code explains that uses permitted in the C-S zone are limited to "only those uses permitted in the C-1 *neighborhood commercial district*...except, that a department store, theater with a maximum seating capacity of four hundred and a cocktail lounge when operated in conjunction with a restaurant and opened only during restaurant hours ..." (Emphasis added)

F-16 Thus, uses permitted in the C-S zone include uses permitted in the C-1 zone, department stores, theatres, and cocktail lounges. The uses permitted in the C-1 zone are limited to "Any retail business, trade, commercial enterprise or professional and business office use, *undertaken for the purpose of rendering neighborhood service*, but excluding other businesses of such character as are permitted in the C-2 commercial district or excluded therefrom." (Emphasis added).

The C-2 General Commercial District, then, is the catch-all. Uses permitted there include:

> "Any other businesses or commercial use, but excluding industrial uses..."

What does this mean? The C-S district allows development of commercial uses, but only for the purpose of rendering *neighborhood service*. This is also the case with the NCC land use designation. Substantial evidence shows that this Project does *not* fit that description. Specifically, at page 15, the EIR states a primary objective of the project is "to provide a commercial center that serves both the *local and regional market* area to attract customers and new retailers into the City of Lodi." (Emphasis added) In addition, page 6 of EIR Appendix B states as follows:

> "The economic success of the proposed Lodi Shopping Center will depend on its ability to continue *to attract customers from a very large geography* that extends south to Hammer Lane in Stockton and north to the edge of the Sacramento County-San Joaquin County border." (Emphasis added)

That is, this Project is designed to serve an intense regional, rather than a neighborhood, area and is not appropriate for development on an NCC/C-S designated parcel. For this reason the Project is inconsistent with the General Plan and Zoning Code.

B. The Project is not a "Department Store"

F-17 Moreover, although the Zoning Code says "department stores" are appropriate in the C-S zone, such statement still does not allow development of the Project in the C-S zone. Specifically, Zoning Code does not define "department store." However, the EIR states that this Project is subject to the "City's recently adopted Design Standards for Large Retail Establishments." (EIR at p. 13.) Those "recently adopted Design Standards" are codified at Chapter 17.58 of the Lodi Zoning code and expressly apply to "Large Retail Developments" or "Superstores." They do not apply to "department stores." (See § 17.58.010(a)). Thus, the City's zoning ordinance clearly distinguishes between "department stores" and "superstores" and the EIR's statements designate the anchor of this Project as the latter. Based on this discrepancy, the proposed Project cannot be approved for development on this C-S zoned site as a "department store."

F-17 Moreover, even if the Project could be categorized as a department store, development of a regional-draw department store on NCC designated property would result in an inconsistency with the General Plan because the retail use would not be "neighborhood and locally oriented."

IX. REQUEST FOR NOTICE

Pursuant to Government Code Section 65092, this office respectfully requests timely notice of any and all public hearings related to the approval of this Project, as well as the staff reports prepared for those hearings. Moreover, Pursuant to Public Resources Code Section 21092.2, please provide this office with copies of any "notices required pursuant to Sections 21080.4 [notice of determination], 21083.9 [scoping meeting], 21092 [notice of any public hearings regarding a negative declaration or EIR], 21108 [notice of determination filed by state agency], and 21152 [notices filed with county clerk including notices of determination and notices of exemption]" for this Project.

Thank you for the opportunity to comment on this EIR.

Very truly yours,

BRETT S. JOLLEY
Attorney-at-Law

Enclosures

ATTACHMENTS TO COMMENT LETTER FROM HERUM CRABTREE BROWN

The remaining material in this document consists of exhibits submitted with the comment letter from Herum Crabtree Brown, and include the following:

Exhibit "A" – Court decision for *South County Citizens for Responsible Growth et al. v City of Elk Grove et al.*

Exhibit "B" – "Wal-Mart's Impacts on the American Supermarket Industry" by DSR Marketing Systems Inc.

Exhibit "C" – *Wall Street Journal* article "Wal-Mart's Surge Leaves Dead Stores Behind."

Exhibit "D" – "The Potential Economic and Fiscal Impact of Supercenters in San Diego – A Critical Analysis" by Rea & Parker Research.

EXHIBIT "A"

Only the Westlaw citation is currently available.

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeal, Third District, California.

SOUTH COUNTY CITIZENS FOR RESPONSIBLE GROWTH et al., Plaintiffs and Respondents,
v.
CITY OF ELK GROVE, Defendant and Appellant;
M & H PROPERTY MANAGEMENT, INC., et al., Real Parties in Interest and Appellants.
The People ex rel. Department of Conservation et al., Plaintiffs and Respondents,
v.
City of Elk Grove, Defendant and Appellant;
M & H Realty Partners III et al., Real Parties in Interest and Appellants.

No. C042302.
(Super.Ct.Nos. 01CS01090, 01CS01123).

Feb. 5, 2004.

Doug Jaffe, Office of the State Attorney General, Richard M. Thalhammer, Sacramento, CA Joseph J. Brecher, Brecher & Volker, Oakland, CA, for Plaintiffs and Respondents.

Eric Nelson Robinson, Kronick, Moskovitz, Tiedemann & Girard, Sacramento, CA, Anthony B. Manzanetti, Elk Grove City Attorney, Elk Grove, CA, for Defendant and Appellant.

Stephen L. Kostka, Bingham McCutchen LLP., Walnut Creek, CA, Howard N. Ellman, Ellman, Burke, Hoffman & Johnson, San Francisco, CA, for Real Party in Interest and Appellants.

JoAnne Speers, Brenda Jahns Southwick, Sacramento, CA, Alan Neal Bick, Gibson, Dunn & Crutcher, LLP., Irvine, CA, for Amicus Curiae for Appellants.

SCOTLAND, P.J.

*1 Pursuant to the California Environmental Quality Act (CEQA), the City of Elk Grove (the City) prepared an Environmental Impact Report (EIR) for a development project known as the Lent Ranch Marketplace. [FN1] After certifying a final EIR, the City approved the project. On consolidated petitions for writs of mandate, the trial court found the EIR and the City's project approval to be deficient in four respects: (1) mitigation for the conversion of farmland to urban use through the payment of mitigation fees; (2) the need for buffer zones to protect existing agricultural uses; (3) the danger posed to the project by a propane facility 3,500 feet from the project site; and (4) the preparation of a separate EIR for a project to reconfigure a nearby freeway interchange. Because it concluded that the EIR process would have to begin anew, the court found it unnecessary to consider whether the EIR and the City gave sufficient consideration to project alternatives.

FN1. CEQA is contained in the Public Resources Code, commencing with section 21000. (Further section references are to the Public Resources Code unless otherwise specified.) Guidelines for the implementation of CEQA are contained in

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Exhibit "A"

title 14 of the California Code of Regulations, commencing with section 15000. (Further references to the Guidelines refer to title 14 of the California Code of Regulations.)

On appeal, we agree that mitigation for the loss of farmland requires additional environmental review, but we otherwise reject the trial court's determinations. We conclude the respondents may raise the question of project alternatives in defense of the judgment, but we consider and reject that contention. We also conclude the City need not commence the entire EIR process anew. Accordingly, we will reverse the judgment and remand the matter to the trial court for preparation and entry of a judgment consistent with these conclusions.

FACTUAL AND PROCEDURAL BACKGROUND

The project at issue in this proceeding, the Lent Ranch Marketplace, is proposed for property owned and controlled by the Lent family. The project consists of the proposed development of approximately 294.8 acres of real property located in the southern portion of the City. The property is roughly triangular in shape. The southern border of the project is Kammerer Road. The western border runs perpendicularly to Kammerer Road. The project is bordered to the east by West Stockton Boulevard and State Route 99. West Stockton Boulevard and State Route 99 run at an angle along the project edge so that the property is narrowest at its northern limit and widest at its southern limit.

The project property has been used for agricultural production, with crops that include oats, barley, hay, and wheat. The land to the east, across West Stockton Boulevard and State Route 99, consists of industrial, commercial, residential, and vacant land. The land to the south, across Kammerer Road, is in agricultural production. The land immediately to the west of the project has been in agricultural production, but is under consideration for residential development as the proposed South Pointe project. The northern edge of the project property borders on land that is designated Agricultural-Urban Reserve under the general plan of the County of Sacramento (the County), which is also the City's general plan. [FN2] That designation applies to land that is identified for urban expansion after the 20-year planning period of the general plan.

FN2. Elk Grove recently incorporated as a city. When it did so it adopted the County's general plan as its own.

***2** The City and County general plan establishes an urban policy boundary which is intended to enclose the existing urban area plus lands that could be developed by the 2010 plan horizon date. The general plan also establishes an urban services boundary which delimits the outermost extent of future urban services. The project property is within the urban policy boundary and the urban services boundary. In fact, Kammerer Road is both the southern boundary of the City limits and the urban services boundary.

The project proponents propose to develop the property into six districts. The project would include a district with a regional shopping mall, a community commercial district, a neighborhood commercial district, an office and entertainment district, a visitor commercial district, and a multi-family residential district. At buildout, the project would include 3,091,000 square feet of commercial space and 280 residential units. The proponents do not plan to construct the project all at once; rather, they anticipate that development would occur consistent with market conditions, likely over a 10-year to 15-year period.

The project proponents sought the City's approval for a general plan amendment, a rezoning and zone text amendment, a tentative subdivision map, a transportation system management plan, and a development agreement. The City prepared an initial study and determined that an EIR should be prepared. Following preparation of a draft EIR, a comment and review period, and administrative hearings, the City certified a final EIR and approved the project.

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Two petitions for writs of mandate challenging the City's actions were filed. Pursuant to stipulation of the parties, the actions were consolidated. After a hearing, the trial court found that the EIR was inadequate with respect to four issues: (1) consideration of possible mitigation for the loss of agricultural land; (2) consideration of the mitigation of land use conflicts by the creation of buffer zones; (3) the significance of the hazard posed by the Suburban Propane facility located about 3,500 feet from the project; and (4) the omission of the reconstruction of the Grant Line Road and State Route 99 interchange from the project description. The court found it unnecessary to consider the claim that the analysis of project alternatives in the EIR is deficient. The court rejected the contention that the project is inconsistent with the City's general plan.

DISCUSSION

I. Standard of Review

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) CEQA applies to discretionary projects to be carried out or approved by a public agency. (§ 21080, subd. (a).) In this respect, a project is any activity that may cause, directly or indirectly, a physical change in the environment. (§ 21065.)

The EIR has been described as the "heart of CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of a project, describes ways to minimize significant environmental effects, and suggests alternatives to the project. (*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p. 113.) Unless a project falls within one of the narrow categorical exemptions from CEQA, an EIR must be prepared whenever it appears that a project may have a significant effect on the environment. (*Ibid.; Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 390.)

*3 Where, as here, the City has prepared and certified an EIR, then in a judicial action to challenge the City's decisions on the ground of noncompliance with CEQA, "the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (§ 21168.5.) It is not a trial court's function to pass on the correctness of the EIR's environmental conclusions, but only on its sufficiency as an informative document. (*City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, 1786.) In doing so, the court does not look for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Ibid.*)

On appeal from a decision of the trial court, we apply the same standard that was applicable in the trial court and do not defer to that court's conclusions. (*San Joaquin Raptor/Wildlife Rescue Center* (1994) 27 Cal.App.4th 713, 722; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 712.) With this standard in mind, we will turn to the issues presented.

II. Loss of Agricultural Land

A. Factual Background

In a program begun by the United States Department of Agriculture and continued by the state Department of Conservation, state lands have been mapped to reflect their importance to agriculture. The categories to which lands are assigned, in descending order of importance, are prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, grazing land, urban and built-up land, and other land. About half of the productive farmland in Sacramento County is classified as prime farmland. The Lent Ranch is not prime farmland; rather, all but about 10 acres of the project site is designated as farmland of statewide importance. [FN3] The 10 acres occupied by the Lent Ranch complex are designated urban and built-up land.

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FN3. Pursuant to existing soil rating systems, the soils on the project site are rated poor or very poor, meaning they have severe or very severe limitations that reduce the choice of crop, require conservation practices, or both. The draft EIR states that farming on the land is no longer economically viable due to poor soil quality, high energy and water costs, and decreased commodity prices. Nevertheless, the land has been used for agricultural production and is considered farmland of statewide importance.

Policy CO-55 of the City and County general plan provides that the conversion of more than 50 acres of farmland of statewide importance is a significant environmental effect under CEQA. [FN4] The proposed project would convert about 285 acres of farmland of statewide importance, plus about 8 acres for an off-site detention basin. Accordingly, the draft EIR identified the conversion of farmland as a significant environmental effect.

FN4. The general plan does not preclude the conversion of some farmland to urban uses, in fact, it provides for planned conversion of some lands. In the general plan the project site was designated for potential urban development by 2010, the general plan's horizon date. In providing for conversion of some farmland in the general plan, the County considered the effect significant but made findings of overriding considerations.

The draft EIR concluded that there is no feasible mitigation measure available to offset the loss of farmland. It reasoned that (1) where the conditions exist which are necessary to warrant classification of land as farmland of statewide importance, the land has already been so classified and it would not be possible to create or manufacture more farmland of statewide importance, and (2) while preservation of other existing farmland or the payment of fees for the purchase of conservation easements would help to limit future losses, such measures would not reduce the specific loss of farmland converted to urban use through the project. [FN5]

FN5. Policy AG-5 of the City and County general plan calls for mitigation of the loss of prime farmlands or lands with intensive agricultural investments through CEQA requirements to provide for protection of nearby farmland. The project site is not prime farmland and does not contain intensive agricultural investments.

***4** During the comment period, the County suggested that the loss of farmland could be mitigated in a manner similar to a mitigation measure the County adopted in approving the East Franklin Specific Plan, a project about three miles to the west of the Lent Ranch project. Specifically, the County imposed a requirement that for every acre developed in the East Franklin project, the applicant would preserve .63 acres of agricultural land within the area, or would contribute $950 into a fund for the purchase of conservation easements or similar instruments. [FN6] A number of other commentators agreed that a mitigation measure such as that adopted for the East Franklin project should be imposed for this project.

FN6. The County said the 63 percent ratio for East Franklin was based upon the fact that only a portion of the project involved farmlands of statewide importance. It suggested the mitigation ratio for Lent Ranch should probably be higher because the Lent Ranch property is almost all farmland of statewide importance.

City staff contacted the Department of Conservation, the cities of Davis, Vacaville, Dixon, and Livermore, and the County of Sonoma to obtain information on agricultural conservation programs. The Department of Conservation recommends that local governments impose a requirement for conservation easements, Williamson Act contracts,

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or payment of a mitigation fee to preserve farmlands on an acre-for-acre basis. The cities of Davis and Livermore impose such a requirement on project approvals. The cities of Vacaville and Dixon are considering adopting such a program. The County of Sonoma has a program for land preservation through conservation easements but apparently does not impose it in the development process.

City staff continued to recommend against imposition of a conservation mitigation requirement on the Lent Ranch project. Staff noted that to impose a mitigation measure under CEQA, there must be an essential nexus between the mitigation measure and a legitimate governmental interest, and the measure must be roughly proportional to the impacts of the proposed project. (Guidelines, § 15126.4, subd .(a)(4); see *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304]; *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 [97 L.Ed.2d 677].) Staff concluded that the proposed mitigation measure would not meet this test because there had been no nexus study or ordinance by the City or the County to implement such a requirement. Staff also asserted that conversion of the land to urban use would result in permanent loss of the resource that could not be avoided, minimized, or rectified.

During the review process, the project proponents informed the City that they would be willing to pay mitigation fees of $950 an acre to be placed by the City into a fund for the purchase of conservation easements or similar instruments. [FN7] City staff continued to maintain that payment of a mitigation fee would not mitigate the impact of the project. However, they recommended that if such a program were to be adopted, it should be clearly defined, the level of mitigation should be clearly identified, and a process for determining fees should be established.

FN7. The project proponents also agreed to pay any subsequently approved increase in the fee or an adjustment based on the Engineering News Record Index, whichever is less.

In the end, the City adopted a development agreement requiring the payment of a mitigation fee. But the City found that payment of the fee would not mitigate the impact of the project below a level of significance. The City adopted a statement of overriding considerations for the project.

***5** The trial court concluded that CEQA allows mitigation through compensatory actions, including the payment of fees, which replace, or provide substitute, resources or environments. The court concluded that the EIR's and the City's findings that the impact from conversion of farmland to urban use cannot be mitigated are contrary to CEQA, that the error was not cured by the fact the project proponents agreed to pay a mitigation fee, and that the agreement was made without the analysis and public comment required by CEQA.

B. Analysis

In this respect, we agree with the trial court. The EIR said, and the City found, that the loss of farmland of statewide importance due to the project would be a significant environmental impact that cannot be mitigated below a level of significance. This finding is supported by ample evidence and is therefore unassailable on review. But the City then appeared to proceed on the basis that, if a significant environmental effect cannot be mitigated to a level below significance, then mitigation is not required and a statement of overriding considerations is sufficient to approve the project.

Mitigation and the requirement of a statement of overriding considerations are not mutually exclusive. The Legislature requires that, when a project will have significant environmental effects which cannot be mitigated below a level of significance, then the responsible agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant environmental effects before approving the project. (§ 21081, subd. (b).) On the other hand, the Legislature has declared a policy that feasible mitigation measures must be adopted whenever they would substantially lessen the significant environmental effects of the project. (§ 21002.) Nothing in CEQA would support the

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view that a statement of overriding considerations would relieve a public agency of the duty to adopt feasible mitigation measures which would substantially lessen the significant environmental effects of a project simply because those measures would not reduce the impact below a level of significance.

In our view, under CEQA the requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures, and whether they will substantially lessen the significant environmental effects of the project. (§§ 21002, 21081, subd. (a)(3); *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1790.) The requirement is not abated simply because the measures will not lessen the effects to below a level of significance. Accordingly, a statement of overriding considerations does not exempt a project from mitigation if there are feasible measures that would reduce substantially, albeit not eliminate, the significant environmental effects of the project.

The CEQA Guidelines recognize that mitigation may include "[c]ompensating for the impact by replacing or providing substitute resources or environments." (Guidelines, § 15370, subd. (e).) Our Legislature has recognized that conservation easements are an appropriate and desirable means of protecting agricultural lands against conversion to urban use. (§§ 10201-10202.) During the administrative proceedings, the City learned the Department of Conservation recommends that local governments mitigate the loss of farmlands through development by imposing a requirement for conservation easements, Williamson Act contracts, or the payment of a fee to preserve farmlands. Other jurisdictions, including the County, have imposed such a requirement. The EIR recognized that the preservation of existing farmland or the payment of fees for the purchase of conservation easements would help to limit future loss of farmland. And the project proponents by agreeing to pay, and the City by agreeing to accept, mitigation fees tacitly agreed the loss of farmlands can be mitigated through the payment of mitigation fees. Thus, we are not concerned here with a situation in which the City has found, as a factual matter, that the loss of farmlands cannot be mitigated. What the City did find is that mitigation will not reduce the impact below a level of significance. As we have noted, that finding does not relieve the City of the duty to mitigate to the extent feasible, as the City has in fact attempted to do by agreeing to accept mitigation fees.

***6** The project proponents point to *Friends of the Kangaroo Rat v. California Dept. of Corrections* (2003) 111 Cal.App.4th 1400 (hereafter *Friends of the Kangaroo Rat*), a recent decision of the Court of Appeal, Fifth Appellate District, which adopted the view, asserted by the City's staff here, that because a conservation easement would not create new farmland, it is not mitigation for the conversion of existing farmland. (*Id.* at p. 1409.)

Friends of the Kangaroo Rat involved the judicial review of a so-called revised cumulative impacts analysis (RCIA) concerning the proposed conversion of agricultural land for use as a correctional facility. Rejecting the contention that an agricultural easement would constitute mitigation, the Fifth Appellate District stated: "The suggested agricultural easement would presumably not create any new farmland where no farmland presently exists.... Thus an agricultural easement would not compensate for a loss of farmland 'by replacing or providing substitute resources or environments' (Guidelines § 15370, subd. (e))..... At best, such an easement might prevent the future conversion of some as yet unidentified parcel of farmland to a nonagricultural use. Although appellant might deem this to be a desirable result, appellant's desire for such a result does [not] turn appellant's proposed action into mitigation of the cumulative impact (on farmland) of this project and of the past, present, and probable future projects properly considered in the RCIA." (*Friends of the Kangaroo Rat, supra,* 111 Cal.App.4th at p. 1409.)

A request to depublish *Friends of the Kangaroo Rat* is pending in the California Supreme Court. In any event, we disagree with the Fifth Appellate District's holding. In this respect, we find a number of legislative pronouncements to be persuasive.

In the Williamson Act, the Legislature has set forth

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certain findings including: "(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation. [¶] ... [¶] (c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents. [¶] (d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments...." (Gov.Code, § 51220.)

*7 In 1979, the Legislature provided for the enforceability of conservation easements by adding a chapter to the Civil Code. (Civ.Code, §§ 815-816; Stats.1979, ch. 179, pp. 398-400.) In doing so, the Legislature found and declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California." (Civ.Code, § 815.)

The Legislature enacted the Agricultural Land Stewardship Program Act of 1995 in order to, among other things, establish a state program to promote the establishment of agricultural easements. (§ 10200 et seq.) In doing so, the Legislature found and declared among other things: "(b) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve land for the production of food and fiber, especially agricultural land around urban areas. [¶] (c) Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities. [¶] (d) The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas...." (§ 10201.)

The Legislature also declared the intent, among other things, to "(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians. [¶] (d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land. [¶] (e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation...." (§ 10202.)

In addition, the Legislature has added provisions to CEQA to require that the Resources Agency, in consultation with other state and federal agencies, takes steps to ensure that the environmental effects of agricultural land conversions are quantitatively and consistently considered in the environmental review process. (§§ 21061.1, 21061.2, 21095.) In doing so, the Legislature declared, in an uncodified provision, an intent that CEQA should play an important role in the preservation of agricultural lands. (Stats.1993, ch. 812, § 1, subd. (d), p. 4428.)

These legislative acts reflect that conversion of agricultural land to other uses has been a matter of significant concern to the Legislature for nearly four decades. Indeed, the Legislature regards the preservation of farmland to be one of the most important environmental assets of the state (Civ.Code, § 815; Gov.Code, § 51220, subd. (d)); recognizes that conversion of farmland to other uses, particularly urban use, inevitably creates development pressures that have a profound impact on the ability of the public and private sectors to conserve other land for agricultural use (§ 10201,

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subds.(b)-(d)); regards conservation easements as an important and necessary means of combating the development pressures created by the conversion of farmland (§§ 10200 et seq.; Civ.Code, § 815); and intends that CEQA should play an important role in the preservation of farmlands. (Stats.1993, ch. 812, § 1, subd. (d), p. 4428.)

***8** Under CEQA, mitigation is not limited to measures that would entirely avoid the environmental impacts of a project; rather, mitigation includes measures that would substantially lessen the significant environmental effects of the project. (§ 21002.) Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, conservation easements can diminish the development pressures created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project. In this respect, conservation easements fall well within the concept of mitigation under CEQA.

Of course, conservation easements are not always required whenever a proposed project would convert farmland to other uses. The Legislature has not so declared and thus leaves the matter for resolution on the facts and circumstances surrounding a particular project. However, we reject the assertion that a requirement that conservation easements be obtained cannot be a feasible mitigation measure when a project will convert farmland to other uses.

Accordingly, we conclude that the issue of conservation fees as a mitigation measure should have been subject to EIR discussion. This would not be necessary if the City had an established program for the assessment and use of conservation fees. However, neither the City nor the County have established such a program. Hence, EIR discussion and public response are necessary to determine the appropriate amount of the mitigation fees to be assessed. Such fees must be fair, that is, roughly proportional to the environmental impacts of the project and not extortionist or confiscatory. (Guidelines, § 15126.4, subd. (a)(4); see *Dolan v. City of Tigard, supra,* 512 U.S. 374 [129 L.Ed.2d 304]; *Nollan v. California Coastal Comm'n, supra,* 483 U.S. 825 [97 L.Ed.2d 677].) [FN8] The determination of the fees solely through the procedure of offer and acceptance will not necessarily establish the appropriate amount of the fees. And EIR discussion and public response are necessary to determine how and when the fees should be paid and spent. For example, should the fees be paid up-front upon project approval or should they be paid on a per-acre basis as the property is developed? Should the fees be spent immediately or should they be held and pooled with fees from other developers? What areas or properties should have priority for acquisition? It seems obvious that preservation of farmland relatively isolated from urban land uses would be cheaper but less efficacious than preservation of farmland that is pivotal in the effort to prevent urban sprawl. These are matters that can and should be addressed through an EIR with an opportunity for public response.

FN8. The City need not wait to impose a fee until after it adopts an ordinance to implement a fee program. The City can impose an in-lieu fee on an ad-hoc basis provided the fee satisfies the *Nollan/Dolan* standard. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 876.)

This conclusion does not mean the City is required to start the EIR process anew. Under CEQA, when an issue arises that requires more environmental discussion than was in the EIR, the matter may be addressed through an addendum to the EIR, through a supplement to the EIR, or through a subsequent EIR, whichever is most appropriate under the circumstances. (Guidelines, §§ 15162- 15164.) When the City determined to accept mitigation fees, additional discussion became necessary. While we do not purport to dictate the manner in which the City must proceed, we do agree with the trial court that this matter must be subject to environmental review in some sufficient manner.

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III. Buffer Zones

A. Factual Background

***9** The draft EIR concluded that the project would place urban land use within a primarily agricultural area and could impair agricultural production and result in land use compatibility conflicts. This was found to be a significant environmental impact.

The draft EIR found potential compatibility conflicts in three respects: (1) from the farmer's perspective, production could be adversely affected as a result of restrictions on pesticide, herbicide, and fungicide use, trespassing and pilferage, increased personal injury liability when trespassers hurt themselves, and littering of fields; (2) from the perspective of users of the developed lands, agricultural land uses could result in a number of nuisances and perceived hazards, such as concern over pesticide, herbicide and fungicide use, odors, dust, and slow moving vehicles; (3) from a growth-inducing perspective, urban use of the project site could result in increased pressure on the City or County to modify the urban policy area or the urban service boundary to permit conversion of agricultural land to urban use for the economic benefit of the landowner.

The draft EIR noted that agricultural properties in proximity to the project would be protected against nuisance complaints by the City's and/or the County's right-to-farm ordinance. Under a right-to-farm ordinance, a farm operation cannot be found to be a nuisance if the farmer adheres to applicable laws and policies. (See also Civ.Code, § 3482.5, subd. (a)(1).) [FN9]

> FN9. "No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began." (Civ.Code, § 3482.5, subd. (a)(1).)

The draft EIR noted that, under state law and county policy, the use of restricted chemicals is regulated pursuant to a permit process that is designed to minimize the effect on adjacent lands. The draft EIR further found the uses contemplated for the southern portion of the project and for most of the western portion of the project are not sensitive land uses and would not be occupied by any person on a 24-hour basis. In addition, the Kammerer Road right of way would separate the project from agricultural uses to the south. The small northern border of the project, and a portion of the north-western border, would be devoted to multi-family residential use which would be adjacent to agricultural use. However, if the proposed South Pointe project obtained approval, the interface along the western border of the project would be eliminated. And the eventual development of the Laguna Ridge Conceptual Study Area would eliminate the interface at the northern border of the project.

The draft EIR concluded that trespassing and pilfering would be easier with the proposed project in place, but that (1) the project would provide for increased law enforcement personnel and an on-site security force, and (2) the types of crops grown in the area, oats, barley, and wheat, are not the types of crops that entice trespassers and pilferers.

The draft EIR said that the agricultural odors of concern are generally those associated with dairy farms, but that there are no dairy farms in the vicinity of the proposed project and it was not anticipated that odors would be significant.

***10** With respect to the growth-inducing impact, the draft EIR noted that, under the general plan, the urban services boundary was intended to be the ultimate boundary of the urban area in the County. It was intended to be permanent and not subject to modification except under extraordinary circumstances. Modification would require specific extraordinary findings and a supermajority vote of

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the board of supervisors. The draft EIR found the urban services boundary to be a constraint to growth-inducement to the south of the project site.

While the draft EIR found that these factors would minimize land use compatibility impacts, it nevertheless found those impacts to be significant and unavoidable.

During the comment period, several commentators mentioned agricultural buffers. With reference to the land south of Kammerer Road, the Sierra Club asserted that the Lent Ranch project is just the type of threat to important farmlands which was foreseen in the general plan. Asserting that more is required to protect farmlands than merely drawing a line on a map, it said that Implementation Measures D and E from the agricultural element of the general plan could provide the first step toward formulating a policy of farmland conservation. [FN10]

FN10. Implementation Measure D provides: "Develop and implement guidelines for design of buffers to be established between areas in a Permanent Agricultural Zone proposed for conversion from agricultural to urban use and adjacent farmlands. Develop and implement procedures for evaluating site-specific buffer proposals and making recommendations to the County Planning Commission. Title to buffer areas may be transferred to the County or other appropriate entity, but shall be credited to the proposed development as open space. Buffer design criteria shall include, but not be limited to, the following: [¶] buffers shall generally consist of a physical separation 300-500 feet wide including roadways; [¶] narrower buffers may be approved depending on the natural features of the buffer, applicable specific plan policies, and on the relative intensities of the proposed urban use and the adjacent agricultural use; and [¶] buffers shall be established on the parcel proposed for development and be fenced along its urban side and posted against trespass."

Implementation Measure E provides: "Develop and implement guidelines for maintenance of buffers including, but not limited to, the following criteria: [¶] the County, a homeowners association, or other appropriate entity shall maintain buffers to control litter, fire hazards, and pests; [¶] compatible agriculture shall be allowed on buffers; and [¶] buffers may be removed once agricultural uses on all adjacent parcels have permanently closed."
Implementation Measures D and E are in a part of the general plan agricultural element that states the specific objective of protecting prime farmlands and lands with intensive agricultural investments, such as orchards, vineyards, dairies, and other concentrated livestock or poultry operations, against urban encroachment. Land in the vicinity of the Lent Ranch project is not prime farmland or land with intensive agricultural investment and thus is not the specific target of Implementation Measures D and E. However, while not controlling, those measures are relevant considerations with respect to the City's decisions regarding urban development of farmland of statewide importance.

The Environmental Council of Sacramento stated that, if approved, the project "will require mitigation in the form of the protection of permanently protected agricultural buffer lands to the south." However, it saw this solution as problematic because the value of the land south of Kammerer Road was being raised by speculation regarding its development potential and there was no guarantee that the owners of land south of the urban services boundary would be willing to sell while there remained potential value for development.

South County Citizens for Responsible Growth expressed concern that development projects proposed for the area--in particular the Lent Ranch project and a project to alter the State Route 99/Grant Line Road interchange-- could result in pressure on the City and the County to modify the

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urban policy area and the urban services boundary. Citing Implementation Measures D and E, the group said: "The City should view the Lent Ranch proposal, and the challenge it poses for farmland and habitat protection in the South County, as an opportunity to further define and implement these programmatic measures. These programmatic activities should precede or be clearly linked to any approvals of development to the edge of the [urban services boundary]."

Finally, an individual named Tim Raboy wrote to express concern that the project would create a massive potential for development past the urban services boundary. He suggested there should be a one-half mile buffer between the project and the urban service boundary.

The City found that, while land use conflicts could be minimized by existing standards and policies (such as the City's right-to-farm ordinance) and by mitigation measures adopted for the project (such as landscaping and limitations on lighting and building materials), the conflicts would be significant and unavoidable. The City also found that the 110-foot-wide Kammerer Road and an additional 20 feet of landscaped buffer on the project side of the road would serve as an effective and sufficient buffer to separate the project from agricultural uses to the south.

***11** The trial court concluded that neither the EIR nor the City's findings adequately explained why a buffer between the project and adjacent agricultural land uses would not substantially reduce land use conflicts or would not be feasible. The court said that, although the land to the west of the project was proposed for development as the South Pointe project, the project has not yet been approved and, if approved, the timing of its implementation is unknown. The court found that conflicts and adverse impacts between the residential use planned for the northern edge of the Lent Ranch property and agricultural uses to the north could be mitigated by a buffer. Finally, the court said that, assuming the traffic on Kammerer Road would be a sufficient buffer for the lands to the south, that buffer would be partially eliminated with the planned realignment of Kammerer Road and the Grant Line Road/State Route 99 interchange. The court found that the EIR failed to consider whether Kammerer Road would be a sufficient buffer after realignment.

B. Analysis

Section 21177, subdivision (a), provides: "No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." This statutory provision embraces the doctrine of the exhaustion of administrative remedies. [FN11] Among the several reasons for the doctrine is the purpose of allowing the decisionmaking body to learn of the contentions of interested parties before litigation is instituted and to allow it to act to render litigation unnecessary if it chooses to do so. (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 997.)

FN11. Subdivision (b) of section 21177 prohibits any person from maintaining a judicial action unless that person objected to the approval of the project orally or in writing during the administrative proceedings. Section 21177 does not require that the person who seeks to raise an issue in court be the same person who raised the issue in the administrative proceedings. It is enough that the person bringing the judicial action or proceeding objected to approval of the project during the administrative proceedings and that some person raised the alleged grounds of noncompliance which are asserted in court.

Generalized objections to a project are not sufficient to satisfy the requirement of the exhaustion of administrative remedies. (*Corona-Norco Unified School Dist. v. City of Corona, supra,* 17 Cal.App.4th at pp. 997-998; *Coalition for Student Action v. City of Fullerton*

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(1984) 153 Cal.App.3d 1194, 1197-1198.) To fulfill the requirement that an issue be first presented to an administrative agency, the issue must be presented with sufficient specificity to satisfy the purpose of the rule, i.e., to enable the decisionmaker to be informed of the nature of the contention and to address it if it chooses. (*Corona-Norco Unified School Dist. v. City of Corona, supra,* 17 Cal.App.4th at pp. 997-998; *Coalition for Student Action v. City of Fullerton, supra,* 153 Cal.App.3d at pp. 1197-1198.) Thus, while we would not insist an issue be raised with the same formality that might attend a judicial proceeding, it must appear the issue was raised with sufficient specificity to conclude that it was in fact presented to the decisionmaking entity for its consideration.

***12** We agree with the project proponents that the question of agricultural buffers on the western and northern borders of the property was not presented in the administrative proceedings. The draft EIR identified potential direct land use compatibility conflicts (such as trespassing and pilferage on farmlands, and urban users' fears of nuisances and hazards from farming) and the potential indirect conflict of increased pressure for modification of the urban services boundary to allow conversion of land that is identified as permanent agricultural under the general plan.

The submitted comments that mentioned agricultural buffers have been noted above. Each of the comments that raised the buffer issue was specifically concerned with protecting the urban services boundary against expansion. Each of the comments referred to the need for buffers to minimize the pressure on the City and the County to expand the urban services boundary. None of them suggested that buffers were necessary to protect agricultural uses against direct conflicts, such as trespassing and pilfering, or to protect urban uses from agricultural practices. None of them suggested that buffers should be established along the western or northern borders of the project property.

The Department of Conservation contends that South County Citizens for Responsible Growth raised the issue of buffers without limitation to any particular compass border of the project and, therefore, the buffer question was presented as a general issue sufficient to include the western and northern boundaries of the property. We disagree. South County Citizens for Responsible Growth addressed buffers under the heading: "The 'Growth Inducement' Section of the DEIR Fails to Analyze the Probable Indirect Long-Term Growth Inducing Effects." The comment specifically refers to pressure on the City and the County to modify the urban policy area and the urban services boundary, and states the draft EIR hangs these boundaries out to dry. The comment says the City should develop programmatic measures for farmland and habitat preservation that precede, or are linked with, development approvals to the edge of the urban services boundary. This comment did not suggest that buffers are necessary to avoid direct land use conflicts or to separate the project from land within the urban services boundary.

Consequently, the question of the need for agricultural buffers along the western and northern borders of the project was not presented to the City and cannot properly be raised in the judicial proceedings. We do not reach this conclusion merely because the comments that spoke of buffers referred exclusively to the land south of the project. In addition to this fact, the sole focus of the comments was the need to preserve the urban services boundary against expansion, which is an issue that does not apply to the lands to the west and the north of the project since they are already within the urban services boundary. Nothing in the comments reasonably presented the alleged need for buffers along the western and northern borders of the project. Accordingly, the trial court erred in addressing the question of buffers along the western and northern borders of the project.

***13** The City found that Kammerer Road and an additional 20 feet of landscaping on the project side of the road would be a sufficient buffer between the project and agricultural uses to the south. We must uphold this determination unless it is not supported by substantial evidence. (§ 21168.5.) The substantial evidence rule is well established and understood. We do not substitute our judgment for that of the City; instead, we must uphold the City's

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determination unless we are satisfied that, on the basis of the record, no reasonable factfinding decisionmaker could have reached the same conclusion. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571, 574.)

The EIR concluded that direct land use conflicts with farmlands to the south would be minimized by a number of factors, including the City's and the County's right-to-farm ordinances, the fact that the land uses planned for the southern portion of the project are not sensitive land uses, the fact that the project would provide for increased law enforcement and an on-site security force, and the fact that the types of crop grown in the area are not the types of crop that entice trespassers and pilferers. The City found that mitigation measures adopted for the project, such as landscaping requirements and limitations on lighting and building materials, would mitigate direct land use conflicts. While the City did not find that land use conflicts would be eliminated, it did find that, under the circumstances, Kammerer Road and an additional 20 feet of landscaped buffer would be a sufficient buffer between the project and agricultural lands to the south.

Under the substantial evidence rule, in order to interfere with the City's determination, we would be required to declare that, as a matter of law, the buffer provided is insufficient and additional buffering space is legally mandated. We are unable to do so. The need for, and adequacy of, agricultural buffers are matters that necessarily must be determined on the basis of the particular circumstances involving and surrounding a project. This is a matter of judgment committed to the City. Under the circumstances presented, we cannot conclude that the City's determination was without evidentiary support.

The court believed that the planned realignment of Kammerer Road and the Grant Line Road/State Route 99 interchange would partially eliminate Kammerer Road as a buffer, and concluded that the City failed to consider whether Kammerer Road would remain a sufficient buffer after realignment. Kammerer Road presently runs along the entire southern border of the proposed project. Grant Line Road lies to the east of the project and terminates at State Route 99 at a location somewhat north of Kammerer Road. In the anticipated realignment, Kammerer Road would bend north from a location in the approximate middle of the southern project boundary and would run though the project site to connect with Grant Line Road at the State Route 99 interchange. However, the portion of Kammerer Road that would cease to be Kammerer Road would not be abandoned. Rather, West Stockton Boulevard would be reconfigured to run through the project property, cross the new Kammerer Road at a signalized intersection, and then connect with, and become the old portion of, Kammerer Road. Accordingly, realignment of Kammerer Road would not eliminate the buffer provided by the roadway.

*14 The EIR concluded that the project would have a growth-inducing impact. Urban use of the project property, and the development of other properties, could result in pressure on the City and the County to modify the urban services boundary to permit development of agricultural property which, under the general plan, is supposed to remain agricultural land. The EIR found that the general plan constituted the greatest constraint to development south of the project. Under the general plan, the urban services boundary was declared the permanent boundary of urban services. It is not subject to modification except under extraordinary circumstances and by super-majority vote. In response to the comments suggesting that buffers be established, the final EIR states that agricultural buffers would not minimize the growth-inducing impacts of the project except to the extent they would be sufficient to make the project infeasible and thus maintain the status quo for the project site.

It seems inevitable that, as the lands within the urban services boundary are converted to urban use, developers will be induced to look across that boundary for land for prospective projects. It also seems inevitable that, when the prospect of development arises, at least some of the owners of land outside the urban services boundary will be enticed to sell or otherwise seek conversion of the land for their financial benefit. What is not obvious is how requiring Lent Ranch to incorporate additional buffers beyond Kammerer Road and the

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landscaping buffer would reduce or eliminate those inevitabilities. Under the circumstances, we cannot reject the City's determination that additional buffers would not mitigate the growth-inducing impacts of the project.

For these reasons, the trial court erred in finding that the EIR and City did not adequately consider the issue of agricultural buffers.

IV. Suburban Propane

A. Factual Background

Suburban Propane maintains a facility approximately 3,500 feet, or two-thirds of a mile, from the proposed project site. The facility consists of four 60,000-gallon pressurized storage tanks and two 12,000,000-gallon refrigerated storage tanks. [FN12] Suburban Propane receives propone by tank truck delivery, with a typical capacity of 10,000 gallons, and by railcar delivery, with a typical capacity of 33,000 gallons. Propane stored at the facility is used to fill tank trucks and railcars for off-site deliveries. On average, Suburban Propane handles about 120,000 gallons of propane each day. Next to the Suburban Propane facility, Georgia-Pacific maintains a facility with a 40,000-gallon storage tank in which it stores formalin, which is a solution of water and formaldehyde.

FN12. Propane is stored in liquid form. Storage of propane in liquid form requires the use of pressure, refrigeration, or some combination of both. The pressurized storage tanks at the Suburban Propane facility have a nominal capacity of 60,000 gallons, but in order to maintain pressure cannot be filled to more than 80 percent of capacity, thus they do not hold more than 48,000 gallons at any one time.

A number of safety studies have been performed with respect to the Suburban Propane and Georgia-Pacific facilities. In 1992, Dames & Moore did a screening-level hazard analysis for the County. A screening-level analysis is not a formal hazards and operability study or hazard evaluation, and it does not attempt to identify the probability that any particular scenario may occur; rather, it simply attempts to identify and describe worst-case release scenarios. [FN13]

FN13. The Dames & Moore report said the probability of a release of propane that would impact off-site individuals would be small. While there are formal methods for estimating such probabilities, these were beyond the scope of the study.

***15** Dames & Moore concluded that the potential consequences from a release of propane included a vapor cloud or flame jet fire, a liquid pool fire, an unconfined vapor cloud explosion (UVCE), vessel over-pressurization and explosion, and a boiling liquid-expanding vapor cloud explosion (BLEVE). Of these, a UVCE or a BLEVE presented the greatest potential danger to persons off-site. [FN14] The potential dangers were thermal radiation exposure from a fire and exposure to overpressure (shock waves) from an explosion.

FN14. A liquid boils, begins to vaporize, when, in normal atmospheric conditions, it is warmed to its boiling point. When a liquid is stored under pressure at a temperature in excess of its boiling point, then upon rapid release, such as through total vessel failure, the liquid can rapidly vaporize and expand. The virtually instantaneous vaporization and expansion of the liquid can produce an explosion with an associated pressure or blast wave. This type of event is a BLEVE. In contrast, a UVCE will occur if propane is released in a manner that causes a slower or more gradual vaporization with creation of an unconfined vapor cloud of the right density and a subsequent ignition event occurs.

The Dames & Moore report analyzed four hypothetical worst-case incidents that might give

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rise to danger. The analysis was used to generate hazard footprints, which consist of maps of the vicinity showing areas in which some measure of injury could occur. The footprints for two of the scenarios, a moderate refrigerated propane spill and a large refrigerated propane spill which generate a UVCE, indicate that some injuries could occur within a portion of the area of the Lent Ranch.

In 1998, Dames & Moore was hired to perform a risk analysis for a UVCE with respect to the actual conditions at the Suburban Propane facility and to define the probabilities of occurrence of such an event. On this occasion, Dames & Moore concluded that Suburban Propane would not pose a significant risk to persons at the proposed project site. The report explained that only one of the release scenarios would have any potential of having effects at the site and that scenario would require a chain of events with a probability of less than one in a billion. The scenario would require a triggering event, simultaneous failure of multiple safety control mechanisms, adverse and unusual meteorological conditions, and a separate detonation point somewhere within the resulting vapor plume. The report stated that the maximum impact zone for the hypothetical UVCE scenario would be 1,700 to 2,300 feet.

Suburban Propane hired an expert, John Jacobus, Ph.D., of EFI Corporation, to conduct a study. Jacobus approached the matter from a worst-case scenario standpoint. In doing so, he did not take into account any fixed safety systems in place at the facility, including water deluge systems, jacketed tank cars, and head shields on rail cars. He discussed a number of seemingly plausible worst-case scenarios, but said that most of them were shown to be scientifically unviable. "For example, the simultaneous failure of two 12,000,000 gallon vessels of refrigerated propane, followed by rapid vaporization of the propane, dilution of the propane vapor to the flammable range, and detonative ignition of the resulting vapor cloud is, at best, fantasy." Jacobus also noted that explosive equivalents are generally expressed in equivalent units of TNT and he utilized TNT equivalents in his study. However, he cautioned that the near field overpressure of a point charge, such as TNT, is markedly different from that of a diffuse charge, such as a flammable vapor cloud, and that the use of TNT equivalents could significantly overestimate pressure-distance relationships.

***16** Jacobus considered six worst-case scenarios. The first two, the rupture, vaporization, dilution, and detonative ignition of the contents of one or both of the refrigerated storage vessels, would be the most likely scenarios to affect persons at the Lent Ranch site, but Jacobus considered those scenarios to be scientifically unviable.

The third scenario was rupture of all four pressurized storage tanks with vaporization, dilution, dispersal of the vapor to its flammable limits, and detonative ignition. This would require simultaneous failure of all four storage tanks and the failure of the built-in safety features such as the water deluge system and the pressure control valves. In that event, fatalities could be expected to a range of one-half mile if a person were in a direct line of sight for the duration of the resulting fireball. Jacobus regarded this scenario as highly unlikely. All four pressurized tanks could only fail simultaneously, if ever, if all four were engulfed in a pool fire that raised their temperatures to or above their superheat temperature limit or they were compromised through an intentional act.

Scenario four involved the rupture of one pressurized storage tank, followed by either a vapor cloud explosion or a BLEVE. Scenario five involved the rupture of a 33,000 gallon railcar followed by either a vapor cloud explosion or a BLEVE. In each case, Jacobus found that the threshold for blistering of bare skin would extend to one-half mile if the individual were in a direct line of sight for the duration of the fireball. The sixth scenario was the rupture of a 10,000 gallon tank truck followed by a vapor cloud explosion or a BLEVE. In that case, the threshold for blistering skin would extend out to .3 miles for an individual in a direct line of sight for the duration of the fireball. Finally, although not as a scenario, Jacobus evaluated the effect of a pool fire involving the refrigerated storage tanks. He concluded that the lower limit or threshold for pain would extend to 1,600 feet for a pool fire involving one vessel and

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to 2,250 feet if the fire involved both vessels.

A study that is referred to as the Jukes and Dunbar study was commissioned jointly by the County Sheriff's Department and City Fire Department. This study analyzed four worst-case scenarios. The first was a railcar failure with a BLEVE. Such an event could produce a shock wave sufficient to cause limited minor structural damage to a distance of 2,380 feet. It could produce radiant heat sufficient to cause first degree burns at a distance of 2,776 feet. It could produce shrapnel projections. While shrapnel projections are generally more limited in distance, the study suggested that a safety perimeter with a radius of 3,200 feet would be prudent and realistic. The study regarded the probability of such an event to be credible, although highly remote.

The second scenario was the total failure of one of the refrigerated storage tanks with the instantaneous release of liquid refrigerated propane, the formation of a vapor cloud, and subsequent ignition of the vapor cloud. Such an event could create a shock wave sufficient to cause limited minor structural damages to a distance of 4,484 feet. It could produce radiant heat sufficient to cause first degree burns to a distance of 2,531 feet. Shrapnel projection was not applicable to this scenario.

***17** The third scenario was the total failure and release of liquid propane from both refrigerated storage tanks with formation of a vapor cloud and subsequent ignition. That event could produce a shock wave sufficient to cause limited minor structural damage to a distance of 5,605 feet. It could produce a shock wave sufficient to shatter windows and perhaps cause additional structural damage, with danger to persons from things such as flying glass, to a distance of 3,757 feet. It could produce radiant heat sufficient to cause first degree burns to a distance of 3,163 feet. Shrapnel projection was not applicable to this scenario.

The fourth scenario involved the total failure and complete release of formalin from the Georgia Pacific tank. Formalin, when released into the atmosphere, can create a formaldehyde cloud. Although it was not expected that such a failure would occur on its own, the study assumed, without modeling the mechanics of such an event, that a disaster at Suburban Propane would be sufficient to cause a total failure of the Georgia Pacific tank. In that event, and if the failure were not involved with a fire, there could be mild health effects to a distance of 1 to 1.4 miles and potentially lethal effects could extend to .3 miles. Such an event was considered relatively remote due to the thermal energy that would be associated with an event sufficient to destroy the tank and the abundance of other ignition sources in the area. A release of formalin with a fire would create a substantially lower health risk to downwind populations.

Quest Consultants, Inc. (Quest) was retained to provide a quantitative risk analysis for purposes of the EIR. It proceeded by (1) determining the potential releases that could result in significant hazardous conditions outside of the facilities (for this purpose Quest utilized information derived from the prior studies of the matter, as well as other information); (2) determining an annual probability of each potential release (for this purpose Quest utilized industrial failure rate data bases, except for failures caused by earthquakes, which were assigned a frequency of once in 10,000 years [FN15]); (3) calculating the potentially lethal hazard zones for each potential release event (these calculations were repeated for numerous combinations of wind speed, atmospheric stability, and wind directions in order to account for local weather conditions); and (4) combining (2) and (3) to derive an annual risk of fatality to the public from the facilities.

FN15. The earthquake frequency was based upon the knowledge that refrigerated storage tanks, such as those at Suburban Propane, are commonly built to withstand the effects of an earthquake with a magnitude that is expected to occur once in 10,000 years.

Quest produced a hazard footprint depicting the annual risk of fatality from the Suburban Propane and Georgia-Pacific facilities. Quest concluded that

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almost all of the Lent Ranch site was between the boundaries of the 1-in-10,000,000 to 1-in-100,000,000 risk range. A small portion of the site along the northeast border, which is currently occupied by West Stockton Boulevard, was within the border of the 1-in-10,000,000 risk range. While there are no United States standards to define acceptable risk, standards have been developed in Western Australia, Hong Kong, the United Kingdom, and the Netherlands. The most common international standard for acceptability of risk is a 1-in-1,000,000 chance of fatality. For comparison purposes, the Quest report also set forth a table containing the individual risk of fatality from various day-to-day causes, all of which were substantially greater than the risk posed by Suburban Propane and Georgia-Pacific.

***18** The Quest report noted that there is no single measure which completely describes the risk a project presents to the public. The report also noted that the consistent use of conservative assumptions in its methodology would overstate the actual risk. Finally, the report stated that the consequences associated with the deliberate efforts of a third party to cause the release of propane were addressed and would be separately provided to appropriate authorities, but that the consequences would not exceed the worst-case releases which had been considered.

The draft EIR utilized the Quest report. In doing so, it noted that Quest had utilized the other reports. The other reports were summarized and detailed comparisons of the results of all the reports were set forth. The draft EIR concluded that the potential impacts from the Suburban Propane and Georgia-Pacific facilities are less than significant. Consistent with the Quest report and the EIR, the City found that impacts from the location of the Suburban Propane and Georgia-Pacific facilities are less than significant.

The trial court found the approach of the Quest report, and the City's findings, to be fundamentally flawed. The court said that CEQA does not include the probability of an effect as a factor in the determination whether the effect is significant, and that the concept of acceptable risk is foreign to CEQA significance determinations. Finding it inappropriate to discount the possibility of criminal sabotage, the court concluded that "[r]egardless of whether the probability of the worst-case scenarios occurring is very low or whether the probability of the criminal attempt succeeding could be reliably estimated, the worst-case scenarios of a substantial public hazard occurring at the project are realistic possibilities that preclude the EIR's finding of insignificance."

B. Analysis

There are three aspects to the trial court's ruling. First, the court concluded that the EIR and the City erred in performing and considering a probability of risk analysis. Second, the court concluded that the record precludes a finding that the risk posed by Suburban Propane is insignificant. Third, the court concluded that the City failed to adequately consider the possibility of criminal sabotage. We will address each in turn.

(1) Probability of an Occurrence

The concept of risk inherently embraces both the nature and magnitude of the harm that may occur and the likelihood of an occurrence that will cause the harm. For example, the basic test of negligent conduct requires consideration of whether harm was sufficiently likely to occur that it would have been foreseen by a reasonable person. (See, e.g., *Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 46; *Beresford v. Pacific Gas & Elec. Co.* (1955) 45 Cal.2d 738, 746.) In a product liability action, a product may be found to be defectively designed if it embodies excessive preventable danger, which requires consideration of, among other things, the gravity of the danger posed by the challenged design and the likelihood that the danger would occur. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 562; *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 431.) In deciding whether a manufacturer has a duty to warn consumers of product dangers, the considerations include the nature and magnitude of the danger and the likelihood of its occurrence. (*Cavers v. Cushman Motor Sales, Inc.* (1979) 95 Cal.App.3d 338, 347-348.) It is in fact difficult to contemplate the

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concept of risk without consideration of both the nature and magnitude of the danger in the abstract and the likelihood of its occurrence.

***19** We find nothing in CEQA that precludes an EIR from addressing the probability that an abstract danger might occur in determining whether a risk is significant. Section 21083, subdivision (b)(3), provides that the Guidelines prepared by the Office of Planning and Research shall require a finding of a significant effect on the environment if "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." This provision does not require a finding of a significant effect simply because some abstract danger can be hypothesized without regard to its likelihood of occurrence. In turn, the Guidelines ask an agency to determine whether a project would "[c]reate 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?" (Guidelines, Appendix G, part VII, (b).) This provision contemplates consideration of the likelihood of an event in determining whether a risk is significant.

The Quest report did not purport to provide the only means of assessing the risk posed to the project; rather, it noted there is no single measure that would completely describe the risk. The EIR set forth the analysis of the Quest report, but it did not attempt to hide the ball by ignoring the other reports. Instead, it summarized the other reports and set forth detailed comparisons of the results of all of the reports.

Accordingly, the EIR served its purpose as an informational document. As we have noted, the draft EIR summarized and set forth the findings of all of the experts. After circulation of the draft EIR, the issue was thoroughly discussed and debated. Written and oral comments were submitted, and workshops and public hearings were held.

"The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189; see *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 392.) Thus, we must conclude the Lent Ranch EIR was sufficient as an informative document and that it was not rendered fundamentally flawed by the inclusion of the Quest report's probability of risk analysis.

(2) Sufficiency of the Evidence

The conclusion of the trial court that the worst-case possibilities of harm preclude a finding of insignificance is a finding that the City's decision is not supported by substantial evidence. We disagree. We do not base our conclusion on the Quest report alone; we give due consideration to all of the reports that were considered.

The experts were not in agreement on all matters concerning Suburban Propane. However, we are concerned here solely with the Lent Ranch project. Differences of opinion as to matters which, according to the experts, would not affect Lent Ranch cannot controvert the City's findings with respect to Lent Ranch. The City found that Suburban Propane would not pose a significant risk to the Lent Ranch project and, in determining whether that finding is supported by substantial evidence, we consider only those scenarios which, according to the experts, could have a potential impact on Lent Ranch. When we focus on Lent Ranch, we find a rather strong measure of consistency in the reports.

***20** The initial Dames & Moore report was a screening-level analysis which emphasized it did not attempt to consider the likelihood a particular event could actually occur. In that report, the only event identified which could cause injuries at the Lent Ranch property would be failure of one or both of the refrigerated storage tanks followed by formation of an unconfined vapor cloud with subsequent ignition. When Dames & Moore was subsequently asked to consider probabilities of occurrence, it concluded Suburban Propane would not pose a significant risk to Lent Ranch because that scenario would require a chain of events with a probability of less than one in a billion of occurring.

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The Jacobus report considered six worst-case scenarios. Like the Dames & Moore report, the only scenarios in which he identified possible harm to persons at Lent Ranch were the failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition. Jacobus explained that some scenarios which may seem plausible in the abstract can be shown to be scientifically unviable when the requisites for the event are considered. He considered the scenarios involving failure of the refrigerated storage tanks to be scientifically unviable. He termed the scenario involving simultaneous failure of both tanks to be "at best, fantasy."

In the Jukes and Dunbar report, as in the other reports, the only scenario at Suburban Propane that would have the potential for causing injury at Lent Ranch would be the failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition. The report did not attempt to determine the probability such an event could happen, but said that, although remote, the possibility is it could.

The Quest report quantified the risk posed by Suburban Propane in terms of an annual risk of fatality. It concluded that the risk of fatality to persons at Lent Ranch from Suburban Propane is 1-in-10,000,000 to 1-in-100,000,000.

According to the reports, the only Suburban Propane scenario with potential to affect Lent Ranch would be total failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition causing a UVCE. Dames & Moore regarded the possibility of such an event as virtually impossible. Jacobus regarded it as scientifically unviable. Quest regarded the risk from such an event as negligible. Jukes and Dunbar characterized the possibility as remote, but said it was credible. In considering the danger posed to Lent Ranch by Suburban Propane, the City was entitled to focus on Lent Ranch and to consider the reports of the experts in their entirety, including both the abstract danger of an event and the expert's views on whether such an event could occur. In order to reject the City's finding that the risk is insignificant, we would be required to reject the Dames & Moore, Jacobus and Quest reports, reject the concurrence of Jukes and Dunbar that the UVCE scenario is remote, and place sole reliance on the Jukes and Dunbar assertion that the scenario is credible. This we may not do. The City's finding is amply supported by the evidence. [FN16]

FN16. Respondents South County Citizens for Responsible Growth and Environmental Council of Sacramento claim there was disagreement among the experts and that, when there is disagreement among experts, a public agency is required to find an effect to be significant. (See Guidelines, § 15064, subd. (g), *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1607.) That standard, however, applies in determining whether an EIR is necessary. Since an EIR is required when substantial evidence indicates a project may have a significant impact on the environment, an agency is not permitted to resolve conflicts in the expert opinions at that point. (§ 21082.2, subd. (d).) On the other hand, when an EIR has been prepared, then the agency is not only permitted, but is required to make factual determinations, and judicial review of those decisions is limited to substantial evidence review. (§ 21168.5.) In any event, when we focus upon potential impacts to Lent Ranch and disregard the experts' disputes about other matters, we do not find sharp disagreement among the experts.

(3) Criminal Sabotage

***21** We cannot agree with the trial court that the City failed to adequately consider the possibility of criminal acts. The reports of Dames & Moore, Jacobus, and Jukes and Dunbar all accepted the possibility that criminal behavior could be the initiating cause of the worst-case scenarios which were considered. The Quest report said that the possibility of criminal acts was considered and that

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the analysis was separately provided to appropriate authorities.

The possibility of criminal sabotage at Suburban Propane was thoroughly discussed during the administrative proceedings, and the consensus of the experts was that a criminal could not intentionally accomplish anything more than was otherwise addressed in the various worst-case scenarios. As we have noted, in the various reports the only scenario identified that could have potential effects at Lent Ranch would be total failure of one or both refrigerated storage tanks with formation of an unconfined vapor cloud and subsequent ignition. Dames & Moore found such an event to be virtually impossible for reasons that would be beyond the control of a criminal. Jacobus found such an event to be scientifically unviable for reasons that would be beyond the control of a criminal.

In addition to the factors that would preclude an accidental UVCE event, a criminal would be faced with the fact that he or she would be required to cause total failure of a refrigerated storage tank without utilizing explosives or any other device that would provide a source of ignition. A vapor cloud cannot form unless pooled propane is allowed to vaporize without ignition of the vapor. Thus, for example, Jacobus was asked what would happen if a terrorist flew an airplane into one of the tanks. He responded that a pool fire, and nothing worse, would result. Jacobus did not believe that a pool fire involving one or both of the refrigerated storage tanks would have impacts at Lent Ranch.

It was for these reasons that the EIR stated, and the City found, the potential of criminal sabotage at Suburban Propane would not create a significant risk to persons at the Lent Ranch project. Substantial evidence supports that finding.

V. The Interchange Reconstruction

A. Factual Background

The City contemplates that the State Route 99/Grant Line Road interchange will be reconfigured. It will be changed from its current hook-ramp type configuration to a modified diamond type with diagonal off-ramps and loop on-ramps in the northwest and southeast quadrants. The improvement of the interchange is a designated project in the City's general plan. It is included in the 1999 Metropolitan Transportation Plan prepared by the Sacramento Area Council of Governments (SACOG). And it is included in SACOG's Metropolitan Transportation Improvement Plan, which identifies projects to be completed in the near future. In fact, SACOG contemplated that the improvements to the interchange would be completed by the year 2001.

***22** The City believes that improvement of the interchange is necessary regardless of whether the Lent Ranch project is approved. It was built in 1958 and was intended serve low-volume, largely rural areas. It does not meet current design standards for interchanges in urban areas and has several potentially dangerous geometric features. It already is subject to congestion and operates at unacceptable levels of service at peak periods. There are a number of existing, approved, and proposed developments within the region, including the Laguna Ridge Specific Plan, the East Franklin Specific Plan, the East Elk Grove Specific Plan, the Laguna Ridge Conceptual Study Area, the South Pointe Project, and the Lent Ranch project, which will exacerbate the insufficiency of the existing interchange.

The City regards improvement of the interchange as a public project proposed by the City that, if approved, will be constructed by the City. It has been the subject of a project study by the Department of Transportation (CalTrans) and is the subject of a separate EIR. The City will require the approval of CalTrans to construct the project.

The project description section of the Lent Ranch EIR states that the project will be served by a reconstructed interchange at State Route 99 and Grant Line Road. The interchange improvement project was included in the Lent Ranch EIR with respect to the analysis of cumulative project impacts. [FN17]

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FN17. The Lent Ranch EIR included a number of mitigation measures aimed at reducing the effect of the traffic impacts that would be caused by the project. The reconfiguration of the Grant Line Road/State Route 99 interchange was not one of them. However, the Department of Conservation asserts that, taken together, some of the mitigation measures essentially describe the reconfiguration of the interchange. The project proponents ask us to take judicial notice of portions of the interchange draft EIR to rebut this assertion. We find it unnecessary to take judicial notice of the interchange draft EIR. The Lent Ranch EIR describes improvements to some of the surface roads and intersections at or around the interchange as mitigation measures, but it does not identify the interchange project as a specific project mitigation measure. Accordingly, we disregard the assertion that the interchange project is an identified mitigation measure and deny the request for judicial notice.

The City has an ordinance that requires the payment of development impact fees by developments in the Laguna South area. The Laguna South area contains about 4,000 acres and includes the East Franklin, Laguna Ridge, Lent Ranch, South Pointe, and Elk Grove AutoMall planning areas. The purpose of the ordinance is to allocate the cost of public infrastructure improvements to the land uses that will benefit from them. Although the ordinance is intended to require developments to contribute a fair share of the cost of improvements, in this instance the ordinance and a condition of project approval will require the Lent Ranch developers to fund much, if not all, of the cost of the interchange project and then await reimbursement as other developments pay their fair shares. The Lent Ranch contributions may be supplemented from other sources, but the City has not made a funding commitment and there is a risk that the Lent Ranch developers will not receive reimbursement if other projects do not go forward.

The trial court held that the interchange reconfiguration is a part of the Lent Ranch project. The court concluded that the City erred in preparing a separate EIR for the interchange project and should have included the interchange project in the Lent Ranch project description.

B. Analysis

Under CEQA, the concept of a project is defined broadly to include "the whole of an action, which has a potential for resulting in ... a ... physical change in the environment...." (Guidelines, § 15378, subd. (a); *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909.) This broad definition of a project is intended to preclude a public agency from segmenting or "chopping up" a project into several smaller projects, each with a minimal effect on the environment but which cumulatively may have significant effects. (*San Joaquin Raptor/ Wildlife Rescue Center, supra,* 27 Cal.App.4th at p. 730; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1023.)

***23** To prevent project segmentation and to ensure that an EIR is informative and legally sufficient, the first and essential step is to provide an accurate, stable, and finite project description. (*Sacramento Old City Assn. v. City Council, supra,* 229 Cal.App.3d at p. 1023; *County of Inyo v. City of Los Angeles, supra,* 71 Cal.App.3d at pp. 192-193.) While this can be an easy task in some cases, decisional authorities amply demonstrate that the determination of what must be included in a project description can be a difficult matter requiring the exercise of judgment. (See, e.g., *San Joaquin Raptor/Wildlife Rescue Center, supra,* 27 Cal.App.4th at p. 731; *Native Sun/Lyon Communities v. City of Escondido, supra,* 15 Cal.App.4th at p. 909; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 45; *Sacramento Old City Assn. v. City Council, supra,* 229 Cal.App.3d at pp. 1025-1026.)

On judicial review of an agency's determination that an EIR adequately describes the project, we apply the same standard which is applicable to other aspects of the agency's action. We defer to the

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agency's factual determinations to the extent they are supported by substantial evidence, and we defer to the agency's discretionary judgments to the extent they are reasonable and not an abuse of discretion. (§ 21168.5.) We must resolve reasonable doubts in favor of the agency's findings and decision. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra,* 27 Cal.App.4th at p. 722.) And, in considering an EIR, we do not look for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 679.) We will not interfere with an agency's certification of an EIR for alleged error unless it appears that the failure to include relevant information was such as to preclude informed decisionmaking and informed public participation. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra,* 27 Cal.App.4th at p. 722.)

In considering this contention, we are guided by the decision in *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d 376. There, the university acquired a building and proposed to move its school of pharmacy biomedical research units into a portion of the building. (*Id.* at p. 389.) Most of the building was under lease to other tenants and thus was unavailable to the university. (*Id.* at p. 393.) The university intended to retake possession upon expiration of the leases, but had not formally decided the uses to which the additional space would be put. (*Id.* at p. 394.) The EIR that was prepared for the relocation of the biomedical research units did not address anticipated future uses of the facility. (*Ibid.*) The Supreme Court found this to be error, holding that an EIR must address future expansion or other action if it is a reasonably foreseeable consequence of the initial project and will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. (*Id.* at p. 396.)

***24** The Court of Appeal had held the EIR's project description was legally inadequate. The Supreme Court said: "Although we agree with the result reached by the Court of Appeal on this issue, we believe the issue should not be rigidly defined as whether the project description was adequate. As we understand the parties' arguments, the fundamental dispute is whether the EIR adequately discussed future uses of the Laurel Heights facility and their environmental effects. Thus, the challenge is not just to the project description but to the EIR's discussion of future environmental effects." (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 394, fn. 6.)

A number of appellate decisions have found error in the failure of an EIR to discuss reasonably foreseeable consequences of a project, often concluding that the error was in the project description. But in such cases the real error is in the failure of the EIR to address reasonably foreseeable consequences at all. For example, in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra,* 27 Cal.App.4th at pages 731 and 733, it appeared that a development project would require expansion of the local sewage treatment facility, yet the EIR was wholly silent on the scope and the environmental consequences of the expansion. In *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, at page 829, a proposed mining operation would require the construction of water facilities and the continuous delivery of substantial amounts of water to the project. While that was undoubtedly one of the significant environmental effects of the project, the EIR was wholly silent with respect to the facilities to be constructed and the pros and cons of delivering the amount of water the mine would require.

On the other hand, when an EIR adequately discusses reasonably foreseeable or reasonably related projects, then generally it is not critical that the project description include such projects. (See, e.g., *Native Sun/Lyon Communities v. City of Escondido, supra,* 15 Cal.App.4th at pp. 909-910; *Christward Ministry v. County of San Diego, supra,* 13 Cal.App.4th at pp. 44-45; *Towards Responsibility in Planning v. City Council, supra,* 200 Cal.App.3d at p. 681.) This is consistent with the Supreme Court's indication that the real question must be whether an EIR adequately discusses future

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or related projects, rather than a rigid insistence on a particular project description. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 394, fn. 6.) It is consistent with the rule that we must look for adequacy, completeness, and a good faith effort at full disclosure, rather than perfection in an EIR. (*Towards Responsibility in Planning v. City Council, supra,* 200 Cal.App.3d at p. 679.) And it is consistent with the rule that we must defer to an agency's judgment and discretion unless it is clear that the facts and circumstances compel a contrary result. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra,* 27 Cal.App.4th at p. 722.)

***25** In this case, the City found, on ample evidence, that the interchange project is necessary regardless whether the Lent Ranch project is approved. The reconstructed interchange will serve a number of existing, approved, and proposed projects in the region, as well as Lent Ranch. The City regards it as a public project proposed by the City which, if approved, will be constructed by the City. Under the circumstances, the City's decision to prepare a separate EIR for the interchange project was reasonable and is supported by substantial evidence.

After deciding to prepare a separate EIR for the interchange project, the City did not ignore the interchange project in the Lent Ranch EIR. The Lent Ranch project description states that the project would be served by a reconstructed interchange that was in the City and CalTrans approval process. The interchange project is identified as a project with potential cumulative impacts. And it is included in the Lent Ranch EIR with respect to the analysis of cumulative impacts. Under the circumstances, we conclude that the Lent Ranch EIR provided sufficient information about the interchange project and its effects as to serve its purpose as an informative document. In fact, we perceive little that would be gained by compelling the City to include the interchange project in the Lent Ranch project description and to prepare a joint EIR for both projects.

VI. Project Alternatives

Respondents South County Citizens for Responsible Growth and Environmental Council of Sacramento assert that the EIR failed to adequately analyze project alternatives. The trial court found it unnecessary to consider this contention because its rulings on other contentions would require the City to begin the EIR process anew and would likely require a new alternatives analysis.

The City and the project proponents contend that respondents cannot raise this question on appeal because they did not file a cross-appeal. As a general rule, a respondent may not challenge a judgment, finding, or intermediate ruling of a trial court without filing a cross-appeal. However, since a correct judgment should be affirmed regardless of the trial court's reasoning, a respondent is permitted to raise issues in defense of the judgment, i.e., issues that would support affirmance of the judgment regardless of whether we agree with the contentions raised by the appellant. (Code Civ. Proc., § 906; *Adoption of Lenn E.* (1986) 182 Cal.App.3d 210, 218 .)

In this case, the trial court found four separate defects in the City's EIR process and ruled that the City would be required to begin the EIR process anew. In our discussion above, we have agreed with the trial court on only one of the asserted defects, and have concluded that the City can correct the defect without beginning anew the entire EIR process. If respondents are correct that the alternatives analysis in the EIR is deficient, the City would be required to begin the EIR process anew, and we would be obliged to affirm the judgment to that extent. Hence, this is an issue the respondents can raise in defense of the judgment even though they did not cross-appeal. Consequently, we proceed to consider that issue.

A. Factual Background

***26** The draft EIR addressed a number of project alternatives including: (1) the no-project alternative (this included two subparts, no project with no development and no project with division of the property into four agricultural-residential parcels

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consistent with existing zoning); (2) a modified mixed-use alternative (under this alternative, the project site would be primarily used for residential development with a small portion for a park and commercial use); (3) a second modified mixed-use alternative (under this alternative, the proposed commercial use of the property would be reduced by about 50 percent and a large single family residential use would be added); (4) a reduced density alternative (this alternative would reduce the size of the proposed commercial development by about 30 percent); and (5) an off-site alternative (with respect to this alternative, the draft EIR considered several alternative locations and decided that the site located at the intersection of West Stockton Boulevard and Poppy Ridge Road was the most viable alternative site for consideration as a project alternative).

The draft EIR indicates there were a number of alternatives considered but rejected for full discussion. One alternative would have been reduction of the development to approximately 23 percent of its proposed size. This was rejected as too small to be feasible economically or to accomplish project objectives. Another rejected alternative would have called for scattering the project components onto a number of noncontiguous parcels in the Laguna area. This was considered not to be feasible for a number of reasons. And the City considered and rejected alternative sites near Elk Grove Boulevard and near the Elk Grove AutoMall.

After the final EIR was published, South County Citizens for Responsible Growth asked the City to consider an alternative for a reduced-size development in the Poppy Ridge area that would be called the Park Center. The City addressed that alternative in its response to comments.

In approving the project, the City rejected each of the alternatives. Alternative 1, the no project alternative, was rejected because it would not satisfy any of the project objectives and would not provide any of the benefits derived from the project, including jobs, economic benefits, housing, and the commercial center. Alternatives 2 and 3 were rejected because they are not environmentally superior to the project and would not attain many of the project objectives. The City found that alternative 4, the reduced-size alternative, would reduce many of the environmental impacts of the project, but rejected it because it would not attain many of the project objectives, including the creation of a high-quality comprehensive and fully integrated commercial, office, retail and entertainment development on one site rather than fragmented land uses spread out over several sites, and the promotion of development in an orderly and cohesive manner for the entire project rather than piecemeal development with a potential of incompatible land uses. The City found that alternative 5, the off-site alternative, would not eliminate environmental impacts; it would simply move them to a different location. The alternative was rejected because of the lack of adequate infrastructure, because the site is not owned by the project proponent, and because it would not mitigate the environmental impacts of the project. The suggested Park Center alternative was rejected because it would not meet the City's need for a major mall, would not attain many project objectives, and is not a site owned by the project proponents.

B. Analysis

***27** "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." (Guidelines, § 15126.6, subd. (a).) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, § 15126.6, subd. (b).)

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"The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." (Guidelines, § 15126.6, subd. (f).) "Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives." (Guidelines, § 15126.6, subd. (f)(1).)

In applying these standards to the Lent Ranch EIR, we conclude that the EIR provided a sufficient range of project alternatives with sufficient variation to allow for public participation and informed decisionmaking. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573; *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151.) The EIR identified a number of alternatives, discussed the environmental advantages and disadvantages of the alternatives, and addressed feasibility of the alternatives, including whether the alternatives would achieve the goals of the project. This was sufficient within the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 573; *Mann v. Community Redevelopment Agency, supra,* 233 Cal.App.3d at p. 1151.)

Respondents particularly object to the City's rejection of alternative 4, the reduced size alternative. They argue that since this alternative would be environmentally superior to the proposed project in many respects, the City was required to adopt it. We agree that the City should not "slavishly adhere" to the project goals identified by the project proponents but rather must make an independent, reasoned judgment. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737.) That being said, however, the decision whether the proponents' goals coincide with those of the City is particularly committed to the City through its elected representatives. It was competent for the City to determine that a comprehensive and fully integrated urban development on one site would serve the City better than would a reduced project with the resultant shift of some of the proposed urban uses to other sites.

***28** Respondents contend the EIR was particularly deficient in addressing alternative locations. The EIR examined one alternative site, and a second alternative site was examined upon the request of South County Citizens for Responsible Growth. A number of other sites were considered but rejected during the scoping process. The EIR identified the sites and gave reasons for their rejection. An EIR need not consider every conceivable project alternative and when an alternative is rejected during the scoping process only a brief explanation of the reasons must be given. (Guidelines, § 15126.6, subd. (c); *Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 569.) The EIR was sufficient in this respect.

Respondents assert that some alternative sites were rejected for the "flimsiest of reasons," including the fact that many of the sites were outside the City's boundaries and that the alternative sites were not owned or controlled by the project proponents. These are not flimsy reasons; they are in fact very substantial reasons for finding alternative sites to be infeasible. (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at pp. 574-575.)

Respondents argue that either the location considered as alternative 5 or the Park Center alternative would have been better than the Lent Ranch site because either would have been further away from Suburban Propane. This argument is premised on the claim that the City is required to find that Suburban Propane poses a significant risk to the Lent Ranch site. Since we have rejected that claim, we reject this argument as well.

For these reasons, we reject the contention that the Lent Ranch EIR failed to adequately consider project alternatives or that the City erred in failing to adopt an alternative.

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CONCLUSION

We agree with the trial court that the City's decision to accept mitigation fees in order to mitigate the loss of farmland of statewide importance requires additional environmental analysis and discussion. We reject the court's conclusions that the City erred with respect to agricultural buffers, the danger posed by Suburban Propane, and in preparing a separate EIR for the Grant Line Road/State Route 99 freeway interchange. We also reject the contention that the EIR analysis and the City's consideration of project alternatives was deficient.

The error we have found will not require the City to start the EIR process anew. In the City's discretion, it may proceed with an addendum to the EIR, a supplemental EIR, or a subsequent EIR.

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with directions to enter a judgment consistent with the holdings of this opinion. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 27(a).)

I concur: DAVIS, J.

NICHOLSON, J.

I concur in the opinion except as to section II of the Discussion, Loss of Agricultural Land, to which I dissent. The reasoning of *Friends of the Kangaroo Rat v. California Dept. of Corrections* (2003) 111 Cal.App.4th 1400, 1408-1410 (*Friends*), is persuasive and, I am convinced, compels reversal of the trial court's ruling on this issue--the only portion of its decision we do not unanimously reverse.

***29** The majority does not distinguish *Friends* from this case. It correctly argues mitigation includes measures that would substantially lessen the project's significant environmental impacts, but a conservation easement does not lessen the loss of agricultural land caused by this or other past and probable future projects. Agricultural land is unique, and once it is developed with urban uses, it is lost permanently. The only means of mitigating or lessening this impact is by not approving the project.

Requiring the developer to pay for an easement does not lessen the impact. Compensation is used to mitigate an environmental impact by replacing the lost resource or providing a substitute resource. (Cal.Code Regs., tit. 14, § 15370, subd. (e).) A conservation easement performs neither of these functions. It merely "pay[s] someone to continue farming land that was already being farmed, and which was not the site of any probable future project." (*Friends, supra,* 111 Cal.App.4th at p. 1410.) Probable development will continue apace.

As the majority notes, the Legislature has clearly expressed the state's interest in maintaining a sufficient supply of agricultural land for economic and environmental reasons. The Legislature has also intended local agencies to consider the loss of agricultural land when they engage in CEQA review. However, no matter what obligations CEQA imposes on an agency, the agency has no power to mitigate the loss of agricultural land by imposing compensation for which it cannot demonstrate a sufficient nexus to the impact it is designed to correct and a rough proportionality to the impact's scope. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 876.)

An agricultural land easement at best "might prevent the future conversion of some as yet unidentified parcel of farmland to a nonagricultural use." (*Friends, supra,* 111 Cal.App.4th at p. 1409.) Here, where the City has no program regulating how, when, or where the proceeds to purchase an easement will be used, and where the easement will not mitigate or lessen the impact to be caused by this or other probable projects, I am not convinced the possible prevention of future conversion of unidentified farmland sufficiently overcomes the constitutional limitation.

At a minimum, the Legislature, and not this court, should first address the conflict between its desire to preserve agricultural land under the CEQA process and the fact the loss of such land cannot be

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substantially lessened or mitigated when approving a project under CEQA. Meanwhile, regarding this case, the EIR discussed, by means of public comments and responses thereto, the option of an agricultural easement. The City considered the option and, in its discretion, correctly rejected it as not substantially mitigating or lessening the direct or cumulative loss of agricultural land. Under these circumstances, I conclude the City complied with CEQA's requirements, and substantial evidence supports its decision. I would thus reverse the trial court's ruling on this issue.

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EXHIBIT "B"

WAL-MART'S IMPACTS ON THE AMERICAN SUPERMARKET INDUSTRY

Prepared by

Dr. David Rogers
President
DSR Marketing Systems Inc.
108 Wilmot Road, Suite 245
Deerfield, Illinois 60015
TEL: 847 / 940-8200
FAX: 847 / 940-8237
email:dsrms@sbcglobal.net

February 10, 2004

Exhibit "B"

SUMMARY

The purpose of this report is to detail Wal-Mart's entry into the American grocery industry, and identify the impacts of this entry.

As of January 2004, Wal-Mart offers a full supermarket selection at 1,471 Supercenters and 65 Neighborhood Markets and controls about 11% of the total U.S. grocery market through its four (4) store formats (including the Discount Stores and Sam's Club). In three (3) states, Wal-Mart's market share already exceeds 40%. At its current store opening pace, Wal-Mart will command at least 17% of the U.S. grocery business in five (5) years, i.e. by January 2009.

It is estimated that every new Wal-Mart Supercenter will ultimately close two (2) supermarkets, while each new Neighborhood Market will replace one (1) supermarket. Such impacts will shutter more than 2,200 supermarkets throughout the USA over the next five years, and lead to an increasing number of cities and states where Wal-Mart has a monopolistic position.

While some argue this is the next phase in the evolution of grocery retailing, it must be recognized that never before has so much of the grocery industry been concentrated in the hands of one company. Moreover, this consolidation is largely in the form of big box retailing requiring customers to travel further to conduct their grocery shopping. This trend has long-term implications for environmental and quality of life issues such as traffic congestion, air pollution, and the overall sense of community.

The consolidation of the grocery business is also impacting the manufacturing sector by placing an inordinate amount of negotiating power in the hands of one retailer. Manufacturers and suppliers will increasingly have to adapt to Wal-Mart's terms or lose access to Wal-Mart's increasing share of consumer spending. Wal-Mart's emphasis on the lowest price has pushed production abroad (Wal-Mart reportedly now accounts for over 10% of all U.S. imports from China) and put many American producers at risk. This has placed added downward pressure on the wages and benefits paid by employers in both the retail and manufacturing sectors of the U.S. economy.

000125

SUMMARY (Continued)

Based on the example of Oklahoma City, Wal-Mart's increasing dominance of grocery retailing will have the following longer-term effects: -

- Planning

  Big box retailing will continue to sap the economic vitality of downtowns. Adding food to superstores will also result in the closure of neighborhood supermarkets creating additional physical blight and decay in suburban areas. These closures also have inevitable consequences for adjacent retailers and the affected shopping centers.

  Increased traffic, air pollution, and infrastructure costs will result from the reinforced trend to big box retailing.

- Economic

  The job losses at conventional neighborhood supermarkets are not equaled in number, nor in wages and benefits, by the positions created at Wal-Mart.

  Reduced real estate values will result at the shopping centers with vacant supermarkets. This will lead to the waste and abandonment of existing public and private investments in buildings and other community assets.

  Beyond these direct effects, living standards will be reduced as a result of the lower wages and benefits offered across all retail and manufacturing channels.

- Competition

  When the number of competitors is reduced, so is consumer choice. There will be a reduction in product choices, service levels, and the other amenities that are typically offered in a diverse competitive climate.

  Further, the impact on prices may not turn out as expected. Wal-Mart argues it brings low prices (in the short-term) but if a local monopoly results from Wal-Mart's massed market entries there are no competitive safeguards for the longer-term. Prices may then increase.

SUMMARY (Continued)

- Environmental

  Larger grocery stores and Supercenters require geographically larger trade areas. As a result, driving-distances and driving-times will increase....stimulating further increases in traffic congestion and air pollution. In addition, the poor and the elderly are particularly disadvantaged as shopping choices become fewer in number and more remote from their homes.

WAL-MART STORE DEVELOPMENTS

After an unsuccessful test with its Hypermart USA format in the 1980's, Wal-Mart entered the grocery business seriously with its first Supercenter in Washington, Missouri in 1988. The Supercenter format underwent several years of testing by Wal-Mart and by 1993 there were only 34 in the U.S.

The Wal-Mart Supercenter format essentially adds a 65,000 sq. ft. supermarket to a standard Wal-Mart discount store. Please refer to Exhibit 1.

The first Wal-Mart Neighborhood Market opened in 1999. These are stand-alone supermarkets of approximately 46,000 sq. ft. which are designed to fill the voids between Supercenters in urban areas. Please refer to Exhibit 2.

By the end of 2003, there were 1,471 Supercenters and 65 Neighborhood Markets operating in the USA (see Table 1 below). Wal-Mart is planning between 220 and 230 Supercenters in 2004 of which approximately two-thirds (or 150) will be expansions or replacements of existing discount stores and the rest will be new stores. Additionally, Wal-Mart is still expanding its Sam's Clubs. Groceries and consumables comprise about 62% of Sam's Club sales, about 60% of which are to consumers rather than to businesses.

Over the coming years, Wal-Mart will add more grocery space than the three (3) largest supermarket chains combined. Wal-Mart will open 50 million square feet of new space during 2004, of which 15.8 million square feet will be grocery space in Supercenters and Neighborhood Markets. In contrast, Kroger, Albertson's and Safeway opened a combined 11.3 million square feet in 2003.

Table 1

NUMBER OF Wal-Mart STORES

Year End January	Wal-Mart Supercenters	Neighborhood Markets	Sam's Clubs	Discount Stores
1992	10	—	208	1,714
1993	34	—	256	1,848
1994	72	—	417	1,950
1995	147	—	426	1,985
1996	239	—	433	1,995
1997	344	—	436	1,960
1998	441	—	443	1,921
1999	564	4	451	1,869
2000	721	7	463	1,801
2001	888	19	475	1,736
2002	1,066	31	500	1,647
2003	1,258	49	525	1,568
2004	1,471	65	537	1,478

WAL-MART'S MARKET SHARE

Grocery sales encompass the food and non-food items typically sold by most supermarkets. That is, including pharmacy, paper products, cosmetics, pet food, etc.

Wal-Mart's grocery sales take place through four (4) different store types and vary in significance. Table 2 below identifies Wal-Mart's U.S. grocery sales by store type for the years ending in January 2000, 2003, and 2006. In 2000, Wal-Mart was already the largest grocery retailer in the United States with combined sales of $57 billion. By 2006, Wal-Mart's grocery sales of $140 billion will be greater than the next three (3) leading grocery chains combined: -

Table 2
WAL-MART GROCERY SALES BY FISCAL YEAR

	2000		2003		2006	
	#	$ (Bn.)	#	$ (Bn.)	#	$ (Bn.)
Discount Stores	1,801	18.9	1,568	20.5	1,300	19.6
Supercenters	721	22.5	1,258	55.7	1,891	94.0
Sam's Clubs	463	15.4	525	19.7	573	24.1
Neighborhood Markets	7	0.1	49	0.8	125	2.3
TOTAL		56.9		96.7		140.0

Based on our definition of the grocery market, Wal-Mart currently captures 11% of the total U.S. grocery business, and this market share will rise to over 14% by 2006: -

Table 3
WAL-MART'S MARKET SHARE

Fiscal Year	Total US Grocery/ Consumables Sales ($ Bn.)	Estimated Total Wal-Mart Grocery/ Consumables Sales ($Bn.)	Wal-Mart %
2000	743.2	56.9	7.7
2003	876.4	96.7	11.0
2006	981.4	140.0	14.3

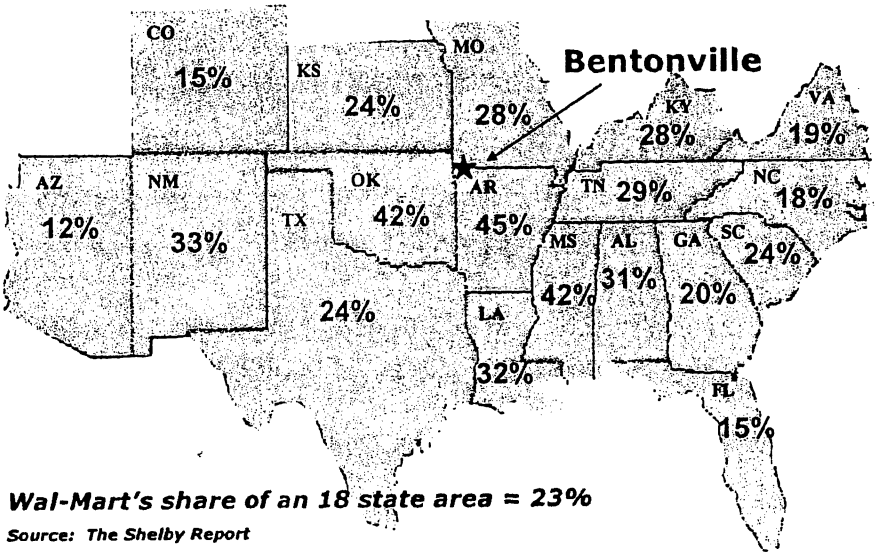
Wal-Mart's grocery sales are mushrooming not only because they are opening so many Supercenters, but also because these new stores are maturing and increasing sales during the first three (3) to five (5) years of their operation. For example, a new Supercenter may only do $500,000 per week in grocery and consumables sales during its first year of operations but by Year 3 or 4 it could be achieving sales in excess of $800,000 weekly.

WAL-MART'S MARKET SHARE (Continued)

Wal-Mart's 11.0% share of the grocery/consumables market includes many States where Wal-Mart's entry into the grocery industry is yet undeveloped. Therefore, the current national average market share figure is a poor indicator of Wal-Mart's future potential and impact. A better indication of the future is to be found in those States where Wal-Mart has already focused its efforts. The Shelby Report (Atlanta, Georgia) publishes the estimated grocery market shares for an 18-State area throughout the U.S. southeast and southwest (please refer to the map below). By the end of 2003, Wal-Mart captured 23% of all the grocery sales in these 18 States.

Furthermore, in markets where Wal-Mart's Supercenters have been operating for more than five (5) years, such as Arkansas, Oklahoma and Mississippi, its market share is in excess of 40%. Since these data do not include the significant grocery sales taking place through Sam's Clubs and the traditional Wal-Mart discount stores, they undoubtedly underestimate Wal-Mart's actual market shares.

WAL★MART
Grocery Market Share - 12/2003



Wal-Mart's share of an 18 state area = 23%

Source: The Shelby Report

000130

THE OKLAHOMA CITY EXPERIENCE

Introduction

Oklahoma City provides one of the best indicators of the long-term impacts of Wal-Mart's entry into the grocery market because it was the first major metropolitan area+ to feel the full effects of a massed Wal-Mart saturation attack.

Wal-Mart's Entry

Wal-Mart opened its first Supercenter in the Oklahoma City metropolitan area in 1992. By 1997, there were still only three (3) Supercenters in the metropolitan area and no Neighborhood Markets. However, by year end 2003, these numbers had increased to 13 Supercenters and 7 Neighborhood Markets. Please refer to Exhibits 3 through 5.

According to The Shelby Report, Wal-Mart accounted for a 42% share of all the grocery sales in the Oklahoma City metropolitan area by December 2003. Of the 42%, 33% took place through the Supercenters and 9% were gained by the Neighborhood Markets.

In the next two (2) years, Wal-Mart will add at least two (2) Supercenters and two (2) Neighborhood Markets in the Oklahoma City market.....producing a total of 24 grocery format stores. This store count - which does not include three (3) discount stores and three (3) Sam's Clubs - will represent one Wal-Mart grocery store per 46,000 people.

Between 1997 and 2003, Wal-Mart has added 2,400,000 sq. ft. of retail space to the Oklahoma City market and, of this, approximately 972,000 sq. ft. has been in the form of grocery space*: -

Table 4

WAL-MART STORES BY FORMAT

	No. of Stores		Sq. Ft. of Space	
Store Type	1997	2003	1997	2003
Discount Stores	9	3	864	288
Supercenters	3	13	555	2,405
Sam's Clubs	2	3	248	372
Neighborhood Markets	0	7	0	322
Total	14	26	1,667	3,387
Net Change		+12		+1,720

+ The population of the Oklahoma City metro area is currently about 1.1 million.

* Excluding Sam's Club.

THE OKLAHOMA CITY EXPERIENCE (Continued)

Impacts

Wal-Mart's focused assault on the Oklahoma City grocery market has had an inevitable impact on pre-existing supermarkets. Between July 1998 and the end of 2003, thirty-one (31) supermarkets in the Oklahoma City area - representing a total of 1.24 million square feet of floorspace - have closed and remain vacant. Ten (10) of these were chain supermarkets and twenty-one (21) were independents. Please refer to Exhibits 6 and 7, and the accompanying photographs which are presented as Exhibit 8.

The opening of seventeen (17) new Wal-Mart grocery stores between 1998 and 2003 has, therefore, already produced the closure of 31 competitors....a ratio of almost two (2) closures for each new Wal-Mart store. Additional store closures will occur as the impacts of the Wal-Mart store openings work their way through the local economy....and more Wal-Mart stores open in 2004-5.

Wal-Mart has also closed five (5) of its discount stores and two (2) Sam's Clubs....leaving an additional 538,000 sq. ft. of vacant space on the local real estate market. Please refer to Exhibit 9.

Besides producing extensive store closures, Wal-Mart's massed assault on the Oklahoma City market has also dissuaded full-size supermarket competitors from opening new stores. Only one (1) new conventional supermarket has opened in the metro area since 1998 (the Albertson's in Yukon) and two (2) Target Supercenters. Buy For Less and Crest Foods have opened a combined four (4) stores but these were all takeovers of existing supermarkets+.

In our opinion, within the next three years, Wal-Mart's share of the Oklahoma City grocery market will exceed 50%.

Competitive Issues

The U.S. Department of Justice and the Federal Trade Commission (FTC) both measure market competitiveness using the Herfindahl-Hirschman Index (HHI). This index is derived by

+ There have been a small number of store-openings by Save-A-Lot and, more recently, Aldi but these are both Limited Assortment Store operators which do not offer a full range of grocery products.

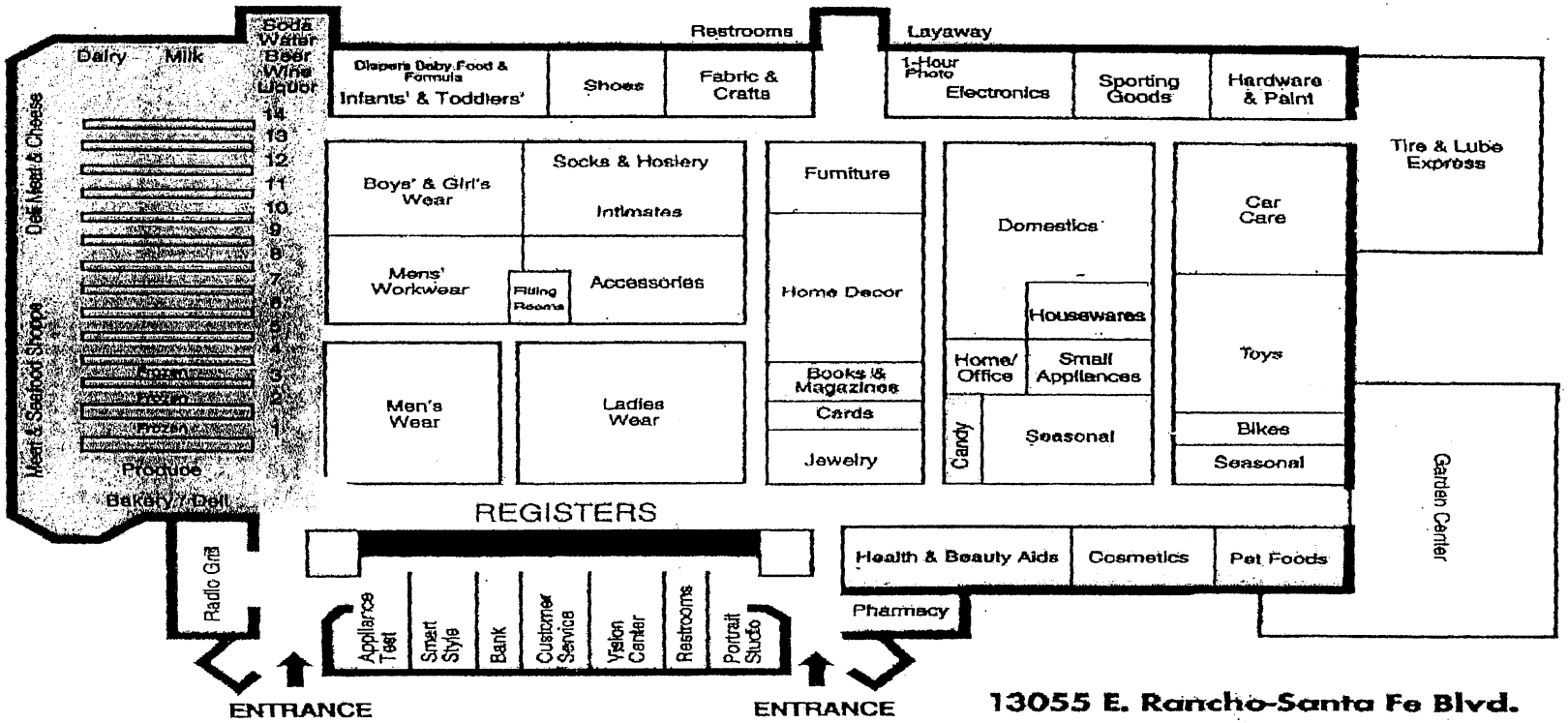
THE OKLAHOMA CITY EXPERIENCE (Continued)

summing the squares of the market shares of all competitors. When the HHI for a market reaches 1,800, the FTC judges competition to be significantly restricted (i.e. monopolistic).

It is estimated that the HHI for the Oklahoma City grocery market stood at only 645 in 1997 with Wal-Mart accounting for 33 points. However, based on The Shelby Report's market share estimates in December 2003, the Oklahoma City HHI is now 2,049, of which Wal-Mart accounts for 1,721 points. In our opinion, there is a clear and significant danger that a monopoly is being established in Oklahoma City that could have negative long-term impacts on prices and consumer choice.

Exhibit 1

WAL★MART SUPERCENTER



13055 E. Rancho-Santa Fe Blvd.
Avondale, AZ

Grocery Only

Other Supermarket Type Merchandise (STM)

Exhibit 1

Exhibit 2

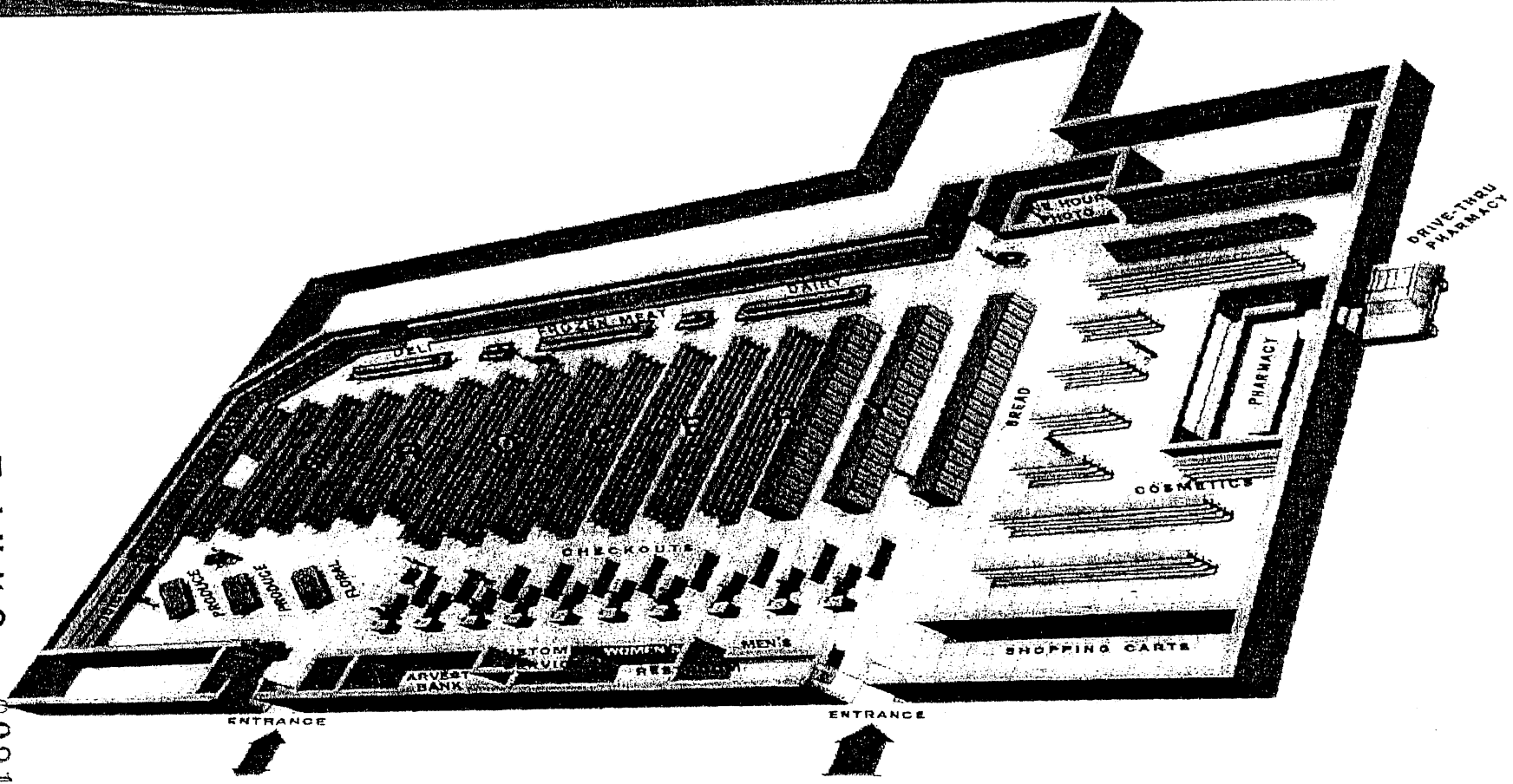


Exhibit 2

Exhibit 3: OKC Walmart Locations 1997

DSR Marketing Systems, Inc.

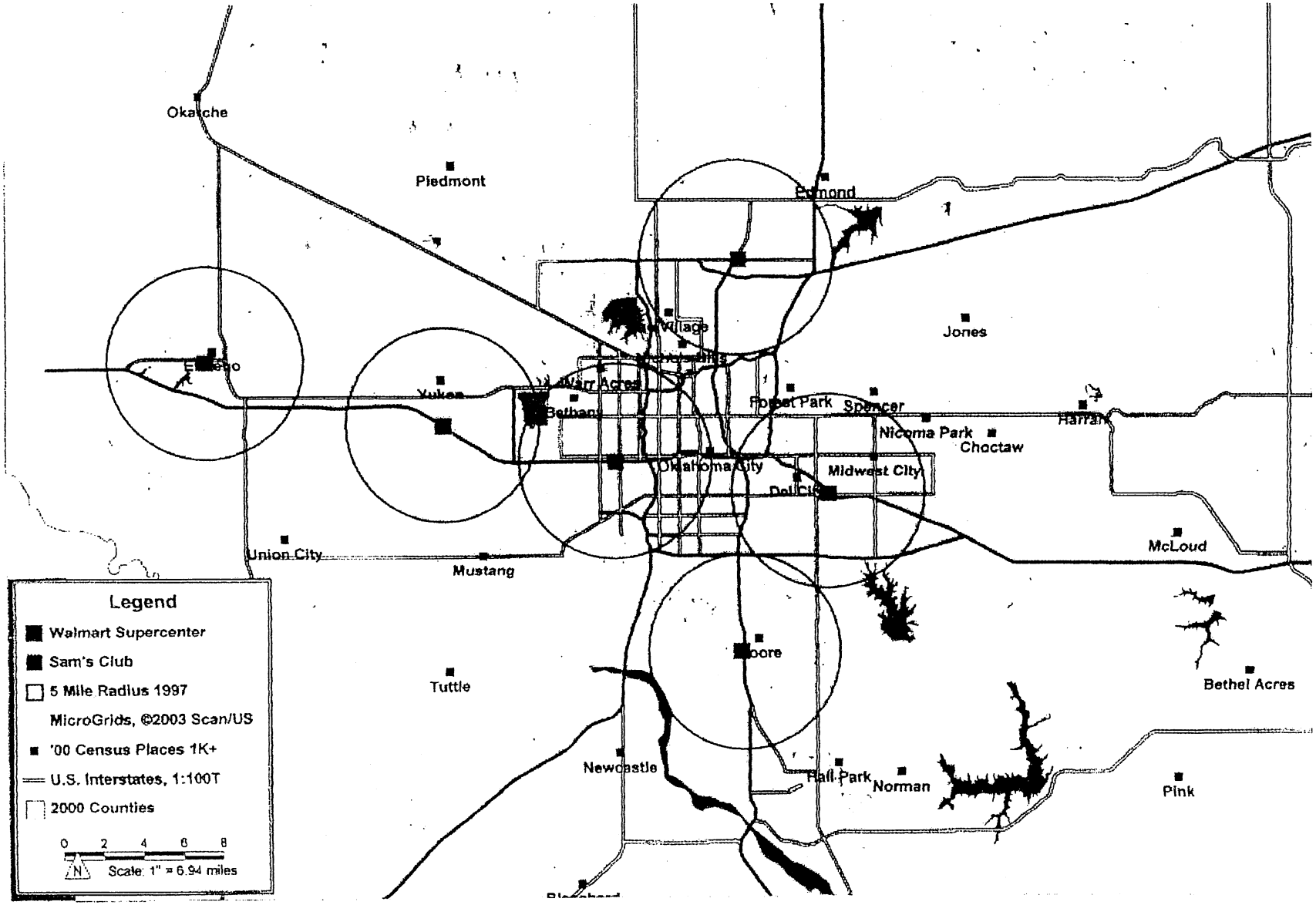


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Exhibit 3

Exhibit 4: OKC Walmart Locations 2003

DSR Marketing Systems, Inc.

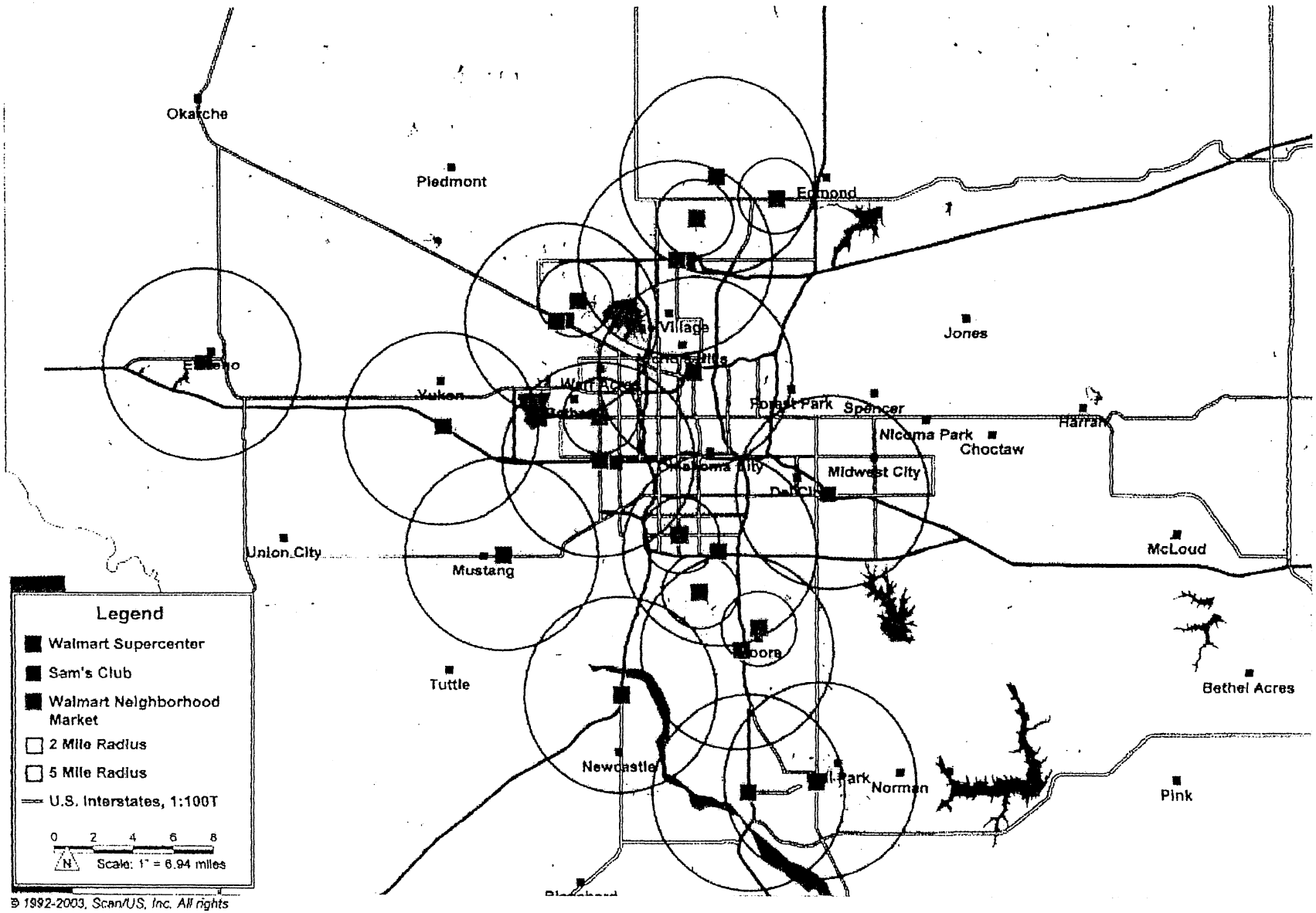

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Exhibit 4 000137

Exhibit 5

OKLAHOMA CITY WALMART LOCATIONS
(as of December 2003)

Year Opened	Store Type*	Store #	Location	City
1983	Sam's	8241	6520 SE 29th	Midwest City
1986-7	Sam's	8289	5510 SW 5th	Oklahoma City
1992	SC	221	Garth Brooks & I-40	Yukon
1994	SC	227	I-40/Country	El Reno
1995	SC	277	19th & I-35	Moore
1998	SC	564	MacArthur & I-40	Oklahoma City
1999	SC	212	I-35 & Main	Norman
1999	SC	2734	Alameda/6th/12/Main	Norman
2000	NM	3275	164th & Western	Edmond
2000	NM	2876	2nd & Bryant	Edmond
2000	NM	2393	Eastern & 9th	Moore
2000	NM	2877	Rockwell & Hefner	Oklahoma City
2000	NM	2875	NW 23rd & MacArthur	Oklahoma City
2000	NM	2394	Penn & SW 59th	Oklahoma City
2000	NM	2878	Western & SW 104th	Oklahoma City
2000	SC	2803	Danforth & Santa Fe	Edmond
2000	SC	622	Northwest Hwy & Council	Oklahoma City
2000	SC	2804	I-44 & Classen	Oklahoma City
2000	Sam's	4731	Northwest Hwy & Council	Oklahoma City
2001	SC	1626	Penn & Memorial	Oklahoma City
2001	Sam's	8117	Penn & Memorial	Oklahoma City
2002	SC	743	I-240 & Shields	Oklahoma City
2003	SC	517	State Hwy 152 & Sara Rd.	Mustang
2003	SC	1056	Northwest 32nd St.	Newcastle

To Open	Store Type*	Store #	Location	City
2004	NM	?	Britton & Pennsylvania	The Village
2004	NM	?	SW 44th & Western	Oklahoma City
2005?	SC	?	I-35 & SE 15th	Edmond
2005?	SC	?	?	Midwest City

* NOTES: SC = Supercenter
NM = Neighborhood Market
Sam's = Sam's Club

Exhibit 6

31 VACANT SUPERMARKETS - JAN. 2004

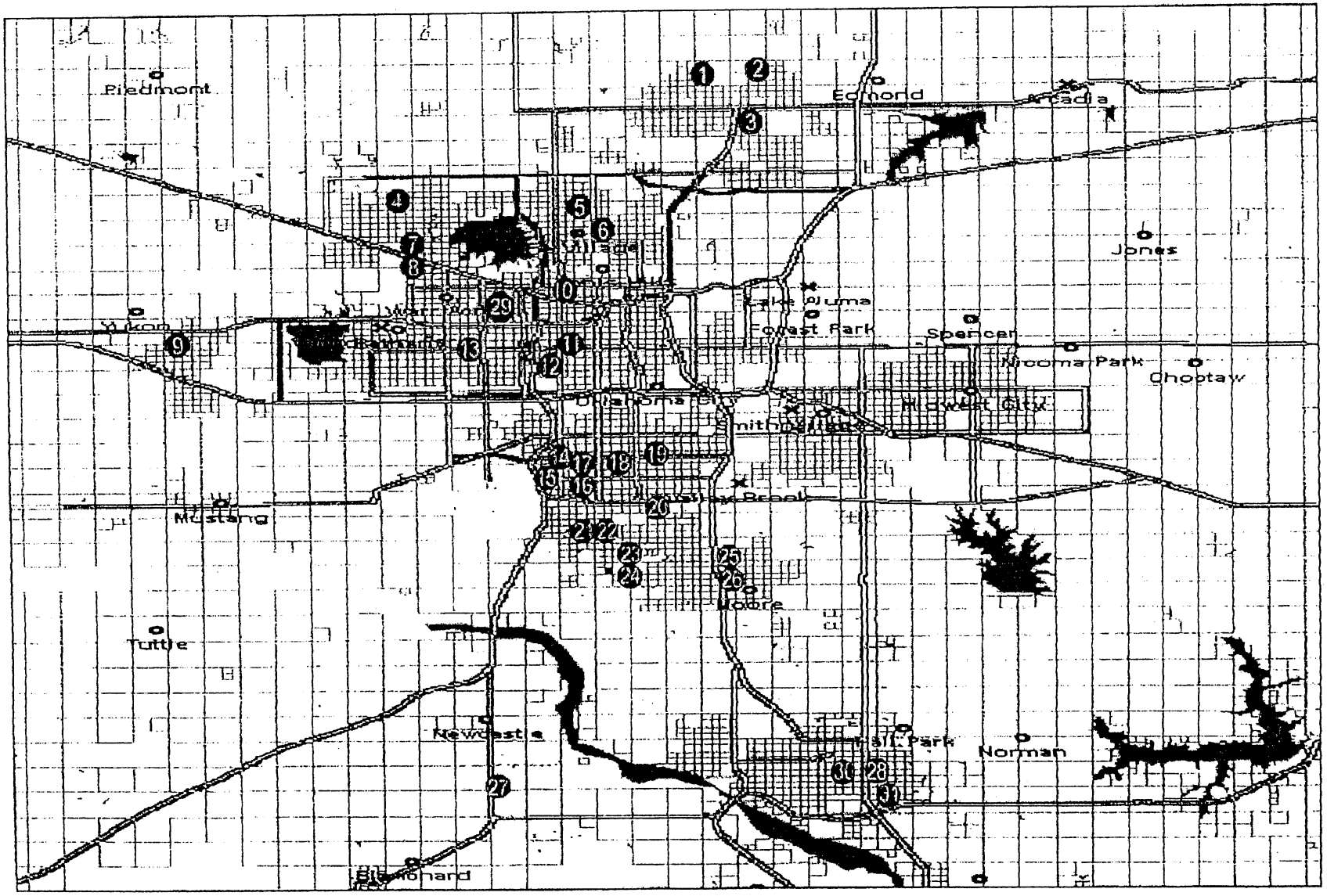


Exhibit 6 000139

Exhibit 7

CLOSED OKLAHOMA CITY AREA SUPERMARKETS SINCE JULY 1998
(Facility not subsequently occupied by a supermarket)

Map Key	City	Store Name	C/I*	Location	Total Area (Approx. sq. ft.)
2	Edmond	Snyder's/IGA	I	Danforth & Kelly	65,000
3		Food World/Jim's IGA+	I	Bryant & Danforth	33,000
9		Homeland	C	2nd & Broadway	34,000
89	Moore	Buchanan's IGA	I	4th & Eastern	26,000
87		Pratt's	I	12th & Eastern	42,000
96	Norman	Buy For Less (Goodner's)	I	Main Street & 24th Ave. SW	61,000
93		Buy For Less (Goodner's)	I	12th and Alameda	42,000
94		Wright's IGA	I	12th & Alameda	30,700
		Pratt's	I	12th & Lindsey	30,000
82	Oklahoma City	Albertson's[1]	C	SW 104th & Western	51,000
79		Buchanan's IGA	I	SW 89th & Pennsylvania	31,000
84		Buchanan's IGA	I	SW 119th & Western	30,000
71		Don's Food Fair	I	SW 59th & May	18,000
70		Spencer's Super Thrift/Grider's+	I	SW 59th & May	29,000
72		Don's Food Fair	I	SW 59th & Pennsylvania	18,000
21		IGA Super Thrift	I	Hefner & May	43,000
23		Food World/Jim's IGA+	I	NW 122nd & MacArthur	31,000
26		Homeland/IGA+	C	Northwest Hwy & Rockwell	56,000
15		Homeland[2]	C	Pennsylvania & Britton	46,000
46		Homeland/Baker's+	C	NW 23rd & Pennsylvania	61,000
44		Homeland	C	NW 16th & Drexel	35,000
41		Homeland	C	NW 23rd & Ann Arbor	29,000
74		Homeland	C	SE 59th & Walker	38,000
77		Homeland/Price Chopper+	C	I-240 & Pennsylvania	70,000
80		Homeland[3]	C	SW 89th & Pennsylvania	48,000
18		IGA Super Thrift	I	NW 63rd & May	26,000
76		Pratt's	I	I-240 & Walker	56,000
27		Price Mart	I	Northwest Hwy & Rockwell	65,000
73		Super Foods/Sav-Mor	I	SW 59th & Western	20,000
35		Pratt's	I	39th & Portland	35,000
103	Yukon	Snyder's IGA	I	Cornwell Road and Main St.	41,000
				TOTAL	**1,240,700**

* C (Chain) or I (Independent)
\+ Closed twice under two (or more) different ownerships.
[1] Replaced at former Homeland/Baker's at 104th/Pennsylvania.
[2] To be demolished and replaced by a Walmart Neighborhood Market.
[3] Part converted to a Hong Kong Market.

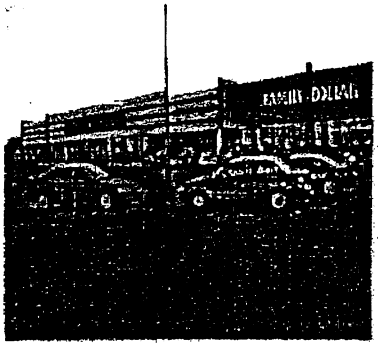
EXAMPLES OF CLOSED SUPERMARKETS OKLAHOMA CITY & METRO AREAS

Exhibit 8

1. FORMER SNYDERS/IGA – SEC DANFORTH & KELLEY

2. FORMER FOOD WORLD/ JIM'S/ PRATT'S – NWC BRYANT & DANFORTH

3. FORMER HOMELAND – SEC 2ND & BROADWAY - EDMOND, OK



4. FORMER FOOD WORLD – 122ND & MACARTHUR

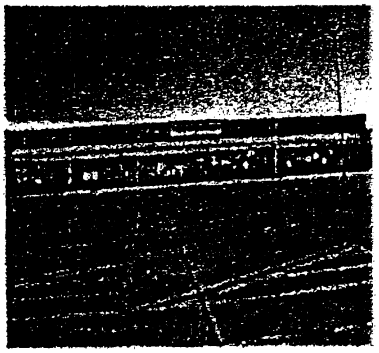
5. FORMER IGA – NEC HEFNER & MAY

6. FORMER HOMELAND – SEC 93RD & PENNSYLVANIA

7. FORMER HOMELAND – ROCKWELL & NW EXPRESSWAY

8. FORMER HOMELAND (NOW DRAPERS) – NWC MACARTHUR

9. FORMER IGA (NOW DOLLAR TREE/ HAIR SALON/ WIRELESS/ SABS) – 63RD & MAY



10. FORMER FOOD OUTLET – SWC HWY 66 & CORMWELL – YUKON, OK

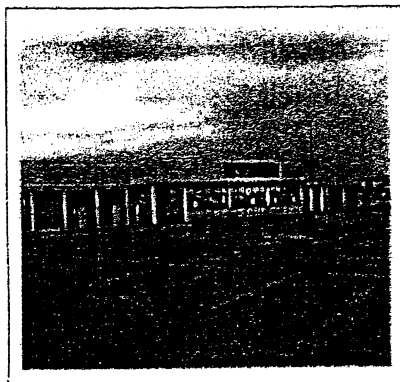
11. FORMER BAKERS IGA – NWC 23RD & PENNSYLVANIA

12. FORMER HOMELAND – SEC 16TH & DREXEL

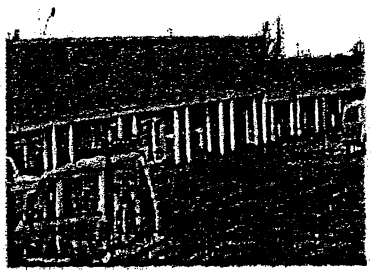
Exhibit 8

CLOSED SUPERMARKETS
OKLAHOMA CITY & METRO AREAS

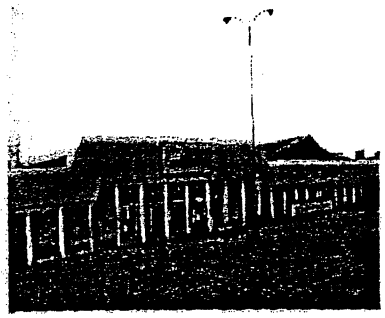
Exhibit 8



13. FORMER HOMELAND – NEC SW 59TH & WALKER

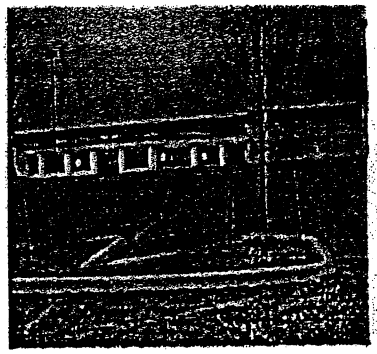


14. FORMER DON'S FOOD FAIR – SWC PENNSYLVANIA & 59TH



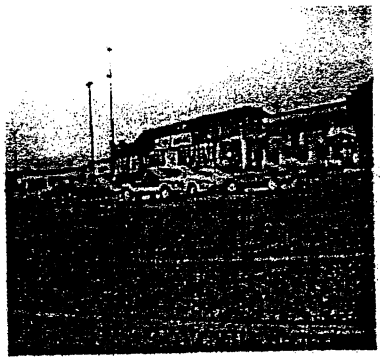
15. FORMER DON'S FOOD FAIR (NOW BINGO) – SWC MAY & 59TH

16. FORMER HOMELAND – NWC PENNSYLVANIA & I-240



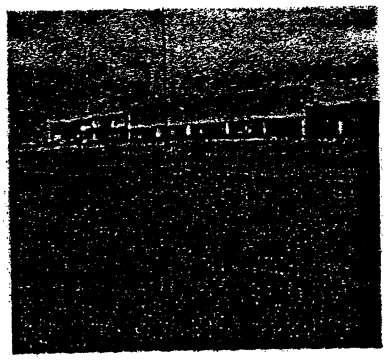
17. FORMER PRATTS – SWC WALKER & I-240

18. FORMER BUCHANAN'S(RE-LEASING TO DRUG EMPORIUM) – NWC 89TH & PENNSYLVANIA



19. FORMER HOMELAND (NOW HONG KONG MARKET) – SEC 89TH & PENNSYLVANIA

20. FORMER PRATTS – SEC EASTERN & 12TH - MOORE, OK

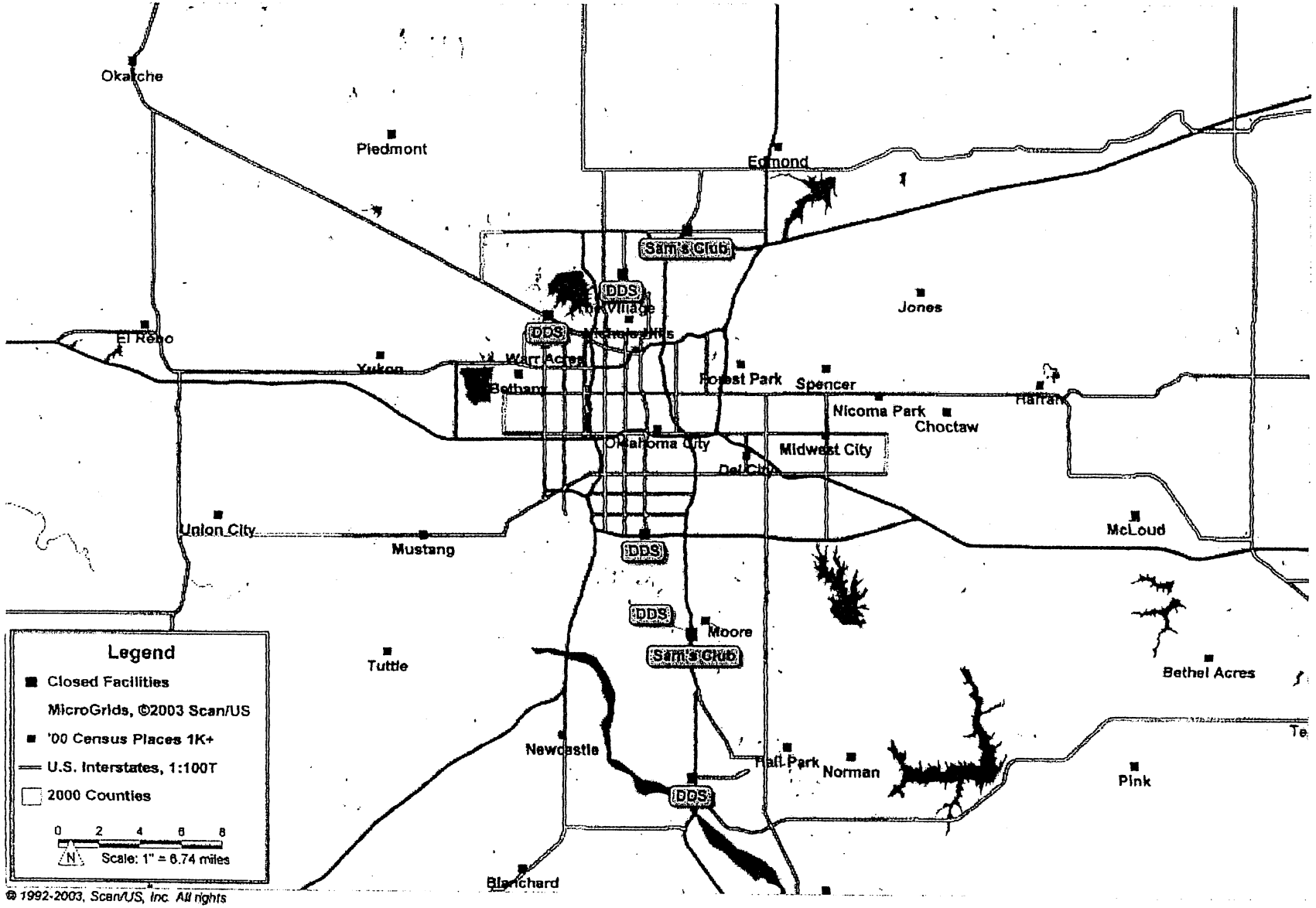


21. FORMER BUCHANAN'S – NEC EASTERN & 4TH - MOORE, OK

Exhibit 8

Exhibit 9: Closed Walmart Facilities

DSR Marketing Systems, Inc.



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02/04/04

Exhibit 9 000143

Appendix 1

ABOUT DSR MARKETING SYSTEMS

DSR Marketing Systems, Inc. is a market research and consulting firm which specializes in retail research, including store location analysis and consumer research.

Dr. David Rogers is the President of DSR Marketing Systems, Inc. He was formerly Head of Site Potential Statistics for J. Sainsbury PLC, the British supermarket chain.

He has given presentations on market research topics for a wide variety of U.S. and British retail trade organizations, and is a Tutor at the annual Retail Location Analysis seminar at Oxford University's Business School (Templeton College).

Dr. Rogers is co-editor of Store Location and Store Assessment Research, a text-book published by John Wiley and Sons Ltd., the international publishers, and is a regular columnist for a variety of retail trade magazines in Australia, the USA and UK, including Retail Merchandiser and Progressive Grocer in New York, the European Retail Digest and Retail Week in Britain, and Shopping Centre News in Australia.

Dr. Rogers has consulted with an extensive number of retail, restaurant, and shopping center clients in Australia, Canada, France, Iceland, Puerto Rico, Saudi Arabia, Sweden, the United Kingdom, and the U.S.A.

His experience includes expert witness testimony at planning and traffic impact inquiries and in cases concerning Retail Competition and Eminent Domain.

Dr. Rogers received his undergraduate degree from the University of Bristol (England), his M.S. from the University of Wisconsin (Madison), USA, and his doctorate from the University of Reading (England). All three degrees were in the field of Urban Studies.

Media & Marketing • The Property Report • Technology

MARKETPLACE

THE WALL STREET JOURNAL

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WEDNESDAY, SEPTEMBER 15, 2004 B1

EXHIBIT "C"

Wal-Mart's Surge Leaves Dead Stores Behind

By KORTNEY STRINGER

AT A WAL-MART in La Junta, Colo., boards cover the windows and wiry weeds sprout from cracks in the parking lot. The 69,000-square-foot store has been vacant since 2000, when Wal-Mart Stores Inc. built one of its even-bigger "supercenters" about a quarter of a mile away and vacated a building it had used for less than 10 years.

"There isn't much demand for another retailer to come in and use that space," says Allison Cortner, the head of a local nonprofit economic development group who has been trying to find a tenant for the empty store. Wal-Mart's lease on the building runs through 2017.

PROPERTY REPORT

La Junta's situation is hardly unique. Throughout the country, hundreds of empty "big box" stores litter the suburban and rural landscape. Some were abandoned by chains that went out of business. Others were orphaned by corporate downsizings. And still others, like the La Junta one, were left behind when their corporate parents decided they weren't big enough.

This build-and-abandon trend occurs everywhere in real estate as needs of tenants change, but it's particularly acute in retailing, where store formats can change as quickly as dress lengths.

While big retailers can afford to write off or absorb the cost of closed stores and their ongoing leases, communities are often stuck with a different kind of bill. They complain that the empty buildings are eyesores that can boost crime and vandalism and bring down property values. And where darkened stores anchor strip malls, they can depress sales of remaining retailers.

Eric Lars Bakke/Merbury Pictures

This La Junta, Colo., store has been empty since Wal-Mart opened a 'supercenter' nearby.

While the stores' owners typically continue to pay property taxes on the vacant properties—that is, if they remain in business—the buildings no longer generate jobs or lucrative sales-tax dollars for state and local governments.

Finding new tenants for big properties isn't easy. Sometimes the very company that abandoned a store blocks a prospective new occupant. Wal-Mart in particular sometimes creates roadblocks when other discount merchandisers or supermarkets have expressed interest in its shuttered buildings, say some real-estate brokers and community officials.

"Wal-Mart clearly says up front, 'We don't want anyone in the buildings with a competing use,' " says Suzanne Chen of Retail Realty Group of Tampa, Fla., which specializes in big-boxes. "Sometimes they would rather sit with a vacant building than budge on letting a competitor in it."

In Fort Myers, Fla., for instance, Wal-Mart blocked a Save-A-Lot grocery store from subletting

Please Turn to Page B4, Column 1

Exhibit "C"

THE PROPERTY REPOI

Towns Struggle to Fill Shuttered Wal-Marts

Continued From Page B1

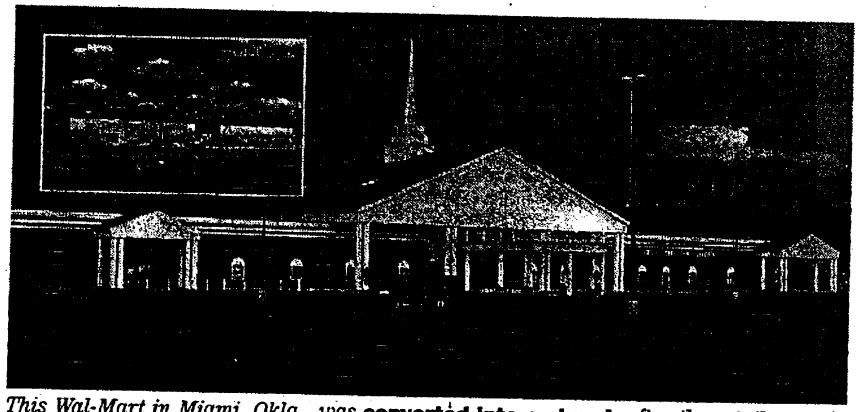
an abandoned store where it still held the lease, according to Ms. Chen. Wal-Mart runs a supercenter, which sells groceries along with the chain's other items, about a mile away.

Wal-Mart spokesman Dan Fogleman says it actually did try to find a grocery store for the building. "However, there was already a supermarket on the other side of the shopping center, and the other chain chose not to locate there. ... This shows that we are willing to put competitors in our vacant buildings." An office-supply retailer now occupies the building.

Still, another Wal-Mart spokesman, Bob McAdam, says the company won't go out of its way to help a competing retailer take over one of its empty stores. "There are times when it's in our interest to get the property moving faster, but we're certainly not going to give a competitor an advantage," he says.

Retailers including **Target Corp.**, **Kmart Holding** Corp. and **Home Depot** Inc. all have vacated big-box locations across the country. But Wal-Mart, because of its rapid expansion, probably has left behind more space than anyone else. It plans to add 50 million square feet of retail space this year around the world, a good chunk of that replacing existing stores it now considers dated. Wal-Mart, which has its own realty unit, says it will fill about 16 million square feet of this empty space this year, but that it still has about 152 vacant stores, or about 13 million square feet, across the nation.

Some big boxes do end up being used by other retail chains. When discounters Ames Department Stores Inc., Caldor Inc. and Bradlees Inc. went out of business, Wal-Mart and other retailers moved into many of their vacated digs. Home Depot and Sears now occupy some of the 600 or so Kmarts that were casualties of its bankruptcy filing in 2002. And **Hobby Lobby Stores** Inc. has moved into a number of vacant Wal-Marts. Oftentimes, the big boxes are divided up into several small stores: Wal-Mart says that about 60% of its empty boxes that have found new uses have been sectioned up for the new tenants.



This Wal-Mart in Miami, Okla., was **converted into a church** *after the retailer closed it. More than 150 former Wal-Marts sit vacant across the U.S.*

Still, many big boxes remain on the market for years. In Clinton, Miss., a Wal-Mart larger than two football fields stood vacant for four years before it recently was demolished. A Wal-Mart in Bardstown, Ky., remained empty for nearly 10 years before a flea market moved in. And La Junta, a town of 8,000 located three hours from Denver, just recently struck a deal to begin using a former Kmart that had been empty for 10 years as a coffee roasting plant, while a former Gibsons Discount Center, a regional discounter, still sits empty three years after its closing.

Communities are getting more aggressive about trying to prevent big boxes from becoming empty in the first place. Some, including Conway, N.H., and Buckingham, Pa., have passed ordinances that limit the size of new stores—thus making it less attractive to build a new store and abandon the old one. These towns often prohibit building owners from closing stores before the space has attracted a new tenant or plans are in place for the structure to be demolished.

Some communities require retailers to tear down buildings that remain empty for a certain period of time. Others have helped find creative uses for empty big boxes, including a Mercedes-Benz dealership in Florida, a church in Oklahoma, a bingo hall in West Virginia, a Christian school in Arkansas and a pharmaceutical lab in Wyoming.

Ron Kitchens, president of an economic development group in Corpus Christi, Texas, has helped both Wal-Mart and Kmart fill empty stores in his region. One Wal-Mart ended up as a plant for an office-furniture manufacturer, while a Kmart will soon become a phone company's call center. "If the buildings didn't work for the biggest retailer, then they're probably not going to work for other retailers," he says. "Communities have to be creative."

Still, some communities figure they're better off with the added employment and taxes that come from a newer, bigger Wal-Mart even if it leaves them with an empty store. That was the case in La Junta, where the town extended its boundaries to allow the new superstore to be built.

Constantly growing retailers like Wal-Mart, of course, could reduce the number of empty stores by simply expanding on the same site. The problem is that Wal-Mart says it needs 20 acres to build a supercenter, while most of its older discount stores sit on 10- to 12-acre sites. In East Greenbush, N.Y., Wal-Mart expanded one of its stores into a 203,000-square-foot supercenter, but only after smaller retailers in the strip mall were relocated to free up space.

Wal-Mart, which owns about half its vacant buildings and leases the rest, insists it is working harder to fill the buildings by aggressively working with communities and brokers. The company also lists its vacant big boxes on its Web site, which reads like nationwide yellow pages: In Texas, Wal-Mart lists more than 40 empty stores for sale or lease, while Georgia has 23. By the end of the year, the Bentonville, Ark., retailer plans to fill 70% of its empty boxes, says Tony Fuller, vice president of Wal-Mart Realty.

"We recognize the challenges," Mr. Fuller says. "It's been a journey for us. Speed wasn't important to us before, but it's very important to us today."

EXHIBIT "D"

The Potential Economic and Fiscal Impact of SUPERCENTERS In San Diego

A CRITICAL ANALYSIS

San Diego County
Taxpayers Association

Exhibit "D"

The Potential Economic and Fiscal Impact of SUPERCENTERS In San Diego

A CRITICAL ANALYSIS

Rea & Parker Research
P.O. Box 421079
San Diego, CA 92142
(858) 279-5070
www.rea-parker.com

This Executive Summary highlights the key findings from the research. Persons desiring a more complete description of the research are referred to the final report, available online at www.taxwatchdog.org. The opinions expressed in this report are those of Professors Rea and Parker.

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In San Diego, starting employees at discount retail establishments earn less than the starting salary quoted by Boarnet and Crane for Orange County. Whereas Boarnet and Crane identified starting wages of $6-$7 per hour, Rea & Parker Research has found that starting pay in San Diego is $5.80-$6--approximately 10% less than the Boarnet/Crane finding. Grocery workers at the large chains, however, are covered by the same contract and, therefore, earn the same in San Diego County as they do in Orange County. Benefit packages available to grocery chain employees and discount retail employees in San Diego parallel Orange County closely.

This finding adds $0.60 to the $8.62 wage and benefit gap identified by Boarnet and Crane. Therefore, the wage and benefit gap in San Diego County is estimated to be $9.22 per hour per worker, indicating that discount retail employees earn wages and benefits equal to approximately one-half of the amount which grocery chain workers earn.

Labor Market Impacts

Using market share per store data for Los Angeles, Dallas, and Atlanta, it has been estimated for San Diego that supercenters will initially penetrate the local market in the range of 12% on the lower end, up to 23% as the initial upper bound. Beyond this initial impact, further impacts can be expected in the form of wage and benefit competition for existing major grocery chains as they seek to meet the challenge of this significant new competition.

Impact Upon Overall Wage Levels: San Diego County has 16.3% of Southern California's total major grocery chain employees, or approximately 13,000 such employees. Applying the San Diego wage gap of $9.22 for the 35.5 average work hours per week produces an initial annual displacement impact upon wages and benefits of $27,000,000 - $51,000,000, depending upon the extent of the market penetration (12%-23%).

As the wage gap closes, another $68,000,000 - $117,000,000 per year would be lost if 40% - 60% of the $9.22 wage gap is closed in an effort to meet supercenter competition. Full closure of the wage gap would lead to another $68,000,000 - $116,000,000 per year in lost wages and benefits, for an annual total loss to the local economy of $221,000,000.

The Boarnet/Crane model combined various of these scenarios into a range of potential impacts, starting on the low end with a model which included the lower bound of direct displacement (10% for Boarnet and Crane-12% for Rea & Parker Research) plus a 40% gap closure and having as the high end the largest penetration (20% for Boarnet and Crane-23% for Rea & Parker Research) plus full closure of the gap. The Boarnet/Crane economic cost range of $500 million - $1.4 billion per year for all Southern California becomes $105 million-$221 million per year for San Diego. That is to say that the total wage impact upon grocery workers in major chains in the event of supercenters entering San Diego will fall somewhere between $105 million and $221 million annually.

Multiplier Effect: According to the San Diego Association of Governments, the regional Multiplier in San Diego varies between 1.5 and 2.5 depending upon the industry involved and the propensity for funds to leak out of the local economy. Using the midpoint Multiplier of 2, the full effect of the wage losses in the grocery industry would result in $210 million - $440 million of reduced economic activity in the region every year.

Ramifications of a Low Wage Economy: Suggesting that the economy would be in a better condition were grocery workers to earn only one-half of what they currently earn, as is the case for discount retail workers, ignores the huge advantages of an economy

Good jobs, good pay, good benefits should be the goal of an economy, and supercenters are not consistent with that objective.

having a work force capable of purchasin nes or renting decent housing--both of which problems would be greatly exacerbated by additional low-wage workers pursuing a limited supply of affordable housing--and when its working class can purchase cars, furniture, and appliances. The economy further benefits when its workers are able to send their children to college, pay for their own health care costs, and provide a decent standard of retirement living. Supercenters do not advance any of these societal benefits.

Were low wages and low prices to be the goal, the ultimate models of successful economies would be underdeveloped nations rather than high-wage industrialized ones. An overall degradation of wages harms the economy. Good jobs, good pay, good benefits should be the goal of an economy, and supercenters are not consistent with that objective.

Major grocery chains provide significant retirement benefits to their workers which large discount retailers do not.

Applying the same range of possibilities as utilized in the wage gap closure analysis yields potential retirement pension losses to society of $40,000,000 - $85,000,000 per year multiplied by 2 (Multiplier) to equal an additional cost applicable to supercenters of approximately $80,000,000 - $170,000,000 per year in lost pension and retirement benefits, which would otherwise be available to stimulate the local economy.

Under the Boarnet/Crane assumption of 47-57 new stores, and allocating 16% to San Diego County at a minimum, based upon current employment data, 7-9 supercenters may be built in San Diego County. Chances are very strong that these supercenters will not find all of their current facilities to be expandable and will open new stores nearby, closing the older ones and bringing about significant urban decay.

A report by Edward B. Shils, Ph.D. from the Wharton School, University of Pennsylvania, found that these new stores replaced traditional "Main Street" retailers, eliminating thousands of jobs formerly in stores employing one to ten persons. These were family type enterprises in which 1.5 full-time jobs were ultimately lost for every one new part-time job in the discount retailer. "Traffic density in the older mall begins to die as shoppers go to the newer and larger mega-retail discount store, whether it be a Target, Kmart, or Wal-Mart. Within a year, every second or third retail store is closed. These stores then take on a ghettoized, boarded-up appearance. Graffiti, iron grills, unsightly signs then appear, and what five to ten years earlier was a handsome mall in harmony with the countryside, now resembles an urban ghetto.

Land use planning currently seeks to encourage "smart growth" and "transit-oriented development." In this planning environment, a policy which turns away from Main Street retailers and toward large suburban sprawl types of retail developments which depend exclusively upon the automobile and which generate this type of decay in existing neighborhoods, is antithetical to the vision and wisdom of the stated policies which seek to encourage the opposite.

Public Service Costs: In the case of the supercenters, 7-9 new or expanded stores would result in 500,000 - 650,000 new square feet of retail development. This footage will require approximately 45-60 acres of land, including parking, loading facilities, and out buildings. As such, there will be an annual public service costs (net of public revenues) equal to between $85,185 and $113,580 from these new supercenters. Factoring into the analysis that the sales tax revenue will be less than average (because of the grocery component), that property taxes will be reduced if redevelopment is used, and that the

new business will be generated in lar art by simply transferring it from elsewhere the region, it is arguable that there is an even greater net cost in this case from the supercenters. Reducing sales taxes and secured property taxes by one-half increases the annual public cost to $161,910 - $215,880. If the supercenters do not expand, and, instead, build new structures and close older ones, the net fiscal cost for the required 160 - 200 new acres would be $575,680 - $719,600 per year.

Public Health Care Costs: Public costs associated with persons without health insurance are very significant. Inasmuch as it has been established that the number of uninsured workers can be expected to increase as supercenters enter a market and compete with major grocery chains, the cost of providing health care to the uninsured becomes a public cost in the form of direct government payments to hospitals and clinics and in the form of uncompensated care in all health facilities--the charges for which are paid by all the other insured persons and businesses through higher insurance premiums and medical fees. Uninsured persons cost the public between $250 and $1,300 per uninsured per year.

It has been established by Boarnet and Crane that 77,540 employees at the major Southern California grocery stores and 103,388 of their dependents are covered by their employers' plans. This represents approximately 97% coverage. It has also been established that only 38% of Wal-Mart employees are covered, implying a 59% drop in coverage as jobs transfer from the chains to the supercenters.

With San Diego's 16% employment proportion, it can be estimated that approximately 12,600 San Diego employees and 16,800 of their dependents are currently insured by grocery chain health plans. Between 2,100 and 18,200 workers and dependents could become uninsured for health care as supercenters penetrate the market and as the wage and benefit gap is closed, generating public costs of $1,050,000 to $9,100,000 per year for health care to grocery workers and their dependents who would not be covered by an employer health plan.

It is clear that there is a significant cost associated with the degradation of job quality which would inevitably accompany the entry of supercenters into the San Diego market.

Concluding Comments

It is clear that there is a significant cost associated with the degradation of job quality which would inevitably accompany the entry of supercenters into the San Diego market. That cost would approximate $290,000,000 - $610,000,000 per year in lost economic activity, consisting of:

- $210,000,000 - $440,000,000 in annual lost wages, and
- $80,000,000 - $170,000,000 in annual foregone pension benefits.

Further, government budgets would suffer, with service costs in excess of revenues of between approximately $85,000 and $720,000 per year and the annual cost of providing health care to workers without health insurance and their dependents of $1,050,000 - $9,100,000--the magnitude of each depending upon the supercenter market penetration and the degree of wage and benefit gap closure. In sum, there could be not only the loss of $290,000,000 - $610,000,000 per year of economic activity and the fiscal losses attached thereto, but also direct public costs which may approach $10 million per year in public services and uninsured health care.

TABLE OF CONTENTS

	PAGE
Executive Summary	i
The Boarnet/Crane Report: Summary of Findings	1
Direct Wage Impacts	2
Impacts on Benefits	7
Summary Comparison of Wages and Benefits	9
Labor Market Impacts	9
Projected Supercenter Market Share	11
Impact Upon Overall Wage Levels	13
Land Market Impacts	14
Fiscal Impacts	15
The Boarnet Crane Report: A Critique	17
Strengths of the Report	18
Limitations of the Report	19
The Projected Economic and Fiscal Impact of Supercenters in San Diego County	21
Direct Wage and Benefit Impacts	21
Labor Market Impacts	22
Projected Supercenter Market Share	22
Impact Upon Overall Wage Levels	23
Multiplier Effect	25
Ramifications of a Low-Wage Economy	26
Foregone Pension Benefits	27
Land Market Impacts	28
Fiscal Impact	30
Public Services	30
Public Health Care Costs	32
Concluding Comments	34

EXECUTIVE SUMMARY

Rea & Parker Research was contracted by the San Diego County Taxpayers Association to evaluate the accuracy and applicability to San Diego of a report by Marlon Boarnet, Ph.D. and Randall Crane, Ph.D. entitled *"The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finances."* Rea & Parker Research found the Boarnet/Crane report to be a very thorough analysis with a good methodological component, particularly with regard to wage impact.

Richard A. Parker, Ph.D. and Louis M. Rea, Ph.D. of Rea & Parker Research applied the model from the Boarnet/Crane report to San Diego County in anticipation that supercenter retail will seek to begin operations in San Diego. Supercenters combine discount retail with grocery items in one structure consisting of up to 250,000 square feet of retail space.

Rea & Parker Research adapted the Boarnet/Crane methodology, where applicable, and added to their methodology those adjustments which address issues not fully analyzed by the Boarnet/Crane report, such as healthcare costs and pension impacts.

The key findings from this analysis by Rea & Parker Research, in the event of supercenters entering the San Diego market, are as follows:

- Wages and benefits can be expected to decline in San Diego County by $105 million to $221 million annually.
- Application of the regional multiplier could expand this negative impact on wages to $440 million per year.
- The wage gap between grocery workers and supercenter employees is expected to be approximately $.60 per hour more in San Diego County than in the Los Angeles and Orange County study area utilized by Boarnet and Crane. This causes the wage impact to be proportionately more detrimental in San Diego than Boarnet and Crane indicated for Southern California, as a whole.
- Lost pension and retirement benefits will impact the region negatively by an additional $80 million - $170 million per year.

- Health benefits will be reduced to employees resulting in poorer quality care for grocery employees and consequent increased public costs which may exceed $9 million per year.

- Fiscal benefits, in the form of sales and property taxes, are frequently less than originally expected and are not likely to cover the costs of traffic, police, fire protection, among others. Ultimately, the net cost of these public services for supercenters could exceed $700,000 per year.

- There are negative impacts on land use to be encountered as a result of the greater level of instability in the discount retail sector and the more space consumptive nature of discount retailers vis-a-vis grocery stores.

- At particular risk from this increased instability are the small, local stores which surround supermarkets in neighborhood shopping centers and depend upon the supermarkets' drawing power. Economic harm to or closure of supermarkets in favor of supercenters will do significant financial damage to these smaller, local stores, causing negative fiscal impacts and an increased potential for urban decay and blight.

Direct Wage and Benefit Impacts

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Concluding Comments

It is clear that there is a significant cost associated with the degradation of job quality which would inevitably accompany the entry of supercenters into the San Diego market. That cost would approximate $290,000,000 - $610,000,000 per year in lost economic activity, consisting of:

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Further, government budgets would suffer, with service costs in excess of revenues of between approximately $85,000 and $720,000 per year and the annual cost of providing health care to workers without health insurance and their dependents of $1,050,000 - $9,100,000--the magnitude of each depending upon the supercenter market penetration and the degree of wage and benefit gap closure. In sum, there could be not only the loss of $290,000,000 - $610,000,000 per year of economic activity and the fiscal losses attached thereto, but also direct public costs which may approach $10 million per year in public services and uninsured health care.

The Boarnet/Crane Report: Summary of Findings

The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Finances was prepared by Professors Marlon Boarnet and Randall Crane in September 1999 for the Orange County Business Council. This report reviews potential impacts associated with combining large ("big box") discount retail and grocery sales into a single store known as a supercenter. Major supercenter retailers with substantial grocery components include Wal-Mart, Target, and Kmart. These supercenters can be as large as 250,000 square feet.

The findings of the Boarnet/Crane Report focused upon Wal-Mart among the supercenters and concluded the following:

- The aggressive entry of supercenters, such as those operated by Wal-Mart, into the Southern California grocery business is expected to depress industry wages and benefits at an estimated impact ranging from a low of $500 million to a high of almost $1.4 billion per year, potentially affecting 250,000 grocery industry employees.

- The full economic impact of those lost wages and benefits throughout Southern California could approach $2.8 billion per year.

- Discount retail chains that operate supercenters typically offer much less comprehensive health care coverage than major California grocery chains. One major negative economic impact of supercenters could be a dramatic reduction in health coverage for most of the 250,000 grocery employees in California, leading to greater societal costs and decreased individual quality of life and health among grocery workers.

- The fiscal benefits of supercenters, and of discount retail more generally, are often less than what is expected when the initial development proposal is approved. The additional tax revenues generated will in part come from existing businesses elsewhere in the city in the form of lost market share. To the extent that salaries are in food-related sales, there are little or no sales tax benefits to be derived. If redevelopment or other financial inducements are offered to the discount retailer, fiscal benefits will be further reduced.

- Discount retail is a part of a more volatile market than is the grocery business. The combination of the two can lead to increased instability in the formerly stable grocery sector. As such, there is an increased risk that a community could lose its supercenter grocery business when it would not otherwise lose the exclusively grocery-oriented retail establishment. This risk has both fiscal and land use implications.

- From a land use perspective, supermarket sites are usually "anchors" to other stores, such as cleaners, pharmacies, and other neighborhood serving retail outlets. The abandonment of the supermarket site will negatively impact the many small local stores which depend upon the drawing power of that anchor.

- Also related to land use is the fact that discount retailers occupy more square footage per sales dollar than do grocery stores, thereby causing a possible increased consumption of land in order to generate an equivalent sales volume.

Since the early 1990s, supercenters have been entering the market in large numbers. In the 1960s, Meijer, a Michigan-based company, was the first to combine a grocery and general merchandise store. Meijer currently operates 116 supercenters in the Midwest. Most of these stores include forty departments featuring over 120,000 different items. Wal-Mart began experimenting with the supercenter concept in 1988. At the end of 1999, Wal-Mart had an estimated 564 stores and was planning another 150 stores by the end of 2000. Kmart introduced its Super-mart concept in 1992. By the end of 1999, there were 105 Super Kmarts. Target entered the supercenter business approximately 4 years ago (see Table 1). Fourteen of Target's 851 existing stores are Super Targets. Tables 2 and 3 demonstrate the effect of this trend on the grocery business. There are currently fewer and larger stores, and they are part of national chains more so than they were 10 years ago.

Direct Wage Impacts

The primary thesis of the Boarnet/Crane Report is that the trend for discount stores to include full service grocery sales is harmful to the economy. Discount retail pays employees considerably less than the major grocery chains. The policy issue is that, if supercenter grocery sales crowd out sales in grocery chains, some otherwise well paying grocery jobs will become lower paying jobs in the supercenters.

Table 1

Store Counts of Super Kmarts and Wal-Mart Supercenters

Year	Super KmartStore Count[1]	Percentage Change (%)	Wal-Mart Store Count[2]	Percentage Change (%)
1990	0	-	6	100
1991	0	-	9	50
1992	5	-	10	11
1993	19	280	34	240
1994	67	253	72	112
1995	87	30	147	104
1996	96	10	239	63
1997	99	3	344	44
1998	102	3	441	28
1999[3]	105	3	564	28
2000[3]	N/A	N/A	721	28

[1]Source: http://www.kmart.com/d_about/financial/factbk_1998/7.stm
[2]Source: Wal-Mart Annual Report, 1999.
[3]Estimates as stated in Kmart Corp Annual Report, 1998, and Wal-Mart Annual Report, 1999.

Table 2

Types and Numbers of Stores (1988 vs. 1998)

	1988 Number	% of Total	1998 Number	% of Total
All Stores	148,000	100.0	126,000	100.0
Supermarkets ($2+ million)	30,400	20.5	30,700	24.4
Chain Supermarkets	16,850	11.4	19,530	15.5
Independent Supermarkets	13,550	9.1	11,170	8.9
Other Stores (< $2 million)	62,600	42.3	37,550	29.8
Convenience Stores	55,000	37.2	57,000	45.2
Wholesale Club Stores	N/A	N/A	750	0.6

Sources: *56th Annual Report of the Grocery Industry*, April 1989, and *66th Annual Report of the Grocery Industry*, April 1999, as cited in http://www.fmi.org/keyfacts/stores.html.

Table 3

Median Average Store Size

Year	Grocery Store Size (ft^2)
1997	39,260
1996	38,600
1995	37,200
1994	35,100
1993	33,000
1992	32,400
1991	31,500
1990	31,000

Source: Food Marketing Industry Speaks, 1991-1998.
As cited in http://www.fmi.org/keyfacts/storesize.html.

The Orange County Business Council has estimated that the majority of Orange County job growth from 1989 through 1997 has been in relatively low paying sectors. For example, during those nine years, the County's service employment increased by 58% while manufacturing jobs in the county fell by 22%. Considering this trend, it is important to encourage job growth in sectors that pay well--especially those sectors, like the grocery industry, that offer a living wage to persons with entry level skills. The emergence of supercenters, which pay wages typical of the low-paying discount retail sector, threatens to convert many high wage jobs into low wage jobs. The Boarnet/Crane Report focuses on the Wal-Mart experience because Wal-Mart has been the most aggressive entrant into the supercenter business.

The hourly employees at Wal-Mart earn a starting wage of approximately $6.00 to $7.00 per hour. Grocery-related employees at Wal-Mart earn effectively the same starting pay as general merchandise employees. For example, salaried employees in the bakery and meat departments receive only a small wage premium over other store employees. At major retail grocery chains, meat cutters and food clerks earn starting wages that are substantially higher than the $6.00 to $7.00 per hour starting salary at supercenters. Effective October 4, 1999, food clerks at the major grocery chains earn a starting wage of $9.78 per hour, while beginning meat cutters earn $11.43 per hour (see Table 4). With regard to the grocery industry in Southern California, only general merchandise clerks earn a wage that is similar to Wal-Mart wages; general merchandise clerks start at $7.07 per hour. General merchandise clerks are a special category designed to allow grocery stores to compete in non-perishable items with other, lower paying retail outlets. General merchandise clerks do not handle food items. The general merchandise pay scale at the major chains is suggestive of what happens when grocery stores must compete with competitors who have lower labor costs and, therefore, is a good predictor of the ultimate impact of Wal-Mart's competition in the grocery business.

Table 4

Hourly Wage Structure of the Major Grocery Chains in Southern California

		10/4/99	10/2/00	10/1/01	10/7/02
Meat Cutters					
	Head Meat Cutter	$18.98	$19.38	$19.78	$20.18
	Journeyman Meat Cutter	$17.98	$18.38	$18.78	$19.18
Apprentices:	4th six months	$15.82	$15.82	$15.82	$15.82
	3rd six months	$14.06	$14.06	$14.06	$14.06
	2nd six months	$12.32	$12.31	$12.31	$12.31
	1st six months	$11.43	$11.43	$11.43	$11.43
Food Clerks					
	Department Head	$17.70	$18.10	$18.50	$18.90
	Experienced Clerk	$16.70	$17.10	$17.50	$17.90
Apprentices:	4th 26 weeks	$14.67	$14.67	$14.67	$14.67
	3rd 26 weeks	$13.04	$13.04	$13.04	$13.04
	2nd 26 weeks	$11.41	$11.41	$11.41	$11.41
	1st 26 weeks	$ 9.78	$ 9.78	$ 9.78	$ 9.78
General Merchandise Clerks					
	Department Head	$12.37	$12.67	$12.97	$13.27
	Experienced Clerk	$11.27	$11.57	$11.87	$12.17
Apprentices:	4th 26 weeks	$ 9.78	$ 9.78	$ 9.78	$ 9.78
	3rd 26 weeks	$ 8.70	$ 8.70	$ 8.70	$ 8.70
	2nd 26 weeks	$ 7.61	$ 7.61	$ 7.70	$ 7.85
	1st 26 weeks	$ 7.07	$ 7.25	$ 7.40	$ 7.55

Source: Food Employer's Council, 1999

Additionally, the gap in the starting hourly pay understates the full wage differential that exists between current grocery workers and Wal-Mart employees. Food clerks, for example, will earn 33% more than their starting salary after one year of employment. In comparison, the Wal-Mart pay scale increases less rapidly with experience, Wal-Mart is a heavier user of part-time work, part-time employees likely work fewer work hours per week than they do at the grocery chains, and the typical Wal-Mart employee stays with the company for a shorter time.

Impacts on Benefits

The current major grocery chain labor contract offers full health insurance coverage for all Southern California grocery employees (full and part time) and their dependents, with no co-payments or deductibles. Health plan costs are fully paid by the employer. Wal-Mart, in comparison, requires that its employees share the cost of health insurance premiums, and insurance coverage is available only to full-time employees. Wal-Mart health plans have deductibles that range from $250 to $1,000, and employees must pay the full premium for dependents. Table 5 compares the benefits available to a grocery chain employee to the benefits available to a Wal-Mart employee, and it demonstrates not only these health insurance differences but also differences in sick pay, vacations, and pension.

Employer-sponsored health care coverage has been declining slowly but steadily since it peaked in the late 1970s and recent trends indicate that the uninsured population is likely to increase as employment-sponsored health insurance continues to erode. This decline in employer-sponsored health care coverage has been fueled in part by a reduction in the percentage of workers accepting coverage when it is offered because they feel that it is not affordable. In 1980, 74% of U.S. employers paid the entire cost of health insurance for their employees. By 1993, this figure had dropped to 37%. In addition, as the price of health coverage has risen, many employers have passed along some of the cost increases to their employees.

In 1995, 38% of Wal-Mart employees were covered by one of the company's health plans; another 35% were eligible but did not elect coverage. In comparison, in June, 1999, the major grocery chain health plan covered 77,540 employees out of approximately 80,000 total employees (97%) and 103,388 of their dependents at no cost to the employee.

The consequences of not having health insurance are significant for the uninsured as well as for society as a whole. Studies indicate that the uninsured are much less likely to receive preventive care and they are more likely to postpone care. It has been found that 71% of the

Table 5

Comparative Benefit Analysis

	Chain Grocery Stores	Wal-Mart
Annual Paid Holidays:	Nine paid holidays per year	Six paid holiday per year
Vacations:	One week after 1 year. Two weeks after 2 years. Three weeks after 5 years. Four weeks after 15 years. Five weeks after 20 years.	One week after 1 year. Two weeks after 2 years. Three weeks after 7 years.
Sick Leave:	Accrues at 4 hours/month, or 6 days/year. Annual cash buy out for unused sick leave.	Accrues at .023077 hours for each hour worked (approx. 4 hours per month) or 6 days per year, to a maximum of 192 hours (24 days). No cash buy out for accrued sick leave in excess of maximum. 50% of accrued sick leave may be used as personal time off from work.
Medical Insurance:	Several plans are offered. Most extensive coverage is the PPO Plan. Under PPO plan, employer pays full premium for employee and all dependents. No deductible. Most procedures reimbursed at 90-100%; $10 doctor's office visits. Maximum out-of-pocket expense is $500.	Employer paid with employee sharing premium. Four deductible options are offered ranging from $250 to $1,000 with varying employee premium share. Employee part of premium ranges from $5.50 to $18.50 bi-weekly depending on deductible. Employee pays full premium for any dependents. Plan includes employee co-insurance.
Dental Insurance:	Employer pays full premium for employee and all dependents. No deductible and no co-insurance.	Employee shares in premium payment ($2.50 bi-weekly) and pays full premium for dependents. Plan includes annual deductible and co-insurance.
Pension Plan:	Provides a defined benefit retirement plan. Employer's contribution is $1.225 per hour.	Offers an employee stock ownership plan. Company pays 15% of employee company stock purchases to an annual maximum stock purchase of $1,800. (approximately $0.135 per hour)
Other:	No-cost vision insurance coverage. Retiree medical insurance coverage.	Offers employee-paid life insurance. Provides profit-sharing plan. Provides employee, 10% discount card on Wal-Mart purchases. Offers reduced-cost medical plan for eligible retirees.

Sources: 1998 Wal-Mart Associate Benefit Book. Summary Plan Description. Food Employers' Council (Bailey, 1999).

uninsured delayed seeking care due to financial constraints, while only 23% of the privately insured population postponed care for the same reason. Therefore, the uninsured have higher hospitalization rates for health conditions and chronic illnesses that do not typically necessitate hospital care. The uninsured are 2.8 times as likely to be hospitalized for diabetes than the insured, 2.4 times as likely to be hospitalized for hypertension, and 2.0 times as likely to be hospitalized for immunizable conditions. When the uninsured do require health care, the care can be quite costly and it will probably be provided at public expense or may go unpaid (known as "uncompensated costs"). Uncompensated health costs result in higher costs to those who do pay for their health care.

Summary Comparison of Wages and Benefits: Table 6 compares the typical Southern California grocery chain employee with a typical Wal-Mart employee regarding wages and benefits. An average Southern California grocery chain employee earns, on an hourly basis, $12.82 in wages, $2.36 in health benefits, and $3.07 in other benefits for a total compensation rate of $18.25. An average Wal-Mart employee earns, on an hourly basis, $7.50 in wages, $0.52 in health benefits, and $1.61 in other benefits for a total compensation rate of $9.63. Thus, the average Southern California grocery chain employee earns $8.62 more per hour than the average Wal-Mart employee.

Labor Market Impacts

The Boarnet/Crane Report presents various case studies from Canada that demonstrate how the presence of supercenters can impact a local economy. The authors justify their use of Canadian case studies, claiming that the Canadian experience with supercenters is more extensive than the United States' experience.

Loblaws, a Canadian grocery and retail chain, opened Real Canadian Super Stores (RCSS) in Alberta in the late 1970s and 1980s. RCSS combines food and discount retail

Table 6

Comparison of Southern California Grocery and Wal-Mart Discount Center Wages

	Hourly Wage	Health Benefits	Other Trust	Premium Pay	Vacation Sick Leave	Total Wage/Hr	Total Annual Pay
Southern California grocery chain employees	$12.82	$2.36	$0.32	$1.74	$1.01	$18.25	$37,960
Wal-Mart --medium estimate	$ 7.50	$0.52	N/A	$1.02	$0.59	$ 9.63	$20,037

Note: Given that only 38% of Wal-Mart employees are covered by health care, compared with virtually all employees at the major chains, the ratio of health care costs to base wages was scaled down by a factor of 0.38 to account for the lower share of employees covered by Wal-Mart health plans. This resulted in an estimated cost of Wal-Mart health benefits of $0.52 per hour.

under one roof, paying wages that are typical of the discount retail industry in the United States. Safeway wages in Alberta were considerably higher than RCSS, but by the early 1990s, RCSS began to have a dramatically negative impact on Safeway profits, and Safeway was forced to compete with the lower cost of RCSS labor. Safeway executives estimated that the wage gap between their employees and RCSS workers was between $8.00 and $12.00 per hour in Canadian dollars. In 1993, Safeway concluded it could no longer compete without drastically cutting pay and benefits, which it did by $5.00 per hour. Further, Safeway bought out the contracts of 4,000 experienced workers and replaced them with new workers earning $6.00 per hour.

In other Canadian examples, competition with RCSS (which had gained a 9% market share) also forced Safeway in Vancouver, British Columbia to drastically reduce the wages and benefits of its employees in order to remain competitive in the Vancouver market. A&P faced similar competition from low labor cost competitors in the greater Toronto area in the early 1990s. The resolution of the conflict placed A&P in a weaker position because it was less able to

renovate, expand, and open new stores, than it would have otherwise. As a result, A&P converted 19 of its Ontario stores to Food Basics, a lower-cost format which operates under a separate bargaining agreement.

Labor represents approximately 60% of the controllable costs (excluding the cost of the product) in the grocery industry, so competition often takes the form of meeting a rival's labor costs. The Canadian experience shows that grocery chains will compete vigorously for market share and profit when faced with low-cost competition. The Canadian grocery chains sought immediate wage and benefit concessions once competitors with lower labor costs became clear competitive threats. Concessions often took the form of buy-outs of more experienced, higher-paid workers combined with a two-tiered wage structure that included substantially less valuable pay and benefit packages for new hires. In some instances, those buy-outs were combined with wage and benefit reductions for existing employees. Overall, the experience in Canada suggests that major chains will seek parity with lower labor cost competitors through wage and benefit "buybacks" from labor, buy-outs of high cost laborers, and two-tiered contracts that reduce costs for new hires. The evidence suggests that wage and benefit differentials across stores that compete vigorously with each other will lead to substantial downward wage pressure until those differentials are closed.

Projected Supercenter Market Share

Boarnet and Crane endeavored to project the magnitude of these wage and benefit impacts upon the Southern California labor market. They identified a site in Riverside County, near the intersection of Interstate 15 and State Route 60, where Wal-Mart was seeking approval for a 300,000 - 1,000,000 square foot distribution center. It was not known whether this distribution center was to be for food distribution, but, under the assumption that it would be for food,

Boarnet and Crane built an economic model of Wal-Mart's potential impact upon the Southern California grocery industry. This model is summarized below.

In 1998, Wal-Mart had 12 distribution centers which served 564 supercenters--an average of 47 stores per distribution center. It also had 33 non-food distribution centers which served 1,889 discount stores--57 stores per distribution center. Wal-Mart seeks to locate its stores within a one-day drive from its distribution centers. This implies that the Riverside County distribution center would serve 47-57 stores in Southern California.

Grocery stores in the Los Angles region have market shares ranging from .144% per store for Albertsons to .169% for Vons. Ralph's share per store is .145%, Slater Brothers' is .144%, and Luckys is .163%. Applying these rates to an assumed 47-57 stores in the Southern California region generates estimates of between 6.77% and 9.63% potential market share for Wal-Mart from one distribution center serving the same number of stores as it does in less densely populated areas. In other words, this is a very conservative projection.

As a high estimate of the ultimate market share generated by that one distribution center, Boarnet and Crane use 20%, which is the approximate average market share enjoyed by the three largest grocery chains operating in Southern California in July 1999. [NOTE: The merger of Albertsons and Lucky has changed this average of the 3 largest chains from 21.09% to 22.82%, per the Boarnet/Crane report. That is to say, the 3 largest chains total almost 70% of the grocery market.]

Wal-Mart is typically suburban and exurban (lower density areas beyond the suburbs) in orientation, and, therefore, will likely focus its operations in Orange County, the Inland Empire, the western San Fernando Valley, eastern Ventura County, Santa Clarita, Antelope Valley, and northern and southern San Diego County. Given the fact that Los Angeles County contains almost two-thirds of Southern California's population, Boarnet and Crane contend that their 10%-20% projection is likely to be very conservative in Orange County.

Impact Upon Overall Wage Levels

A market share of 10-20% represents the capture of 42%-84% of all growth projected for Southern California. The entry of Wal-Mart supercenters into Southern California will be viewed by its competitors as the equivalent of cutting their own growth projections by 42%-84%. The implication of this is that Wal-Mart's entry into Southern California will almost certainly be perceived as a major competitive threat, requiring a response which will most likely take the form of the type of employee reductions witnessed in Alberta, British Columbia, and Ontario.

The first channel of economic impact is that 10%-20% of otherwise high-paying grocery jobs will be crowded out by low-paying supercenter jobs. This represents a direct loss in wages of $127,000,000 - $255,000,000 based upon the $8.62 wage gap from Table 6 and applying the current average of 35.5 hours per worker for 10% and 20% of the 80,000 major grocery chain employees in Southern California.

These types of large labor cost differentials within the grocery industry cannot be sustained once the supercenter enters. Economic equilibrium will be achieved at some level which will be directly related to the real and perceived competitive threat posed by supercenters. Based upon the Canadian experience, Boarnet and Crane estimated that grocery chains would seek to close between 40% and 60% of the gap in the near term, with the possibility that the entire gap could close over time. Table 7 indicates that this wage gap closure could lead to another $458,000,000 to $611,000,000 in wage losses in Southern California. These amounts increase to $1.146 billion and $1.018 billion, respectively, when full wage gap closure is achieved.

When considering the full range of possibilities--10%-20% market share and 40%-60% or 100% wage gap closure, the full direct labor market impact can be projected at $500,000,000 - $1,400,000,000, using wage gaps of $7.97 - $9.22 ($600,000,000 - $1,300,000,000 using the $8.62 midpoint gap).

Table 7

Near-Term Indirect Economic Impact from Lower Wages Paid to Grocery Employees in Lost Wages, Per Year ($millions)

Total Wage Gap:	$8.62	
Amount of Gap Closed:	40%	60%
Estimated Supercenter Market Share: 10%	$458	$687
20%	$407	$611

Applying the Southern California Association of Governments regionwide Multiplier of 2.08 adds an equal amount of indirect wage losses as the direct wage and benefit losses ripple through the economy, so that the full direct and indirect wage and benefit loss to the economy of Southern California is projected by Boarnet and Crane to equal between $1.1 billion and $2.8 billion.

Land Market Impacts

Three significant land use impacts were discussed by Boarnet and Crane. First, there is an increased risk of store closures and associated blight which arises from the introduction of supercenters into a local economy. The new and powerful competition which supercenters provide will account for some consolidations and store closures, leaving certain older neighborhood shopping centers, typically anchored by a grocery store and populated with many small local businesses, in a state of economic and physical blight. Further, the combination of the historically stable grocery industry with the more volatile general merchandise retail sector will likely cause certain economic instability to be introduced into the food sector, again leading to an increasingly risky environment, conducive to more store closures and blight.

Second, general merchandise retail consumes more space than grocery stores. The average supermarket achieves sales of $398 per square foot, whereas the average discount retailer

sells $264 per square foot. To the extent that the supercenter does not utilize its space as efficiently as grocery stores, this trend can lead to the consumption of more land and building space than might otherwise have been the case.

And third, the move from a traditional discount retail center into a larger supercenter is frequently accomplished by closing the older, smaller store, leaving it vacant and causing much local physical and economic deterioration--again, causing much harm to the neighborhood shopping center and its associated smaller businesses.

Fiscal Impacts

The instability of discount retail discussed in the previous section concerning land use also has implications for government revenue.

Boarnet and Crane demonstrate through various municipal finance data from Orange County how tax revenues tend to rise upon the opening of a discount retailer but then relatively quickly either level off or actually decline back toward previous levels.

- New retail development in a city occurs, to some extent, at the expense of existing retail. Thus, a share of sales taxes generated by new retail is not new to the city at all. Some cities experience only a short-term "spike" in sales tax revenues associated with discount retail, with tax revenues levelling after only 2 or 3 years.

- Tax competition among jurisdictions utilized to attract and/or retain business can tend to further reduce any tax revenue benefits because the incentives offered to attract the retailer may include forgiveness from certain of the taxes they might otherwise pay.

- General merchandise stores are more vulnerable to market shifts than are food stores. Large discount retailers will most likely enter a community, boosting overall retail sales and tax revenues, only to be among the first to consolidate or close when conditions change.

- Large retail sites impose additional public costs in the form of traffic, security, environmental, and other impacts.

- The growth in retail sales in communities seems to be occurring more in grocery items than in general merchandise, and most grocery sales are not taxed. Therefore, the tax base of the host city will suffer as existing retail shifts to groceries.

- The use of redevelopment project areas to develop large discount retail requires that a significant portion of any property tax increases be diverted to the redevelopment agency and not be available to the city's general fund.

The combination of these factors has tended to cause discount retailers to have less of a positive fiscal impact than is usually predicted and has also caused the benefits that do occur to be shorter-lived than originally estimated.

The Boarnet/Crane Report: A Critique

"The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finances" by Marlon Boarnet, Ph.D. and Randall Crane, Ph.D. is a detailed review of the potential impacts of incorporating grocery-related retail into general merchandise discount retail in Orange County, California.

The report is replete with tables and charts which make the case that supercenters with a grocery component are expanding in the United States, generally, and in Southern California, in particular.

The negative impacts of this expansion are identified as follows:

- Wages can be expected to decline in Orange County by $500 million to $1.4 billion.
- Application of the regional multiplier could expand this impact to $2.8 billion.
- Health benefits will be reduced to employees resulting in poorer quality care for grocery employees and consequent increased societal costs.
- Fiscal benefits, in the form of sales and property taxes, are frequently less than originally expected.
- A decreased level of stability in the retail sector can result in further erosion of the fiscal benefits.
- There are negative impacts on land use to be encountered as a result of this increased instability and the more space consumptive nature of discount retailers vis-a-vis grocery stores.
- At particular risk from this increased instability are the small, local stores which surround supermarkets in neighborhood shopping centers and depend upon the supermarkets' drawing power. Economic harm to or closure of supermarkets in favor of supercenters will do significant financial damage to these smaller, local stores.

Strengths of the Report

The Boarnet/Crane report carefully identifies patterns and trends in the retail sector and uses these identified patterns and trends to draw intuitively reasonable conclusions about the economy of Orange County and Southern California.

The abundant data are well presented in clear tables and graphics which support the assumptions underlying these conclusions. The data particularly supports the fact that large discount retailers are moving more and more into the selling of grocery products in the form of supercenters. Further, Boarnet and Crane meticulously detail the higher wages and benefits paid by large grocery chains in contrast to discount retailers. The very logical conclusion that they draw, therefore, is that the growth of lower wage discount retailers into the grocery sector will cause a reduction in the overall wage level of grocery employees. This will be the case not only for those directly employed by discount retailers instead of large grocery chains but also for those who would stay employed at the large chains which would then be subject to a heightened level of price competition. The report considers a wide variety of possible impacts depending upon the degree of success Wal-Mart (as the selected supercenter example) might have in the market and the timing and amount of wage gap closure policies undertaken by the grocery chains. Their considerations are thoroughly and well considered.

The Boarnet/Crane report also elaborates upon the fiscal impacts experienced in various Orange County cities which were home to large discount retail openings in recent years. It presents a considerable amount of data which demonstrate that local tax revenue tended to increase only in the short term and levelled off, often returning to its former level, in the longer term. They further offer possible explanations for this finding which are based upon significant economic logic and soundness--namely that fiscal inducements offered to retailers, transfer impacts of moving sales from other local retailers, the non-taxability of the growing retail

component of grocery sales, and local public costs of servicing the development will all tend to greatly reduce the positive fiscal impacts originally projected.

Limitations of the Boarnet/Crane Report

The conclusion drawn by Boarnet and Crane could have been strengthened by a more broad-based and extensive array of case studies. The handful of studies utilized to support wage impacts were limited to Canada only, and yet the report indicates that Wal-Mart entered the grocery business in 1988; Kmart entered in 1995; and large warehouse clubs have been competing in these markets for years. Therefore, there are likely to be additional cases available for reference, especially cases within the United States.

Similar criticisms can be made concerning the information provided on store closures as well as the disappointing fiscal impact of supercenters. That is, the research underlying these conclusions is limited in number and breadth of case study references. With a minimum amount of research in California alone, cases involving competitive redistribution of the market were readily identified in Palo Alto, Davis, and Modesto. Further, whereas Boarnet and Crane do mention that retail development tax revenues entail certain costs such as traffic and security, they do not detail the degree to which these costs offset revenues. This kind of detail is very easy to derive from governmental budgets or other development impact analyses, and it is, therefore, relatively surprising that these costs were not considered with more precision.

Boarnet and Crane do an excellent job of qualitatively discussing certain of the negative consequences associated with those workers who do not possess health insurance. Their report would have been strengthened by calculating the societal cost associated with the burden of providing health care to those without insurance. This societal cost is associated with increased levels of disease and with the long-term problems of workers not covered by pension plans.

There is some source of confusion which can arise from the Boarnet/Crane report. Although the report was prepared for the Orange County Business Council using many Orange County sources of data, its conclusions are drawn in terms of Southern California--not Orange County. As such, when the estimated labor market impact is placed between $1.1 billion and $2.8 billion, that range applies to all of Southern California. This issue becomes particularly important with regard to the critical analysis by Rea & Parker Research in that its purpose is to draw conclusions about the potential impact in San Diego County. It is important to note that the Boarnet/Crane report does not permit a direct San Diego County/Orange County comparison. This comparison can be drawn only between San Diego County and all of Southern California.

The next section of this report by Rea & Parker Research will apply the Boarnet/Crane model to San Diego County in anticipation that supercenter retail will also seek to begin operations in San Diego. This application to San Diego County will adapt the Boarnet/Crane methodology where applicable and add to the analysis those adjustments to the methodology which address the limitations of the Boarnet/Crane report.

The Projected Economic and Fiscal Impact of Supercenters in San Diego County

This concluding section of the report will adapt the strengths of the Boarnet/Crane report to San Diego County and add to those strengths certain adjustments which Rea & Parker Research feels address those handful of limitations discussed in the previous section.

As such, this section will contain four subsections, as follows:

- Direct Wage and Benefit Impacts
- Labor Market Impacts
  - Projected Supercenter Market Share
  - Impact Upon Overall Wage Levels
  - Multiplier Effect
  - Foregone Pension Benefits
- Land Market Impacts
- Fiscal Impacts
  - Public Services
  - Public Health Care Costs

Direct Wage and Benefit Impacts

Not unlike Orange County, and most of the United States for that matter, job growth in good jobs--ones with decent pay and benefits, job stability, and a chance to advance in a career--is vital to the economic and social well being of the San Diego region.

In San Diego, starting employees at discount retail establishments earn less than the starting salary quoted by Boarnet and Crane for Orange County. Whereas Boarnet and Crane identified starting wages of $6-$7 per hour, Rea & Parker Research has found that starting pay in San Diego is $5.80-$6--approximately 10% less than the Boarnet/Crane finding. Grocery workers at the large chains, however, are covered by the same contract and, therefore, earn the same in San Diego County as they do in Orange County. Benefit packages available to grocery chain employees and discount retail employees in San Diego parallel Orange County closely.

This finding adds $0.60 to the $8.62 wage and benefit gap identified by Boarnet and Crane. Therefore, the wage and benefit gap in San Diego County is estimated to be $9.22 per hour per worker, indicating that discount retail employees earn wages and benefits equal to approximately one-half of the amount which grocery chain workers earn.

Labor Market Impacts

Projected Supercenter Market Share: Rea & Parker Research has identified certain cases of competition in the United States to supplement those Canadian cases provided by Boarnet and Crane.

The City of Davis, California loses 50% of its grocery sales to larger, less expensive grocery stores in Woodland, 10 miles away, resulting in an obviously reduced number of local grocery jobs. In Palo Alto, almost every grocer has closed its business because of large grocery operations in other nearby jurisdictions. In Modesto, a Food 4 Less store was drawing considerable business from Sonora and Tuolomne County--a full 50 miles away--until a Pic 'N Save store opened in Sonora. While these are all grocery store competition examples in contrast to supercenter competition, the point is made that larger, less expensive stores will compete (even from 50 miles away) and compete well with nearby grocery stores, causing corresponding employee displacement.

It is clear that the opening of supercenter grocery operations will compete well against existing San Diego County grocery chains. Boarnet and Crane identified a potential range of 10%-20% market penetration for the supercenter throughout Southern California. For San Diego, that penetration may be higher.

Boarnet and Crane produced a very conservative estimate of supercenter market share based upon Los Angeles market share per store (.144%-.169%). This market share was used to estimate the lower bound of their estimate and includes the fact that the densely populated Los

Angeles region has many more grocery stores than other areas. For example, market shares per store in Dallas/Ft. Worth, among the major stores, ranges form .240% (Kroger) to .940% (Albertsons). Atlanta's rates range from .140% (Ingles) to .330% (Kroger).

Utilization of the higher per store shares from Dallas and Atlanta, as more applicable to San Diego in lieu of the Los Angeles data, is justified because the population sizes of Atlanta and Dallas are closer to the population of San Diego than is the Los Angeles population. It is further justified by the conclusion drawn by Boarnet and Crane that supercenters locate in suburban and exurban areas, where the population density is lower. Applying an approximate market share of .20% to .25% would raise Boarnet and Crane's lower bound of market penetration to. 9.4%-14.3%, or an approximate midpoint of 11.9%. On the upper end, it has already been observed that Boarnet and Crane's average large store market share of 20% is low (the average share for the 3 largest chains currently equals 22.8%). Rounding the lower bound of 11.9% to 12% and the upper bound (22.8%) to 23% provides an initial 12%-23% projected market penetration for supercenter grocery operations in San Diego, which is 15%-20% higher than the Boarnet/Crane projection. As with the contention by Boarnet and Crane that their projected market share was likely to be very conservative, the same can also be said about these San Diego market share estimates, especially when the experiences of Sonora, Palo Alto, and Davis are considered in the analysis.

Impact Upon Overall Wage Levels: Boarnet and Crane analyzed the impact upon the entire Southern California region regarding the potential entry by Wal-Mart into the grocery/supercenter business. The focus of this analysis by Rea & Parker Research is the potential impact upon the San Diego region. Therefore, the initial step in assessing any impact the supercenters may have on San Diego is to prorate downward the scope and magnitude of the base numbers involved in the Boarnet/Crane study.

Instead of a base of 80,000 major grocery chain employees in all of Southern California, San Diego County has 16.3% of that total, or approximately 13,000 such employees. Applying the San Diego wage gap of $9.22 for the 35.5 average work hours per week produces an initial annual displacement impact upon wages and benefits of $27,000,000 - $51,000,000, depending upon the extent of the market penetration (12%-23%).

As the wage gap closes, using Boarnet and Crane's 40%-60% model, another $68,000,000 - $117,000,000 per year would be lost. Full closure of the gap would lead to another $68,000,000 - $116,000,000 per year in lost wages and benefits, for an annual total loss to the economy of $221,000,000.

The Boarnet/Crane model combined various of these scenarios into a range of potential impacts, starting on the low end with a model which included the lower bound of direct displacement (10% for Boarnet and Crane-12% for Rea & Parker Research) plus a 40% gap closure and having as the high end the largest penetration (20% for Boarnet and Crane-23% for Rea & Parker Research) plus full closure. The Boarnet/Crane economic cost range of $500 million - $1.4 billion per year for all Southern California becomes $105 million-$221 million per year for San Diego. Table 8 summarizes these wage and benefit impacts. Each entry in the Table includes the prior impact--that is, the 40%-60% closure data includes the direct displacement effect and the full closure data includes displacement and 40%-60% closure.

The annual range of possible losses is wider for Boarnet and Crane ($500 million - $1.4 billion vs. $105 million - $221 million) in this analysis because Boarnet and Crane hypothesized three different wage gaps. If the same wage gaps were to be introduced into this analysis, the range of possible impacts would widen to $97 million - $235 million per year.

In general, it can be said that the total wage impact upon grocery workers in major chains in the event of supercenters entering San Diego will fall somewhere between $105 million and $221 million, annually.

Were low wages and low prices to be the goal, the ultimate models of successful economies would be underdeveloped nations rather than high-wage industrialized ones. That, of course, is patently illogical. An economy benefits from higher wages and spending and the economic activity that this activity generates. An overall degradation of these wages harms the economy. Good jobs, good pay, good benefits should be the goal of an economy, and supercenters are not consistent with that objective.

Foregone Pension Benefits

Discount retailers have relatively inconsequential pension and retirement plans which are rendered further irrelevant by the fact that employees' tenure at discount retailers is very short. Hence, major grocery claims provide significant retirement benefits to their workers which large discount retailers do not. These benefits serve to both stimulate the economy and to reduce the public cost associated with providing care and services to indigent senior citizens.

It had been estimated that, given the current 5-year vesting period applicable to the retirement plans in major grocery chains, approximately 60% to 65% of all workers will achieve vested retirement benefits based upon current employment and tenure patterns. This indicates that approximately 8,125 of the current 13,000 workers will receive pension benefits for their employment at the major grocery chains. Assuming an average of 15 years service, the retirement benefits payable would be $863.65 per month, or approximately $10,400 per year. If 12%-23% of the 8,125 workers are replaced by supercenter workers, the local economy would lose between $10,000,000 and $19,000,000 per year in the form of lost employee pension benefits. The 40%-60% gap closure scenario could increase these totals to $40,000,000 - $58,000,000 annually. If all major chain employees are either replaced or have their benefits reduced to supercenter level, the economy would receive a total $85,000,000 loss per year. Applying the Boarnet/Crane range of possibilities yields potential societal pension losses of

$40,000,000 - $85,000,000 per year multiplied by 2 (Multiplier) to equal an additional cost applicable to supercenters of approximately $80,000,000 - $170,000,000 annually, which would otherwise be available to stimulate the local economy.

Land Market Impacts

Boarnet and Crane elaborated upon various Orange County cases in which a discount retailer closed one store in order to open a larger and newer store nearby. Case after case indicated that these vacated stores did not find a new occupant very easily, if at all, causing further closures among the small complementary local stores. These stores spend much time vacant, causing physical and economic blight and creating an "attractive nuisance" for vandals and others with property damage in mind. Clearly, building one store and then vacating it for another is worse than not building at all from a land market and land use planning perspective.

Under the Boarnet/Crane assumption of 47-57 new stores, and allocating 16% to San Diego County at a minimum, based upon current employment data, 7-9 supercenters may be built in San Diego County. Given the more suburban/rural orientation of supercenters, as discussed previously, this estimate is likely to be very conservative. Chances are very strong that these supercenters will not find all of their current facilities to be expandable and will open new stores nearby, closing the older ones and bringing about the type of urban decay discussed above.

According to Peter Grant in a column written this year for the *Wall Street Journal* ("Plots and Ploys"), Wal-Mart has a strategy in place to replace "many of its outlets with large supercenters. Nationwide, this has loaded the company with an inventory of 28.7 million square feet of surplus space." Currently, at least three and maybe four Wal-Marts will be closing in a parish near New Orleans to "make way for supercenters. Making matters worse, the parish already is littered with seven other vacant big box stores."

This number of large store closures will cause potentially significant amounts of economic dislocation within local retail markets and will most definitely leave San Diego County communities with many blighted and economically discussed parcels with which to deal.

Furthermore, there will be increased risks of continued closures of other stores from the new competition as well as the risks of adding elements of discount store instability to otherwise stable grocery businesses.

The point is that the transition to supercenters entering the local market will not be a smooth one. The transition will be accompanied by store closures, economic disinvestment, and physical decay in parts of the local market as business shifts toward the new sites.

A report by Edward B. Shils, Ph.D. from the Wharton School, University of Pennsylvania, entitled "Measuring the Economic and Sociological Impact of the Mega-Retail Discount Chains on Small Enterprise in Urban, Suburban, and Rural Communities," was published in 1997. In his study, Dr. Shils detailed much of the data and conclusions drawn by Boarnet/Crane and by Rea & Parker Research. Dr. Shils further elaborated upon the impact of discount retailers on small local businesses in Eastern Pennsylvania, San Diego, Chicago, and Syracuse, New York, and found that the new stores replaced traditional "Main Street" retailers, eliminating thousands of jobs formerly in stores employing one to ten persons. These were family type enterprises in which 1½ full-time jobs were ultimately lost for every one new part-time job in the discount retailer. On visits to all the locations cited above, Dr. Shils and his staff "witnessed the increasing decay, both physically and morally of the stores and their environment in malls that had been in their ascendancy in the 80s and 90s." Where a supercenter had been opened one-half mile away from the older mall and where after 6 months to 1 year, "traffic density in the older mall begins to die as shoppers go to the newer and larger mega-retail discount store, whether it be a Target, Kmart, or Wal-Mart. Within a year, every second or third retail store is closed. These stores then take on a ghettoized, boarded-up appearance. Graffiti, iron

grills, unsightly signs then appear, and what five to ten years earlier was a handsome mall in harmony with the countryside, now resembles an urban ghetto . . . what was witnessed was not 'urban sprawl' but 'suburban' as well as 'rural sprawl.'"

In the year 2000, in an era of land use planning which seeks to encourage "smart growth" and "transit-oriented development," a retail policy which turns away from Main Street retailers and toward large suburban sprawl types of retail developments which depend exclusively upon the automobile, is antithetical to the vision and wisdom of the stated policies which seek to encourage the opposite.

Fiscal Impact

The critique portion of this report identified three issues which should be addressed in the course of identifying the fiscal impact of the entry of discount general merchandise retailers into the grocery business. These three issues are as follows:

- Retail development generates both tax revenues and public costs, such as police, fire, traffic, and environmental costs. There exist certain measures which are available to facilitate making such an estimate in this analysis.

- The quality of life and health degradation which accompanies having no health insurance also entails certain public costs in the form of public hospitals and health clinics and in the form of uncompensated care at all public and private health facilities--uncompensated care being charity cases accepted by hospitals for which they receive no payment and bad debts, many of which are from uninsured patients.

- Major grocery chains provide pension plans which are far superior to large discount retailers, and major chain employees stay on their jobs for many more years. As such, major chain employees will enjoy pension benefits at retirement which supercenter employees will not. This will be a significant loss (foregone benefit) to society if supercenters replace major chains.

Public Services. In the event that 7-9 supercenter facilities open in San Diego County, that would likely add from 500,000 to 2,250,000 square feet of additional building space to the built environment. The lower end of this range assumes 7 new supercenters, all of which are

accomplished by adding 70,000 square feet of grocery space to existing stores. The upper end assumes 9 brand new structures of 250,000 square feet each.

The San Diego Association of Governments (SANDAG), through its consulting arm SourcePoint, uses standardized revenue multipliers for office, commercial, and industrial development (San Diego Air Commerce Center: Economic and Fiscal Impact Analysis, August, 1997) which tend to depict the following annual public revenues and costs for commercial development on a per acre basis:

Public Revenues		
Unsecured Property Tax	$ 622.52	
Secured Property Tax	1,836.26	
Franchise Fees	1,355.56	
Property Transfer Tax	41.08	
Licenses and Permits	1,432.13	
Charges for Current Services	272.09	
Sales Tax	1,568.71	
Other	951.81	
Total Annual Public Revenue Per Acre		$ 8,080.16
Public Costs		
Public Safety	$7,008.27	
Support Services	942.62	
Other	2,022.46	
Total Annual Public Costs Per Acre		$ 9,973.35
Net Annual Public Cost Per Commercial Acre		<$ 1,893.19>

Within the City of San Diego, therefore, according to SANDAG, on average, one commercially developed acre for retail purposes generates a net cost of $1,893 to the general fund. Commercial development's profitability changes to the positive when hotels and their transient occupancy tax become part of the development mix. With regard to supercenters, however, there is no hotel development included.

In the case of the supercenters, 500,000-650,000 square feet are new revenue/cost generators. That range represents the grocery component of the supercenter (70,000 square feet

for 7-9 new stores). This footage will require approximately 45-60 acres of land, including parking, loading facilities, and out buildings. As such, there will be an annual service cost equal to between $85,185 and $113,580 for the public from these new supercenters. Factoring into the analysis that the sales tax revenue will be less than average (because of the grocery component), that property taxes will be reduced if redevelopment is used, and that the new business will be generated in large part by simply transferring it from elsewhere in the region, it is arguable that there is an even greater net cost in this case from the supercenters. For example, reducing sales taxes and secured property taxes by one-half increases the net public cost from $1,893 per acre to $3,598 per acre, elevating the annual public cost to $161,910 - $215,880. If the supercenters do not expand, and, instead, build brand new structures and close older ones, the net fiscal cost for the required 160 - 200 new acres would be $575,680 - $719,600 per year.

In the context of this report, this magnitude of dollars is inconsequential in the ultimate assessment of the impact of supercenters. What is of great consequence, however, is the conclusion that, as indicated by Boarnet and Crane, the fiscal benefits to be derived from supercenters are much lower than expected and, as a matter of fact, are likely to be negative fiscal impacts rather than benefits.

Public Health Care Costs: Public costs associated with persons without health insurance are very significant. Inasmuch as it has been established that the number of uninsured workers can be expected to increase as supercenters enter a market and compete with major grocery chains, the cost of providing health care to the uninsured becomes a public cost in the form of direct government payments to hospitals and clinics and in the form of uncompensated care in all health facilities--the charges for which are paid by all the other insured persons and businesses through higher insurance premiums and medical fees.

In 1996, the California Nurses Association estimated that there were 6.5 million uninsured Californians, generating $1.6 billion in uncompensated care (a cost of $246.15 per uninsured person). Minnesota also did a study in 1996 and found that their 400,000 uninsured were costing $203 million in uncompensated care ($507.50 per uninsured). Connecticut in 1993 identified a $1,310 per person uninsured cost, adding that 20% of each hospital bill covers the cost of people without health insurance. In 1999, Southern Nevada identified $40,000,000 of uncompensated care. In 1995, San Diego estimated its uncompensated care cost at $150 million cost for San Diego is what is known as charity care for 600,000 individuals without health insurance--or 25% of the County's population. Among these uninsured persons, 80% are working or are dependents of working persons. Further, the $150 million cost estimate is purely for "charity care," which is health care granted for no fee; this cost estimate does not include health care given for which only partial payment is received.

In 1992 and 1993, Rea & Parker Research undertook two studies for the State of California to determine the net cost of providing services to undocumented immigrants, a significantly uninsured population. Those reports identified total State and local costs in San Diego County of $227.52 per undocumented immigrant, which can easily be doubled to include federal costs associated with various subsidies, co-payments, and other federal participation in health provision.

Taking all of these studies into account, uninsured persons cost the public between $250 and $1,300 per uninsured per year. For purposes of this analysis, a relatively conservative cost estimate of $500 per person will be utilized.

It has been established by Boarnet and Crane that 77,540 employees at the major Southern California grocery stores and 103,388 of their dependents are covered by their employers' plans. This represents approximately 97% coverage. It has also been established that only 38% of

discount retail employees are covered, implying a 59% drop in coverage as jobs transfer from the chains to the supercenters.

With San Diego's 16% employment proportion, it can be estimated that approximately 12,600 San Diego employees and 16,800 of their dependents are currently insured by grocery chain health plans. If the supercenters take the minimum 12% market share projected, 1,500 of these employees and 2,000 of their dependents will effectively be converted either directly or by substitution into supercenter employees, and only 600 will obtain employer-provided health coverage for themselves and 800 dependents--a minimum of 2,100 more uninsured people in the region (900 employees and 1,200 dependents). If the market share were to approach 23%, these numbers of uninsured would increase to approximately 1,800 employees and 2,400 dependents--or 4,200 more uninsured. In the ultimate, if all 12,600 workers and 16,800 dependents are impacted by renegotiated contracts or buy-outs which reduce the jobs to supercenter level, 7,800 workers and 10,400 dependents could lose their health insurance. That is to say, between 2,100 and 18,200 workers and dependents could become uninsured for health care costs as supercenters penetrate the market, generating public costs of $1,050,000 to $9,100,000 per year of health care costs for the uninsured.

Even more important than these costs is the societal health issue best addressed by asking if it is really good public policy for workers, 62% of whom would not have health insurance and who are very likely to have postponed health care, to be handling food products for the society at large. Obviously, the answer to this question is in the negative.

Concluding Comments

It is clear that there is a significant cost associated with the degradation of job quality which would inevitably accompany the entry of supercenters into the San Diego market. That

cost would approximate $290,000,000 - $610,000,000 per year in lost economic activity, consisting of:

- $210,000,000 - $440,000,000 in lost wages, and
- $80,000,000 - $170,000,000 of foregone pension benefits.

Further, government budgets would suffer, with annual service costs in excess of revenues of between approximately $85,000 and $720,000 and the cost of providing health care to workers without health insurance and their dependents of $1,050,000 - $9,100,000 per year. In other words, there could be not only the annual loss of $290,000,000 - $610,000,000 of economic activity and the fiscal losses attached thereto, but also direct public costs which may approach $10 million per year in public services and uninsured health care.