AGENDA ITEM 1-1

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Conduct Public Hearing to consider two appeals of the Planning Commission's decision regarding the Lodi Shopping Center project (Wal-Mart Supercenter) located at 2640 West Kettleman Lane.**

MEETING DATE: **January 19, 2005**

PREPARED BY: **Community Development Director**

RECOMMENDED ACTION: Uphold the Planning Commission action and deny both appeals.

BACKGROUND INFORMATION: The two appeals that have been filed concern the certification of the Final Environmental Impact Report (FEIR), conflicts with the Lodi Zoning Code, inconsistencies with the General Plan and two conditions of approval for a Use Permit to construct the Lodi Shopping Center. The law firm of Herum Crabtree Brown filed the first appeal that I will focus on. This appeal finds fault with the Environmental Impact Report that was prepared for the project. Further, they believe that the project is not consistent with the General Plan or Zoning Ordinance. A detailed response is provided regarding the assertions made by the appellant. The law firm of Steefel Levitt and Weiss filed the second appeal. Their client, Wal-Mart, is unhappy with two conditions contained within Resolution P.C. 04-65. The first of these conditions requires signed leases for at least 50% of the existing Wal-Mart store before a building permit may be issued for the new Supercenter proposed within the project. The second condition requires the project proponent to fund a commercial linkage study as outlined in the recently adopted Housing Element and pay any fee adopted by the City Council that may be required as a result of the study.

ANALYSIS: Because there are two appeals that have been filed for very different reasons, I will break this portion of the communication into headings that attempt to address each issue.

Herum Crabtree Brown APPEAL

As mentioned, the law firm of Herum Crabtree Brown filed the first appeal. Their letter of appeal states "Generally, the appeal is filed on the basis that the project conflicts with the Lodi Zoning Code, is inconsistent with the Lodi General Plan, and does not satisfy the minimum requirements of the California Environmental Quality Act ("CEQA")".

APPROVED: Janet S. Keeter, Interim City Manager

While the issue that has been raised in the appeal is not clear, I will assume that it is the same issue that was raised in a letter commenting on the Draft Environmental Impact Report from an attorney with the same firm and raised at the public hearing by Mr. Herum. Staff believes that the response provided in the Final EIR shown on page 37 of that document is sufficient. However, it seems clear that the appellant is not convinced of our opinion. The General Plan describes the NCC Neighborhood/Community Commercial designation as follows:

> This designation provides for neighborhood and locally oriented retail and service uses, multi-family residential units, public and quasi-public uses, and similar and compatible uses. The FAR shall not exceed 0.40 for commercial uses, and residential densities shall be in the range of 7.1-20.0 units per gross acre. This designation assumes an average of 2.25 persons per household for residential uses.

It is staff's opinion that this project with the proposed Wal-Mart Supercenter is a locally oriented community retail project. Further, it is our opinion that this interpretation has been consistently applied to like centers in Lodi, at this same intersection, subsequent to the adotion of the General Plan. Examples of similar national retailers include the existing Wal-Mart, Target, Lowes, J.C. Penny, Marshalls and Staples. Moreover, we believe it is hard to argue that this center is meant to serve a different, more regional, market since the communities north and south of Lodi either already have or are in the process now of approving Supercenters like the one proposed.

The second part of the appeal deals with what the appellant finds to be a conflict with the Zoning Code. Once again, I can only assume that it is the same argument that was presented previously. That argument apparently is focused on the notion that a Wal-Mart Supercenter is not a "Department Store". It is most definitely staff's opinion that a Wal-Mart Supercenter is a department store. In fact, a Supercenter has an added department that other Wal-Mart's do not and that is grocery sales, which are also allowed within the zoning district in question. Further, the appellant has the misguided idea that because the Zoning Code does not define what a department store is it cannot exist. That is simply not true. Even the Webster's Ninth New Collegiate dictionary supports the conclusion that the Supercenter is a Department Store with this definition:

> Department store (1887): a store selling a wide variety of goods and arranged in several departments

Again, we find it hard to argue that a store with 36 specifically defined departments, all with their own manager does not fit the concept or the definition of a department store. Finally, in an attempt to see what other argument might stick, the appellant suggests that because the recently adopted large scale standards do not specifically state that they apply to department stores, but does mention Supercenters, then the two are somehow different. Again, we do not agree. The applicability of the large retail establishment standards is based on the size of the project, nothing else.

FINAL ENVIRONMENTAL IMPACT REPORT

As with the General Plan and Zoning issue, the specific faults that Herum Crabtree Brown have with the Final EIR are not clear. The appeal does not go into any detail. Mr. Herum, at the Planning Commission meeting only mentioned one area of concern which his firm did not raise during the public comment on the Draft EIR, so the best I can do at this point is assume that he disagrees with the responses provided in the Final EIR to their previous comments. Therefore, I would simply incorporate the Final EIR by reference as staff's response to those issues. That said, Mr. Herum did raise a new issue at the Planning Commission hearing dealing with Appendix F of the CEQA Guidelines.

In Mr. Herum's comments to the Planning Commission at the December 6th public hearing, he stated that the EIR "does not comply with Appendix F of the CEQA Guidelines." Since this specific issue had not been raised in previous written or oral commentary, by Mr. Herum or anyone else, staff has not had the opportunity to respond to this comment in the EIR or the earlier staff report to the Planning Commission.

The CEQA Guidelines include a total of 11 appendices, including "Appendix F: Energy Conservation." This is a one page document which provides guidance on how to prepare "Energy" sections in EIRs where a project has potentially significant energy implications. As with the other CEQA Appendices, which are intended to provide examples, guidance or other information pertinent to the CEQA process, Appendix F has no statutory or regulatory effect. The actual requirements for preparation of EIRs are contained in the CEQA Statutes and the CEQA Guidelines, each of which contain one clear reference to "energy." Section 21000 of the CEQA Statutes provide that EIRs shall include a detailed statement on significant effects of a project and *"[m]itigation measures proposed* ***to minimize significant effects*** *on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy"* (Public Resources Code §21000(b)(3) (Emphasis added). The CEQA Guidelines, at Section 15126.4(a)(1)(C), provides as follows: *"Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed* ***when relevant. Examples of energy conservation measures are provided in Appendix F****"* (Emphasis added). It is clear from these provisions that mitigation measures are to be identified for only for significant impacts, which is consistent with the fundamental intent and requirements of CEQA for all environmental topics. There is no requirement for discussion of less-than-significant impacts, or for the identification of mitigation measures for less-than-significant impacts.

In order to confirm the above understanding with respect to CEQA's requirements for addressing energy impacts and mitigations, the City's EIR consultant contacted the State Clearinghouse, Governor's Office of Planning and Research on December 14, 2004, for guidance on this issue. (This is the state government entity responsible for administering CEQA and circulating all EIRs to state agencies.) The Clearinghouse staff stated that Appendix F is indeed only intended as an "example" and that the only CEQA requirements pertaining to energy are contained in the Statute and Guidelines sections cited above. Furthermore, the State Clearinghouse staff stated that energy impacts generally are not a significant issue for land development projects, given the minimum energy conservation requirements of Title 24 of the California Code of Regulations which are applicable to all building construction. Consequently, the Clearinghouse staff sees few EIRs which include sections on energy. This has particularly been the case since late 1998 when the subject of energy impacts was deleted from the state's model Initial Study Checklist (contained in Appendix G of the CEQA Guidelines).

There is no question that the proposed Lodi Shopping Center project would result in the incremental consumption of energy; both during the construction and operational phases of the project, and that it would also result in indirect energy usage through the generation of vehicle trips. However, the project would not result in the "wasteful, inefficient, or unnecessary consumption of energy" which is clearly the threshold of significance for energy impacts under CEQA. On the contrary, its location within the Lodi urbanized area would minimize vehicle trip lengths for Lodi residents, and its proximity to other major retail centers in southwest Lodi would facilitate multi-purpose shopping trips thereby reducing fuel consumption. The increased range of goods and services offered at the shopping center would reduce travel by residents to shopping destinations outside the City (to an outlying Wal-Mart Supercenter, for example) and avoid excess fuel consumption resulting from such trips. From an operational standpoint, the Wal-Mart Supercenter alone is proposed to include a number of energy-conserving features which extend beyond the requirements of Title 24. These include the use of skylights, energy-efficient HVAC units, solar-reflective roofing materials, energy-efficient lighting systems, and the reclamation of the "heat of rejection" from refrigeration equipment to generate hot water, among other things. As such, the

proposed Lodi Shopping Center would not result in the wasteful, inefficient or unnecessary consumption of energy and would not result in a significant impact to energy resources. It follows that there is no CEQA requirement that energy mitigation measures be identified for the project since the Project's impact is less than significant.

Since it was determined at the outset of this EIR process that the proposed Lodi Shopping Center project would not result in significant energy impacts, the EIR does not include a discussion of significant energy impacts or mitigation measures, and the absence of EIR sections on energy is now typical for land development projects of this nature. Nevertheless, the EIR does address energy consumption where appropriate. In addition to energy conservation measures proposed to be incorporated into project design, mentioned above, the impact and mitigation discussion in Section *II. J. Air Quality* includes several air quality mitigation measures which are directed at reducing energy and fuel consumption in order to minimize emission of air pollutants. These include: energy-efficient building design measures and fixtures such as automated climate control and high-efficiency water heaters; the strategic planting of deciduous trees to reduce summertime cooling requirements; facilitation of the use of alternative transportation systems through the provision of on-site bus turnouts, and bicycle parking facilities provision of an on-site pedestrian path system linking all building pads with each other, with bus stops, and with off-site pedestrian systems; and establishment of a transportation demand management plan including designation of a coordinator and implementation of a carpool/vanpool program. (DEIR, pp. 122-123.)

In conclusion, the EIR on the Lodi Shopping Center project is in full compliance with CEQA requirements relating to the evaluation of energy impacts. The project's impact is less than significant and would not result in the "wasteful, inefficient, or unnecessary consumption of energy". Therefore, there is no requirement that the EIR include a comprehensive discussion of energy impacts or mitigation measures. Since Appendix F of the CEQA Guidelines addresses significant energy impacts and proposed mitigation measures, it is not applicable to the Lodi Shopping Center project, notwithstanding Mr. Herum's assertion to the contrary.

BAKERSFIELD CITIZENS FOR LOCAL CONTROL V. CITY OF BAKERSFIELD

On December 13, 2004, the California Court of Appeal, Fifth Appellate District, issued its decision in *Bakersfield Citizens for Local Control v. City of Bakersfield* (No. F045035, Fifth District, December 13, 2004). A copy of the court opinion is attached to this staff report. This case has relevance to the Lodi Shopping Center project for the following reasons: 1) it involves two proposed shopping centers with Wal-Mart Supercenters; 2) the plaintiff in that case was represented by the firm Herum Crabtree Brown, which has also appealed the Lodi Planning Commission's approval of the Lodi Shopping Center project as well as the Commission's certification of the project EIR; and 3) the case involves several issues which were raised by Mr. Herum during the public review process for the EIR on the Lodi Shopping Center project. In light of the Appellate Court's detailed discussion of some of these same issues in the Bakersfield decision, and given that Mr. Herum has appealed the Planning Commission's certification of the Lodi Shopping Center EIR, staff believes it is worthwhile to provide further clarification to the City's original responses to comments as contained in the Final EIR.

<u>Project's Individual and Cumulative Potential to Indirectly Cause Urban Decay Through Economic Impacts</u>

In the *Bakersfield* case, the Court agreed with the plaintiff that both EIRs were flawed because they did not contain any analysis of economic or social changes, which could potentially result in urban decay. The Court ruled that: "the omission of analysis on the issue of urban/suburban decay and deterioration

rendered the EIR's defective as informational documents. On remand, the EIR's must analyze whether the shopping centers, individually and/or cumulatively, indirectly trigger the downward spiral of retail closures and consequent long-term vacancies that ultimately result in decay." (Bakersfield, p.29). So, the central issue in Bakersfield was the lack of an economic study of potential physical deterioration and blight and the standard under which such economic studies are required under CEQA. The lack of study of this impact is not present here because the City analyzed these issues extensively. The City of Lodi commissioned two expert economic studies for the Lodi Shopping Center project that were analyzed and included in the Draft EIR. Therefore, the question before the City Council is whether substantial evidence supports the EIR's conclusion that the project's economic impacts will not indirectly cause significant adverse physical impacts (i.e., substantial physical deterioration, urban decay or blight due to long-term business closures). The Bakersfield court specifically stated that this question was not before them, and, therefore, the case does not address the issue.

In the case of the Lodi Shopping Center, the City's economic consultant ADE (economic experts) prepared two economic impact studies, with one study focused on the downtown area and the other study analyzing citywide effects to various businesses. Both of these studies analyzed the potential lost sales for different types of Lodi businesses (discount stores, groceries, pharmacies, other retailers, restaurants and non-retail uses), the potential for business closures/vacancies, and whether these impacts would lead indirectly to a significant environmental impact. The study also analyzed the potential impacts of closure of the existing Wal-Mart store. These are exactly the types of studies the court was looking for in the Bakersfield case. These studies were summarized and discussed in the DEIR and complete copies of the reports were attached as Appendix B to the DEIR. Both of these studies concluded that the economic impacts of the project on existing businesses would not result in significant business closures and physical deterioration of an area. Based on these expert studies, the DEIR concludes that the economic impacts of the project would result in less than significant physical environmental impacts (DEIR, pp. 22-25). The project would take away approximately 8.1% of total sales from existing Lodi businesses, including 6% from retail stores and 11% from grocery stores. The DEIR and reports conclude that loss of sales of this amount will not result in business closures. Further, any sales loss is expected to be temporary since demand from future population and housing growth in the City will replace these lost sales.

The Herum Crabtree Brown comment letter on the DEIR disputes the EIR analysis and conclusion that no store closures will occur as a result of the project. The letter claims that there is substantial evidence that the project will cause store closures. The "substantial evidence" referenced in the letter included various factual assertions, characterizations (some of which are erroneous) of the information in the ADE reports, and reports on Supercenter impacts conducted in Oklahoma City and San Diego. The letter did not include any economic study that specifically addressed Lodi businesses and local economy, and the proposed project. All issues in the letter were addressed in detail in the Final EIR (FEIR) (See Responses F-1 – F-17 (pp. 15-38), in particular, Responses F-5 – F-8). The Herum Crabtree Brown comment letter does not contain "substantial evidence" that the project will cause store closures, much less closures that would result in blight or urban decay. The City and ADE reviewed its analysis based on the Herum letter comments and confirmed the DEIR finding that there is no substantial evidence indicating the potential for business closures resulting in substantial physical deterioration of an area or urban decay caused by the proposed project. (See FEIR at pages 24-25 for a detailed discussion.) The only substantial evidence of the project's impacts on Lodi businesses are the analysis and conclusions in the ADE reports and DEIR which support the finding that the impact is less than significant. Even if the assertions and studies in the Herum letter are considered "substantial evidence" under CEQA, the Council has the discretion to weigh the conflicting information and rely on the ADE report to support its conclusion that the project's economic impacts would not result in a significant adverse physical impact. Staff believes that the ADE

reports and evidence in the record as a whole constitute substantial evidence to support a finding of a less than significant impact.

Two issues raised by Herum Crabtree Brown and addressed in the FEIR are further discussed here since they were considered in the Bakersfield opinion: (1) the definition of adverse physical impacts resulting from economic effects under CEQA; and (2) any potential significant adverse physical effects resulting from Wal-Mart vacating its existing Lodi store upon the opening of the Supercenter.

The Herum Crabtree Brown comment letter on the Draft EIR for the Lodi Shopping Center asserts that the EIR incorrectly applied the redevelopment definition of "blight" as a standard for determining the significance of an indirect project impact, and should have instead used the terms "physical deterioration or decay." In a footnote, the court in the *Bakersfield* case also stated that the term "urban blight" is not interchangeable with "urban decay" and that "blight" has a specialized meaning under state redevelopment law that may not be applicable under CEQA. (Bakersfield, p. 17, ftn 4.) Since the DEIR used the "physical deterioration" standard, there is no potential error in the CEQA analysis. To the extent the DEIR used the words "physical deterioration" and "blight" interchangeably; it did not substantively affect the analysis and conclusions. The DEIR's socio-economic analysis states the standard of significance is whether the project's economic impacts would cause significant business closures and building vacancies that "would result in substantial physical deterioration of properties or blight" (DEIR, pp. 22-25). Although the redevelopment law definition is mentioned in the DEIR to help inform the definition of physical deterioration or blight, it is NOT the sole basis for establishing the significance standard under CEQA. In any event, under the DEIR's analysis, the socio-economic impacts are less than significant under the "physical deterioration of properties", "urban decay" or "blight" standard because the DEIR provides substantial evidence that there are unlikely to be any business closures as a result of the proposed project. (DEIR, p. 24-25). Therefore, no chain of causation can be traced between business closures and potential indirect impacts in the form of physical deterioration of buildings or property, regardless of whether that deterioration is called physical deterioration of properties, urban decay or urban blight.

The comment letter also alleges that Wal-Mart moving out of its existing store when the Supercenter opens will create a long-term vacancy and resulting deterioration of the existing building. The Court in the *Bakersfield* case stated that the EIR should have analyzed this issue in a meaningful way and considered whether the vacancies would be "long-term". (Bakersfield, p. 28.)

The Final EIR resolves this concern because it makes clear that the condition will require the re-tenanting under a proposed condition of approval on the project that no building permits be issued for the Supercenter until a tenant has been secured for the existing Wal-Mart store. The Planning Commission in its approval of the project placed this condition on the project (Condition R, Planning Commission Resolution No. 04-65). Wal-Mart has appealed this condition to the City Council, but as discussed above, staff believes this condition is necessary in order to approve the project.

Cumulative Project Impact

In the *Bakersfield* case, the City of Bakersfield simultaneously processed, considered and approved two EIRs on two proposed shopping centers in the City located only three miles apart, each of which included a Wal-Mart Supercenter (the Panama and Gosford projects). The Court ruled that the EIR was flawed for failing to analyze the potential for cumulative physical deterioration resulting from the business closures caused by the combined competitive effects of two shopping centers located in such close proximity. (Bakersfield, p. 28)

In Mr. Herum's comment letter on the DEIR and Planning Commission testimony, it is asserted that the cumulative analysis, including the analysis of urban decay, is insufficient for not considering a number of large retail projects, which are proposed or completed elsewhere in the County and adjacent Sacramento County. The only Supercenters that are proximate to the market area for the Lodi Supercenter are two new Wal-Mart Supercenters in the City of Stockton, both located over 5 miles from the proposed Lodi Supercenter. The first of these centers is located on Hammer Lane south of the Lodi Shopping Center project, and was opened for business in the fall of 2004. The application for this project, which only required a building permit, was submitted in June 2003. The second Stockton Supercenter is proposed for a site adjacent to Interstate 5 near Eight Mile Road (part of the Spanos project) southwest of the Lodi Shopping Center, and is approved, but in litigation and not under construction. The application was submitted in November, 2003.

CEQA does not require that either Stockton Supercenter be considered in the cumulative analysis in the EIR because these projects were initially proposed after the NOP for the Lodi Shopping Center EIR was circulated in April 2003, which is the cut-off date for including projects in the DEIR's cumulative analysis.

Under CEQA, "probable future projects" to consider in an EIR's cumulative impacts analysis include projects "requiring an application which has been received at the time the notice of preparation is released". (CEQA Guidelines section 15130(b)(1)(B)(2).) Further, CEQA only requires cumulative analysis to include projects outside the agencies control, "if necessary". (CEQA Guidelines section 15130(b)(1)(A).) The Stockton Supercenters also present completely different facts from the adjacent Supercenters in the Bakersfield case. In Bakersfield, the two Supercenters were located in the same City, within 3.6 miles of each other, and were considered by the City concurrently. None of those facts are present here. Since the applications for the two Stockton Supercenters were submitted after the Project's NOP release and are located outside the City's jurisdiction, they are not required to be analyzed in the EIR under CEQA. In any event, in the FEIR, the City of Lodi's economic consultant ADE concludes that the presence of another Supercenter in North Stockton "will not take additional sales away from businesses in Lodi" (FEIR, p. 52.). Therefore, it is unlikely that any of the Supercenter projects listed in the Herum letter would have a significant adverse cumulative effect on existing Lodi businesses, given the distances that would separate these Supercenters from the Lodi Supercenter, and the fact that they are located in other cities.

The *Bakersfield* decision also discusses the treatment of cumulative impacts for other environmental subject areas, which it found to be deficient in the EIRs under its review. As noted above, the Herum comment letter on the Lodi Shopping Center DEIR also asserts that other aspects of the cumulative impact analysis, apart from the urban decay issue discussed above, are deficient for failing to consider a number of other projects, some as far as 30 miles away. The response to this comment is provided on pages 32 and 33 of the FEIR, which reads in part:

> 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. (FEIR, pp. 32-33.)

In conclusion, the cumulative impact analysis contained in the DEIR fully complies with CEQA, and the *Bakersfield* decision.

Correlation of Air Quality Impacts with Adverse Public Health Effects

In the Herum Crabtree Brown comment letter on the Draft EIR for the Lodi Shopping Center, it is asserted that the DEIR did not disclose the potential public health effects of the project resulting from increased emissions of air pollutants from project-generated traffic. In particular, the comment requested information on the probability that members of the public "would be afflicted with air pollution caused ailments" as a result of the project. In the Bakersfield case, the court ruled that the analysis of air quality impacts was insufficient because "there is no acknowledgment or analysis of the well-known connection between the reduction in air quality and increase in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a non-attainment basin". (Bakersfield, p.38.)

The deficiencies in the EIR that the Court found in the Bakersfield case do not apply to the Lodi Shopping Center EIR. The adverse health impacts of significant air quality impacts are acknowledged and analyzed in both the Draft and Final EIR. In a section entitled "Health Effects of Pollutants"; the DEIR includes a detailed discussion of health effects resulting from exposure to high concentrations of ozone, particulates, and carbon monoxide. (See DEIR, pp.114-115.) The DEIR also discusses the non-attainment status for certain air pollutants in the San Joaquin Valley United Air Pollution Control District (SJVUAPCD) and the adverse impacts of this status. (DEIR pp. 115-116). The DEIR quantifies the air quality emissions from the project and concludes that the project impact will exceed SJVUAPCD thresholds and be significant and unavoidable, even with the implementation of feasible mitigation measures. There can be no question that the DEIR fully and completely analyzes the air quality impacts of the project and informs the public and decision-makers of the adverse effects of those impacts on human health.

The Final EIR (at page 28) contains a detailed response to Herum's comment on the health effects of pollutants based on information provided by the EIR air quality consultant Donald Ballanti. The essential portion of that response reads as follows:

> 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. (FEIR, p. 28.)
>
> 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. (FEIR, p. 29.)

As discussed in the FEIR quoted above, there currently exists no scientific basis for making precise quantitative estimates of probability and number of members of the public will become afflicted by respiratory ailments as a direct result of the project. However, there is no doubt that the project will add incremental amounts of air pollution to an air basin which already experiences poor air quality conditions. It is likely, therefore, that the project would incrementally exacerbate the incidence and severity of respiratory ailments resulting from worsened air quality. This is reflected in the EIR's conclusion and the City's finding that the project would result in significant and unavoidable impacts to air quality. Since it is well established that impacts to air quality are directly linked to public health impacts, it is acknowledged that the project would have some impact on public health, although the degree of severity of the incremental public health impact cannot be quantified.

Steefel Levitt Weiss APPEAL

The appeal that has been filed by the law firm of Steefel Levitt and Weiss centers on two conditions of approval contained within Planning Commission Resolution No.04-65.

CONDITION R.

This condition of approval reads as follows:

> No building permit shall be issued for the proposed Wal-Mart until a tenant for the existing Wal-Mart building located at 2350 West Kettleman Lane has been secured. For purposes of this condition, secured means a signed lease for more than 50 percent of the space. Further, Wal-Mart shall not restrict the type of tenant that may occupy the building.

The impetus of the condition goes back to the very first meeting the City had with the project proponent regarding the construction of another Wal-Mart in Lodi. At that meeting the project proponent was told that a condition of the project would require a tenant for the existing building prior to the new one being built. Quite simply, I feel it is good planning to avoid vacant space whenever possible. This condition provides for that certainty. Moreover, during the campaign regarding Measure R this past fall, campaign literature was produced that promised the very same thing. In a question and answer format the campaign piece asks the question: "What will happen to the building that Wal-Mart now occupies after the Supercenter is built?" The answer provided states: "It will be filled with a new tenant. The owner of the current Wal-Mart site is committed to securing a tenant for the existing Wal-Mart building, and has told the City he will refill the existing building before a new store is built. Wal-Mart is also working with the developer to ensure that a new tenant is found." The City is now holding the project proponent and his major tenant to their word, nothing more or less.

Finally, the discussion of the closure of the existing Wal-Mart store is outlined in the Draft EIR on page 25 and again in the Final EIR on pages 25 and 26. Although the EIR found that no mitigation was required regarding this issue, the Final EIR is clear that the reasoning is based on the fact that the City would be conditioning the project to ensure the building would be occupied. The City has substantial justification for requiring this condition.

CONDITION EE.

The second condition of approval that is being appealed was added as a result of the discussion from the Commission members during the hearing on December 6th. The condition requires the project proponent to fund the commercial linkage study that is outlined in the recently adopted Housing Element. It further requires the payment of whatever fee is ultimately adopted by the City Council as a result of the study. The comment in the appeal letter that the issue was introduced late in the project processing is both immaterial and incorrect. Commissioner Mattheis first raised this issue during the public meeting on the Draft EIR on September 9, 2004. Mr. Mattheis made the comment that he believed the EIR should address the potential impact of generating lower wage jobs and the connection to affordable housing for these workers. As shown in our response to the comment on page 50 of the Final EIR, the issue that was raised is not an environmental concern from a housing standpoint as outlined by CEQA. The traffic, air quality and noise impacts are addressed as noted. With respect to the issue, the Planning Commission took the position that the adopted Housing Element should be implemented and that there is a nexus between the need for affordable housing and the project. This finding warrants the condition. As an alternative, the City Council does have the option to continue this matter until such time as the commercial linkage study is completed and then apply the required fee.

FUNDING: None

Konradt Bartlam
Community Development Director

KB/lw

Attachments: Herum Crabtree Brown Appeal
Steefel Levitt & Weiss Appeal
Bakersfield case
Planning Commission packet (including Draft Minutes from 12/8/04 meeting)
Draft Resolutions

HERUM CRABTREE BROWN
Attorneys At Law

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December 10, 2004

RECEIVED
2004 DEC 10 PM 4:
CITY CLERK
CITY OF LODI

VIA HAND DELIVERY
Ms. Susan J. Blackston
Clerk of the City of Lodi
221 West Pine Street
Lodi, CA 95241

Re: Appeal of Planning Commission Decision Certifying Final EIR 03-01, Approving Use Permit U-02-12, and Tentative Parcel Map 03-P-001
(State Clearing House Number 2003042113)

Dear Ms. Blackston:

Enclosed please find a timely request for de novo review by the City Council on appeal of the Planning Commission's December 8, 2004 decision to approve the request of Browman Development Company to certify Final Environmental Impact Report EIR 03-01, approve Use Permit U-02-12 to allow the construction of a regional commercial center in the C-S, Commercial Shopping District, and to allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Tentative Parcel Map 03-P-001 to create twelve parcels for the project at 2640 W. Kettleman Lane. This appeal is filed on behalf of Lodi First, an unincorporated association of Lodi residents, voters, property owners, and taxpayers interested in ensuring responsible and lawful development in Lodi.

Generally, the appeal is filed on the basis that the Project conflicts with the Lodi Zoning Code, is inconsistent with the Lodi General Plan, and does not satisfy the minimum requirements of the California Environmental Quality Act ("CEQA").

Please also find Check No. 12203 in the amount of $250.00 to cover the appeal fee. If you have any questions, please feel free to contact me.

Very truly yours,

Natalie M. Weber

NATALIE M. WEBER
Attorney-at-Law

Enclosure

X CC	__ HR
X CM	__ IS
X CA	__ LIB
X CD	__ PR
__ EUD	__ PD
__ FIN	__ PW
__ FD	__ COM

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221 West Pine Street
Lodi, CA 95240

Re: Appeal of Planning Commission Decision on Wal-Mart Supercenter on December 8, 2004

Dear City Clerk:

On December 8, 2004, the Planning Commission unanimously certified the EIR, and approved a use permit and tentative parcel map for a commercial shopping center located at 2640 W. Kettleman Lane, which includes a Wal-Mart Supercenter. We are greatly appreciative of the approval. Wal-Mart has been a part of the Lodi community since 1991 and has worked diligently for several years with the City on this project. We are thankful to City staff and officials for all their hard work. Wal-Mart looks forward to opening its new Supercenter and continuing and enhancing its relationship with the City and its residents.

We have been informed that Steve Herum, Esq. has filed an appeal of the Planning Commission's approval on behalf of a purported citizen's group called Lodi First. In light of that action, we are submitting this letter to the City.

Wal-Mart is in agreement with staff and the City on all conditions of approval other than two conditions adopted by the Planning Commission. This appeal relates only to those two conditions. First, Wal-Mart has concerns related to the proposed language for Condition R of the use permit and tentative map approval resolution. This condition requires signed leases for 50% of the existing Wal-Mart store before a building permit is issued for the new Supercenter, and prohibits tenant restrictions. As Wal-Mart expressed to the Planning Commission, it understands the importance to the City of re-tenanting the existing store. It is committed to seeing that happen. Wal-Mart intended its sale to Browman Development Company to address these concerns by putting the property in the hands of the owner of the overall shopping center who has a proven track record of tenanting the center and has a huge financial incentive to have the space re-tenanted. Wal-Mart is concerned with the language of the condition and has suggested alternative language for the following reasons, among others. Wal-Mart is selling its existing building and land to Browman Development Company who will be in control of the existing store property at the time Wal-Mart seeks the Supercenter building permit. So, Wal-Mart's building permit will be subject to satisfaction of a condition that it has no control over. Requiring signed leases at building permit is premature because Wal-Mart will still occupy the existing store at that time and the date of its availability for the new tenant will

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be uncertain. Further, there is some question about the City's ability to regulate the terms of Wal-Mart's sale of its existing building. Finally, there is no nexus for the condition since the economic study concluded that re-tenanting was not a significant environmental issue.

Second, Wal-Mart has concerns about a new condition added by the Planning Commission at the end of the hearing. Our understanding is that this condition requires the project developer to fund the commercial linkage fee nexus study under Program 11 of the Housing Element and pay any adopted fees. We have concerns about this condition because it places the entire burden of the nexus study on a single project and was introduced late in the project processing. The Housing Element states that this study on a City-wide issue is the responsibility of the City to be funded with General Fund monies.

Enclosed is a check for the appeal fee of $250.00.

We look forward to addressing the City Council on these issues and finding a mutually acceptable solution to re-tenanting the existing Wal-Mart store when it becomes vacated. Thank you very much for your consideration.

Sincerely,

Timothy D. Cremin

Timothy Cremin

Enclosure

16982:6419142.2

Filed 12/13/04

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BAKERSFIELD CITIZENS FOR LOCAL CONTROL, Plaintiff and Appellant, v. CITY OF BAKERSFIELD, Defendant and Respondent; PANAMA 99 PROPERTIES LLC, Real Party in Interest.	F044943 (Super. Ct. No. 249669)
BAKERSFIELD CITIZENS FOR LOCAL CONTROL, Plaintiff and Appellant, v. CITY OF BAKERSFIELD, Defendant and Respondent; CASTLE & COOKE COMMERCIAL-CA, INC., Real Party in Interest and Appellant.	F045035 (Super. Ct. No. 249668) **OPINION**

APPEALS from judgments of the Superior Court of Kern County. Kenneth C. Twisselman II, Judge.

Herum Crabtree Brown, Steven A. Herum and Brett S. Jolley for Plaintiff and Appellant Bakersfield Citizens for Local Control.

Jones & Beardsley, Mark A. Jones, Craig N. Beardsley and Christopher Finberg for Real Party in Interest and Appellant Castle & Cooke California, Inc.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts VII, VIII and IX.

Virginia Gennaro, City Attorney; Hogan Guiney Dick and Michael M. Hogan for Defendant and Respondent City of Bakersfield.

Gresham Savage Nolan & Tilden, John C. Nolan and Jennifer M. Guenther for Real Party in Interest Panama 99 Properties LLC.

INTRODUCTION

Appellant Bakersfield Citizens for Local Control (BCLC) has challenged development of two retail shopping centers in the southwestern portion of the City of Bakersfield (City), alleging violations of the California Environmental Quality Act (CEQA). The shopping centers are located 3.6 miles apart.[1] When complete, they will have a combined total of 1.1 million square feet of retail space. Each shopping center will contain a Wal-Mart Supercenter (Supercenter) plus a mix of large anchor stores, smaller retailers, and a gas station. An Environmental Impact Report (EIR) was prepared and certified for each project.

In these consolidated appeals we are called upon to assess the sufficiency of the EIR's. In the published portion of this opinion, we first determine that BCLC has standing, that it exhausted its administrative remedies and that the appeals are not moot. We then explain that the EIR's do not fulfill their informational obligations because they failed to consider the projects' individual and cumulative potential to indirectly cause urban/suburban decay by precipitating a downward spiral of store closures and long-term vacancies in existing shopping centers. Furthermore, the cumulative impacts analyses are defective because they did not treat the other shopping center as a relevant project or consider the combined environmental impacts of the two shopping centers. Finally, we explain that failure to correlate the acknowledged adverse air quality impacts to resulting adverse effects on human respiratory health was erroneous. These defects are prejudicial

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1 References to mileage, square footage and acreage are approximate.

and compel decertification of the EIR's and rescission of project approvals and associated land use entitlements. In the unpublished portion of this decision, we resolve the rest of the CEQA challenges.

FACTUAL OVERVIEW

Real party in interest Panama 99 Properties LLC (P99) is developing a 370,000-square-foot retail shopping center named Panama 99 (Panama) on 35 acres of vacant land located at the northeast corner of Panama Lane and Highway 99. The project site was zoned for mobile home use and its general plan designation was low-density residential/open space.

Real party in interest and appellant Castle and Cooke Commercial-CA, Inc. (C & C), is developing a 700,000-square-foot regional retail shopping center named Gosford Village (Gosford) on 73 acres of vacant land located on the southwest corner of Pacheco Road and Gosford Road. The project site's zoning and general plan land use designation was service industrial.

Panama is located 3.6 miles east of Gosford. The two shopping centers share some arterial roadway links.

Each shopping center will feature a 220,000-square-foot Supercenter as its primary anchor tenant. Supercenters "combin[e] the traditional Wal-Mart discount store with a full-size grocery store." Supercenters compete with large discount stores, traditional department stores, supermarkets and other grocery stores, as well as drug stores and apparel stores. The Supercenter at Panama will replace an existing Wal-Mart store that currently is located 1.4 miles north of the Panama site. In addition to the Supercenter, Panama will contain a Lowe's Homes Improvement Warehouse (Lowe's), a gas station and a satellite pad. Gosford will contain a total of 17 retail stores, plus fast food restaurants and a gas station. In addition to the Supercenter, there will be six other anchor tenants, including Kohl's Department Stores (Kohl's) (apparel and home related

items) and Sam's Club (warehouse club selling groceries and a wide array of consumer products).

P99 and C & C (collectively developers) applied in early 2002 for project approvals and associated zoning changes and general plan amendments. A separate EIR was prepared for each shopping center (hereafter the Panama EIR and the Gosford EIR). The Panama EIR concluded that Panama would have significant and unavoidable direct adverse impacts on air quality and noise. The Gosford EIR concluded that Gosford would have a significant and unavoidable adverse impact on air quality, both individually and cumulatively.

The Panama EIR identified the Supercenter and Lowe's as the two anchor tenants. The Gosford EIR did not identify any tenants. In response to comments questioning the environmental effects resulting from locating two Supercenters in a 3.6-mile radius, the Gosford EIR states that no tenants have been identified. However, it is clear from the administrative record that prior to certification of the Gosford EIR, the public and the City knew that one of Gosford's tenants was going to be a Supercenter.

The planning commission and the City Council considered the two projects at the same meetings. On February 12, 2003, the City Council certified the EIR's and adopted statements of overriding considerations on the nonpublic consent calendar. Then, after public hearing, it approved both projects and granted associated zoning changes and general plan amendments.

In March 2003, BCLC filed two CEQA actions challenging the sufficiency of the EIR's and contesting the project approvals and related land use entitlements (the Panama action and the Gosford action).

Soon thereafter, construction related activities commenced on the project sites. In July 2003, the trial court denied BCLC's request for a temporary restraining order enjoining construction related activities at the Gosford site.

Trial was held on the Panama action in November 2003 and on the Gosford action in January 2004. In both actions, the court concluded that CEQA required study of the question whether the two shopping centers, individually or cumulatively, could indirectly trigger a series of events that ultimately result in urban decay or deterioration.

BCLC unsuccessfully sought a temporary restraining order enjoining construction related activities at the Panama site after the court orally announced its decision in the Panama action.

Argument was held concerning the proper remedy. The trial court concluded that the failure to study urban decay rendered the EIR's inadequate as informational documents and it ordered them decertified. It left the project approvals and associated land use entitlements intact and it severed the Supercenters from the remainder of the projects. It enjoined further construction of the partially built Supercenter buildings but allowed all other construction activities to continue pending full CEQA compliance. In its written judgments, the court found the EIR's deficient because they did not consider the direct and cumulative potential of "the Panama 99 project and the related Gosford Park project" to indirectly cause urban decay. However, the additional environmental review it ordered focused exclusively on the Supercenters, ordering study of the following two points: (1) cumulative impacts "on general merchandise businesses" arising from operating both Supercenters; (2) urban decay that could result from closure of the existing Wal-Mart on White Lane.

BCLC partially appealed both judgments; C & C partially cross-appealed the judgment in the Gosford action. The appeals were consolidated on our own motion.

Previously, we have denied petitions for writ of supersedeas that BCLC filed in March and June of 2004. Therein, BCLC sought an injunction prohibiting construction related activities on the project sites pending resolution of the appeals.[2]

During the pendency of these actions, the Lowe's store was constructed and it is operating at Panama. The Kohl's store was constructed and it is operating at Gosford. Sam's Business Trust acquired a 12-acre parcel at Gosford and we were notified in June 2004 that this entity would seek issuance of a building permit to construct the Sam's Club. A group known as Gosford at Pacheco LLC, has purchased 25 acres of the Gosford site. Both Supercenters are partially constructed.

DISCUSSION

At the outset, it is necessary to explicitly reject certain philosophical and sociological beliefs that some of the parties have vigorously expressed. For the record, we do not endorse BCLC's elitist premise that so-called "big box" retailers are undesirable in a community and are inherently inferior to smaller merchants, nor do we affirm its view that Wal-Mart, Inc. (Wal-Mart), is a destructive force that threatens the viability of local communities. Wal-Mart is not a named party in these actions and we rebuff BCLC's transparent attempt to demonize this corporation. We do not know whether Wal-Mart's entry into a geographic region or expansion of operations within a region is desirable for local communities. Similarly, we do not know whether Wal-Mart is a "good" or a "bad" employer. We offer no comment on Wal-Mart's alleged miserly compensation and benefit package because BCLC did not link the asserted low wages

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[2] BCLC made a disastrous tactical choice when it did not diligently and expeditiously seek a preliminary injunction in the trial court and extraordinary relief in this court at the first hint of construction activities. By the time BCLC petitioned us, the Kohl's store at Gosford was operating and the Lowe's store at Panama was almost complete. At that point, the equities did not weigh in BCLC's favor.

and absence of affordable health insurance coverage to direct or indirect adverse environmental consequences.

Likewise, we will not dignify with extended comment C & C's complaint that BCLC is just a "front" for a grocery worker's union whose disgruntled members feel threatened by nonunionized Wal-Mart's entry into the grocery business. As will be explained, BCLC has standing to pursue this litigation and it exhausted its administrative remedies. This is sufficient. We do not know whether Wal-Mart adversely affects the strength of organized labor and we have not considered this question.

In sum, we have no underlying ideological agenda and have strictly adhered to the accepted principle that the judicial system has a narrow role in land use battles that are fought through CEQA actions. "The only role for this court in reviewing an EIR is to ensure that the public and responsible officials are adequately informed '"of the environmental consequences of their decisions *before* they are made."'" (*Berkeley Keep Jets Over The Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1356 (*Berkeley*).)

I. Standard of Review

CEQA is codified at Public Resources Code section 21000 et. seq. CEQA is augmented by the state CEQA Guidelines, codified at title 14 of the California Code of Regulations section 15000 et. seq.[3] The Guidelines must be interpreted "in such a way as to 'afford the fullest possible protection of the environment.'" (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 868 (*Eel River*).) No party has challenged the legality of any of the applicable Guidelines and none of them appear to be "'clearly unauthorized or erroneous under CEQA.'" (*Laurel Heights*

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[3] Unless otherwise specified, statutory references are to the Public Resources Code. The state CEQA Guidelines will be cited as Guidelines.

Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1123, fn. 4 (*Laurel Heights II*).) Therefore, we will afford them "'great weight.'" (*Ibid.*)

The applicable standard of review is well established. If the substantive and procedural requirements of CEQA are satisfied, a project may be approved even if it would create significant and unmitigable impacts on the environment. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.) "In reviewing an agency's determination under CEQA, a court must determine whether the agency prejudicially abused its discretion. (§ 21168.5.) Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported by substantial evidence." (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 25-26 (*Dry Creek*).) Courts are "not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document." (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391 (*Irritated Residents*).) "'The appellate court reviews the administrative record independently; the trial court's conclusions are not binding on it.'" (*Id.* at p. 1390.)

"'The EIR must contain facts and analysis, not just the bare conclusions of the agency.' [Citation.] 'An EIR 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.'" (*Irritated Residents, supra,* 107 Cal.App.4th at p. 1390.) "CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." (*Dry Creek, supra,* 70 Cal.App.4th at p. 26.) Therefore, "[n]oncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown." (*Irritated Residents, supra,* 107 Cal.App.4th at p. 1391; § 21005, subd. (b).) Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and

informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. (*Dry Creek, supra*, 70 Cal.App.4th at p. 26; *Irritated Residents, supra*, 107 Cal.App.4th at p. 1391.)

The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259 (*Hillside*).) "Substantial evidence is defined as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.'" (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1391; Guidelines, § 15384, subd. (a).) Substantial evidence is not "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); Guidelines, § 15384.)

II. Procedural Issues

A. Standing

C & C asserts that BCLC lacks standing because it is an economic competitor and not a bona fide environmental group. We reject this accusation as unproved speculation. The record supports the trial court's determination that BCLC has standing to pursue this litigation. "CEQA litigants often may be characterized as having competing economic interests." (*Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1138.) One of BCLC's members is a homeowner residing near Gosford and he spoke in opposition to the projects at a public hearing prior to their approval. This is sufficient to

satisfy CEQA's liberal standing requirement. (*Id.* at pp. 1138-1139; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 272 (*Bozung*).) In any event, unions have standing to litigate environmental claims. (See, e.g., *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265.) Since C & C did not support with legal argument or authority its perfunctory assertion that the trial court erred by quashing a deposition meant to elicit facts about BCLC's standing, we deem this point to be without foundation and reject it on this basis. (*In re Steiner* (1955) 134 Cal.App.2d 391, 399.)

B. Exhaustion

Next, we reject C & C's complaint about the timing of BCLC's objections to the shopping centers. C & C decries BCLC's failure to submit written comments on the draft EIR's and points out that BCLC's attorney presented his client's oral and documentary objections to the projects at the public hearing concerning project approvals that was held by the City Council on February 12, 2003. C & C does not specifically contend with proper legal argument and citation to applicable authority that BCLC failed to exhaust its administrative remedies but this appears to be the implication of its argument. Although we could dismiss as undeveloped whatever legal point C & C might have intended, we have elected to substantively resolve the exhaustion question because the issue is likely to reoccur.

Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action. Only a proper party may petition for a writ of mandate to challenge the sufficiency of an EIR or the validity of an act or omission under CEQA. The petitioner is required to have "objected to the approval of the project orally or in writing 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." (§ 21177, subd. (b).) The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative

proceedings. (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894.) Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120-1121 (*Galante*).) However, the lead agency is not required to incorporate in the final EIR specific written responses to comments received after close of the public review period. (*City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, 1043-1044.)

When discussing exhaustion some opinions have identified certification of the EIR rather than approval of the project as the crucial cutoff point. (See, e.g., *Galante, supra,* 60 Cal.App.4th at p. 1121.) However, section 21177 specifically refers to close of the public hearing on project approval prior to issuance of the notice of determination, not certification of the EIR. (§ 21177, subds. (a) & (b).) The correct formulation is expressed in *Hillside, supra*, 83 Cal.App.4th at page 1263: "[A] party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project."

We believe that the apparent inaccuracy in some case law results from the fact that environmental review is not supposed to be segregated from project approval. "[P]ublic participation is an 'essential part of the CEQA process.'" (*Laurel Heights II, supra,* 6 Cal.4th at p. 1123.) Although public hearings are encouraged, they are not explicitly required by CEQA at any stage of the environmental review process. (Guidelines, § 15087, subd. (i).) "Public comments may be restricted to written communications." (Guidelines, § 15202, subd. (a).) Yet, "[p]ublic hearings on draft EIRs are sometimes required by agency statute, regulation, rule, ordinance, or the agency's written procedures for implementation of CEQA." (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2004) § 9.26, p. 408 (CEQA Practice).) "If an

agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing." (Guidelines, § 15202, subd. (b).) Since project approval and certification of the EIR generally occur during the same hearing, the two events are sometimes treated as interchangeable. (See, e.g., *Hillside, supra,* 83 Cal.App.4th at p. 1257 [final EIR certified at same hearing during which project was approved]; *Irritated Residents, supra*, 107 Cal.App.4th at p. 1389 [same].)

C & C disparagingly refers to BCLC's oral presentation and its submission of evidence at the February 12, 2003 City Council hearing as a last minute "document dump" and an intentional delaying tactic, pointing out that EIR's had been certified prior to opening of the public hearing. We reject this complaint because C & C omitted the key fact that the City had improperly segregated environmental review from project approval in contravention of Guidelines section 15202, subdivision (b). The planning commission bifurcated the process by agendizing certification of the EIR's as nonpublic hearing items and separately agendizing project approval and related land use entitlements as public hearing items. Similarly, the City Council agendized certification of the EIR's on the closed consent calendar and agendized the "concurrent general plan amendment/zone change[s]" necessary to implement the projects on the public hearing calendar. Since certification of the EIR's had been placed on the nonpublic consent calendar that was handled prior to the opening of the public hearing, counsel for BCLC necessarily voiced all of BCLC's objections, including defects in CEQA compliance, during the hearing on project approvals. He specifically objected to the bifurcated process and asked for certification of the EIR's to be removed from the consent calendar and heard concurrently with the hearing on the project approvals and land use entitlements. The City Attorney recommended against this, incorrectly stating that this "would open up the entire EIR process, open up the new comment period, and delay the entire project because it would not be able to certify the EIR tonight."

City appears to have thought that the public's role in the environmental review process ends when the public comment period expires. Apparently, it did not realize that if a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing. (§ 21177, subd. (b); Guidelines, § 15202, subd. (b); *Hillside, supra,* 83 Cal.App.4th at p. 1263.) If the decision making body elects to certify the EIR without considering comments made at this public hearing, it does so at its own risk. If a CEQA action is subsequently brought, the EIR may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval.

C & C seems to assume that it was somehow entitled to final project approval in February 2003. On the contrary, the City Council was not obligated to certify the EIR's that evening. "[E]xpediency should play no part in an agency's efforts to comply with CEQA." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 (*Reasonable Growth*).) As was cogently noted by the trial court, "the public agency decides when they are going to certify the EIR.... [¶] ... [¶] ... They didn't have to do it that night." C & C's complaint that allowing project opponents to raise objections after close of the public comment period for the draft EIR allows them to "sandbag" project proponents and delay certification "ad infinitum" should be presented to the Legislature, for it is a complaint about the design of the CEQA process.

We reject C & C's related contention that BCLC failed to participate in the public review process prior to certification of the EIR's because it is factually incorrect. BCLC actively participated in the administrative review process prior to certification of the EIR's. The City Planning Commission accepted public comment concerning the adequacy of the draft EIR's at a hearing on October 3, 2002. Sheila Stubblefield, who is described in the minutes of this meeting as BCLC's president and founder, spoke in opposition to both projects at that meeting. After the City Planning Commission voted in December 2002 to recommend certification of the EIR's and approval of the projects,

BCLC notified the City in writing that it was appealing the planning commission's decision. The issues specifically raised by BCLC in this letter include urban decay and cumulative impacts. If an EIR is certified by an unelected planning commission, then the lead agency must allow the public an opportunity to appeal the certification to an elected body. (§ 21151, subd. (c); Guidelines, § 15090, subd. (b); *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525-526.) BCLC sent a second letter to City before the February 2003 City Council meeting. It outlined several inadequacies in the EIR's and raised other objections to approvals of the project. Then, BCLC's legal counsel appeared at the City Council meeting and proffered oral and documentary support for BCLC's previously expressed position that the EIR's were legally inadequate. Since the certification of the EIR's had been placed on the nonpublic consent calendar, he necessarily spoke during the hearing on project approvals.

Finally, we dismiss C & C's assertion that BCLC only challenged the Supercenter aspect of the shopping centers. The evidence contradicts this position and demonstrates that BCLC's objections concerning urban decay and cumulative impacts related to the shopping centers as a whole. For example, BCLC's December 2002 letter appealing the decision of the planning commission specifically referenced the addition of over one million square feet of retail space. Nowhere within this letter did BCLC mention Wal-Mart or the Supercenters. BCLC's February 2003 letter also references urban decay as a consequence of the shopping centers and it cites relevant authorities. The trial court's oral decisions and written judgments found the EIR's deficient because they failed to consider whether the shopping centers could indirectly cause urban decay. It was only the remedy that inexplicably was limited to the Supercenters.

In essence, C & C has imputed bad faith on BCLC's part without offering any evidence to justify the accusation. BCLC actively and properly participated in the administrative review process. It did not contravene CEQA by challenging the adequacy of the EIR's at the February 2003 City Council meeting and submitting evidence

supporting their position. There is no indication in the record that if the City had seriously considered the objections asserted by BCLC and others and if it had revised the EIR's in response to these objections, BCLC subsequently would have asserted new inadequacies solely to delay the projects. It is the City's bifurcated process, which resulted in segregation of environmental review from project approval, that supports an imputation of bad faith, an inference BCLC civilly does not press.

C. Mootness

Developers achieved an important practical victory when they convinced the trial court to leave the project approvals in place, sever the Supercenters from the remainder of the projects and allow construction of the rest of the shopping centers to proceed prior to full CEQA compliance. As a result, retail businesses currently are operating at both project sites and nonparties have acquired portions of the project sites. This has generated substantial economic and psychological pressures in favor of the shopping centers as presently approved and partially constructed. BCLC cannot provide any precedent for closure of an operating retail establishment because the retailer's landlord failed to adequately comply with CEQA and it has not asked us to order these businesses to cease operations pending full CEQA compliance. Given this state of affairs, questions necessarily arise concerning redressability and consequent mootness. Has the danger of irreversible momentum in favor of the shopping centers, about which we warned in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 at page 742 (*Raptor*), been realized?

Undoubtedly some would view further environmental study of the partially completed projects as a futile waste of time and money. Since CEQA's purpose is not to generate meaningless paperwork (*Bozung, supra,* 13 Cal.3d at p. 283), we were tempted to find the alleged defects in CEQA compliance essentially nonredressable and therefore moot. Yet, after reviewing briefing on this question, we decided not to adopt this rather

cynical position. For the following reasons, we have concluded that the CEQA issues remain viable and therefore, we decline to dismiss the appeals as moot.

First, developers expressly recognized that they were proceeding at their own risk when they relied on the contested project approvals during the pendency of this litigation. When an injunction is not granted after commencement of a CEQA action, the agency is to assume that the contested EIR or negative declaration satisfies CEQA's requirements. However, "[a]n approval granted by the responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit." (Guidelines, § 15233, subd. (b).) Although BCLC's failure to diligently and expeditiously seek injunctive relief necessitated our denial of its belated pleas for issuance of extraordinary relief pending issuance of this opinion, it did not provide developers with a "pass" on full CEQA compliance or grant them any vested interest in improvements that were completed at their own risk. The sale or lease of land to third parties was beyond BCLC's control. Such third party transactions do not immunize defective land use approvals. As a matter of public policy and basic equity, developers should not be permitted to effectively defeat a CEQA suit merely by building out a portion of a disputed project during litigation or transferring interests in the underlying real property. Failure to obtain an injunction should not operate as a de facto waiver of the right to pursue a CEQA action.

Second, questions concerning urban decay and cumulative impacts constitute important issues of broad public interest that are likely to reoccur. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1202, fn. 8; *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479.)

Finally, even at this late juncture full CEQA compliance would not be a meaningless exercise of form over substance. The City possesses discretion to reject either or both of the shopping centers after further environmental study and weighing of the projects' benefits versus their environmental, economic and social costs. As

conditions of reapproval, the City may compel additional mitigation measures or require the projects to be modified, reconfigured or reduced. The City can require completed portions of the projects to be modified or removed and it can compel restoration of the project sites to their original condition. (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 641; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888-890.) We presume that the City will fully and sincerely assess the new information contained in the revised EIR's and that it will fairly and independently decide whether reapproval of the projects is in the best interests of the City's residents, giving no weight to the fact that the shopping centers are partially constructed.

III. Urban Decay

Water contamination and air pollution, now recognized as very real environmental problems, initially were scoffed at as the alarmist ravings of environmental doomsayers. Similarly, experts are now warning about land use decisions that cause a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake. In this case, the trial court recognized that the shopping centers posed a risk of triggering urban decay or deterioration[4] and it concluded that CEQA required analysis of this potential impact. C & C has challenged this determination. We find C & C's arguments unpersuasive and agree that CEQA requires analysis of the shopping centers' individual and cumulative potential to indirectly cause urban decay.

Guidelines section 15126.2 requires an EIR to identify and focus on the significant environmental impacts of the proposed project. In relevant part, this section provides:

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[4] Some of the parties use the term "urban blight," assuming that it is interchangeable with "urban decay." This is incorrect. "Blight" is a term with specialized meaning that has not been shown to be applicable. (See Health & Saf. Code, § 33030 et. seq.)

"Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (Guidelines, § 15126.2, subd. (a).) Guidelines section 15064, subdivision (d) mandates that both primary (direct) and "reasonably foreseeable" secondary (indirect) consequences be considered in determining the significance of a project's environmental effect.

"CEQA is not a fair competition statutory scheme." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1235.) Therefore, the economic and social effects of proposed projects are outside CEQA's purview. (Guidelines, § 15131, subd. (a).) Yet, if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019 (*Friends of Davis*); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445-446 (*Mt. Shasta).*) Subdivision (e) of Guidelines section 15064 provides that when the economic or social effects of a project cause a physical change, this change is to be regarded as a significant effect in the same manner as any other physical change resulting from the project. (See, e.g., *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 131 [potential of increased student enrollment in an already overcrowded school resulting from construction of the proposed apartment complex was an environmental effect that required treatment in an EIR because it could lead to the necessity of constructing at least one new high school].) Conversely, where economic and social effects result from a physical change that was itself caused by a proposed project, then these economic and social effects may be used to determine that the physical change constitutes a significant effect on the environment. (See, e.g., *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 [when a waste management facility was proposed next to a religious retreat center, CEQA required study whether the

physical impacts associated with the new facility would disturb worship in the natural environment of the retreat center].) Guidelines section 15131, subdivision (a) provides, "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes in turn caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes."

Case law already has established that in appropriate circumstances CEQA requires urban decay or deterioration to be considered as an indirect environmental effect of a proposed project. The relevant line of authority begins with *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 (*Bishop*). There, the appellate court held that adoption of multiple negative declarations for different aspects of the same large regional shopping center violated CEQA. (*Id.* at p. 167.) The court also agreed with appellant that on remand "the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown Bishop." (*Id.* at p. 169.) Citing Guidelines section 15064, the court found that the lead agency had an affirmative duty to consider whether the new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area. (*Id.* at p. 170.) Therefore, "[o]n remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center." (*Id.* at p. 171.)

Next, *Mt. Shasta, supra*, 198 Cal.App.3d 433, invalidated an EIR for a proposed shopping center for numerous reasons. In relevant part, the court determined that the EIR was defective because it failed to "consider the potential physical effect of the rezoning on the central business area. The EIR pointed out the proposed project may pose a

significant economic problem for existing businesses, but offered little analysis of the issue." (*Id.* at p. 445.) The court rejected respondent's justification that "no analysis of economic effects was required in the EIR." (*Id.* at p. 446.) Citing *Bishop, supra,* 172 Cal.App.3d 151 and Guidelines section 15064, it explained that "[t]he potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area. Therefore, on remand, City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project." (*Mt. Shasta, supra,* 198 Cal.App.3d at p. 446.)

City of Pasadena v. State of California (1993) 14 Cal.App.4th 810 addressed this issue as part of its determination whether a project to relocate a parole office was exempt from CEQA. In assessing whether the significant effect exception applied, the court discussed *Bishop, supra,* 172 Cal.App.3d 151. It agreed that social and economic effects must be considered if they will cause physical changes but found *Bishop* distinguishable because appellant in this case had not made a "showing or argument that [relocation of the parole office] would cause the physical deterioration of the area." (*Id.* at p. 828.)

Friends of Davis, supra, 83 Cal.App.4th 1004 (distinguished, *post*) rejected the position that identification of a Borders bookstore as a prospective tenant in a retail development compelled supplemental environmental review. There, the City of Davis (Davis) certified an EIR for a specific plan that reflected designation of the subject property for retail use. The applicant subsequently acquired an option to purchase the property and applied for design review of a proposed retail development that conformed to the specific plan and current zoning designation. During the design review process, it was revealed that one of the tenants would be a Borders bookstore. Davis planning staff took the position that the design review process did not differentiate between one type of retail tenant and another. Over objection from citizens who sought to use the design review ordinance to exclude Borders from locating in Davis, the planning commissions'

decision to approve the design review application was upheld. The appellate court agreed with Davis, carefully explaining that it was "not reviewing the record to determine whether it demonstrates a possibility of environmental impact, but are viewing it in a light most favorable to the City's decision in order to determine whether substantial evidence supports the decision not to require additional review." (*Id.* at p. 1021.) Prior environmental review already encompassed retail use of the property. A subsequent EIR was not required merely because it "appears likely" that Borders would compete with existing bookstores. (*Ibid.*) Appellant had not presented any evidence supporting its assumptions "that existing downtown bookstores will not be able to compete with Borders and will close[,] ... that the bookstores will not be replaced by new or different businesses ...[and] that the bookstore closures will cause other downtown businesses to close, thus leading to a general deterioration of the downtown area." (*Ibid.*)

Most recently, it was held that the project description for a proposed warehouse distribution center did not have to specifically identify the end user because this information did not implicate new or different environmental effects other than those that had been addressed in the EIR. (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396 (*Apple Valley*).)

It is apparent from the case law discussed above that proposed new shopping centers do not trigger a conclusive presumption of urban decay. However, when there is evidence suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact. Many factors are relevant, including the size of the project, the type of retailers and their market areas and the proximity of other retail shopping opportunities. The lead agency cannot divest itself of its analytical and informational obligations by summarily dismissing the possibility of urban decay or deterioration as a "social or economic effect" of the project.

C & C contends that study is not required because the record does not contain substantial evidence proving that the shopping centers will cause urban decay. This argument founders because it is premised on the wrong standard of review. Substantial evidence is the standard applied to conclusions reached in an EIR and findings that are based on such conclusions. (*Irritated Residents, supra*, 107 Cal.App.4th at pp. 1390-1391.) BCLC is not challenging a conclusion in the EIR's that the shopping centers would not indirectly cause urban decay or a finding adopted by the City. It is not arguing that the City used the wrong methodology in assessing whether urban decay will be an indirect effect of the project or challenging the validity of an expert's opinion on this topic. Rather, BCLC's argument is that the EIR's failed to comply with the information disclosure provisions of CEQA because they omitted any meaningful consideration of the question whether the shopping centers could, individually or cumulatively, trigger a series of events that ultimately cause urban decay. Neither EIR even contains a statement indicating reasons why it had been determined that urban decay was not a significant effect of the proposed projects. (§ 21100, subd. (c).) BCLC is challenging the City's view that such an analysis was purely economic and therefore was outside the scope of CEQA. The substantial evidence standard of review is not applied to this type of CEQA challenge. The relevant question is whether the lead agency failed to proceed as required by law. (1 Kostka & Zischke, CEQA Practice, *supra,* § 12.5, pp. 464-466.1.) "[A]lthough the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute." (*Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 118 (*Peninsula*).) If C & C is contending that claims concerning omission of information from an EIR essentially should be treated as inquiries whether there is substantial evidence supporting the decision approving the projects, we reiterate

our rejection of this position for the reasons previously expressed in *Irritated Residents, supra*, 107 Cal.App.4th at page 1392.

In any event, C & C's position has no substantive merit. There is a great deal of evidence in the record supporting the validity of concerns that the shopping centers could cause a ripple of store closures and consequent long-term vacancies that would eventually result in general deterioration and decay within and outside the market area of the two shopping centers. Although much of BCLC's evidence specifically applied to the Supercenters, the administrative records as a whole contain sufficient indication that addition of 1.1 million square feet of retail space in the shopping centers' overlapping market areas could start the chain reaction the ultimately results in urban decay to necessitate study of the issue with respect to the entirety of the shopping centers.

First, BCLC retained a professor of economics at San Francisco State University, C. Daniel Vencill, to study the cumulative economic effects that will be caused by the two new Supercenters (the Vencill report). Together with two colleagues, Vencill reviewed literature and analyzed the five-mile area surrounding the project sites. Photographs were taken of the sites and "existing blight conditions which have remained unabated for some years in the area surrounding the proposed new sites" were documented. The Vencill report determined that the two shopping centers are in the same shopper catchment area and they will be competing with each other as well as with existing retail establishments. It states that "[t]here are [four] existing shopping centers and malls that will be adversely affected by [Gosford and Panama]. One regional mall is suspected of being in serious decline." The two Supercenters represent significant excess capacity as configured and located. "This will result in oversaturation and fall-out of weaker competitors in the at-risk commercial blight zone the developments will create." The Vencill report identified 29 businesses, primarily but not exclusively grocery stores, that are at direct risk of closure. Two Albertsons are "facing extinction" and a small nursery that is located across the street from Gosford "would certainly become defunct."

Additionally, no "alternative plans" were observed for the Wal-Mart building on White Lane that will be vacant when this Wal-Mart store is replaced by the Supercenter at Panama. The Vencill report finds:

> "It is reasonably probable [that] competition provided by the two proposed [Supercenters] (i.e., the diversion of existing sales from local merchants), individually and especially cumulatively, will have economic impacts on existing businesses triggering a chain of events that may lead to adverse effects on the physical environment in the southern part of Bakersfield. One of the ways this may occur is that smaller retailers in the area, particularly those located within five miles of the sites, and even more specifically those retailers already struggling or on the verge of having to terminate operations, will be unable to compete and will have to go out of business. In turn, this may cause permanent or long-term vacancies of retail space in the area. The result is typically neglect of maintenance and repair of retail facilities, the deterioration of buildings, improvements, and facilities. This may then culminate in physical effects associated with blight-like conditions, which include visual and aesthetic impacts accompanying the physical deterioration."

BCLC also submitted numerous studies and articles analyzing the adverse effects other communities in California (San Diego, Orange County and Calexico,) and elsewhere (Oklahoma City, Oklahoma; Bath, Maine; Eastern Pennsylvania; Chicago, Illinois; Syracuse, New York) have experienced as a result of saturation of a market area with super-sized retailers.[5] As relevant here, the authors found numerous adverse effects

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[5] Rea & Parker Research report prepared for San Diego County Taxpayers Association entitled The Potential Economic and Fiscal Impact of Supercenters in San Diego, A Critical Analysis (2000) of report by Boarnet & Crane entitled The Impact of Big Box Grocers on Southern California Jobs, Wages and Municipal Finances; The Impact of Big Box Grocers on Southern California, Jobs, Wages, and Municipal Finances prepared for Orange County Business Council (1999); Rea & Parker Research, Smart Growth's Response to Big-Box Retailers: City of Villages--A Renewed Orientation Toward Communities and Neighborhoods (2001) prepared for the independent Grocers Association of Calexico; Shils & Taylor, Measuring the Economic and Sociological Impact of the Mega-Retail Discount Chains on Small Enterprise in Urban, Suburban and Rural Communities (1997); Welles, *When Wal-Mart Comes to Town* (July 1, 1993) Inc.

resulting from saturation of a market area with Supercenters and similar retail facilities, such as SuperTargets and SuperKmarts. These effects include, but are not limited to, physical decay and deterioration resulting from store closures in the same market area or in established areas of the community (i.e., the "traditional downtown area") due to competitive pressures, followed by an inability to easily re-lease the vacated premises. The authors also found that it had been difficult to find tenants for buildings that formerly housed Wal-Mart stores that were replaced by the new Supercenters. Many of the empty buildings physically deteriorated.

This evidence cannot be cavalierly dismissed as "hit pieces" designed to disparage a specific corporation. Studies discussing the experiences of other communities constitute important anecdotal evidence about the way the proposed shopping centers could serve as a catalyst for urban deterioration and decay in the City. The Vencill report is extremely significant and it strongly supports BCLC's position that CEQA requires analysis of urban decay.[6]

Moreover, numerous individuals commented about urban decay during the administrative process. For example, at the planning commission's public hearing on the adequacy of the draft EIR's, Cindy Fabricius stated, "[T]here are 45 empty Wal-Marts in the state of Texas. There are 34 empty standing Wal-Marts in the state of Georgia. There are 27 in Utah. Find them. Go look at them. They are empty. When Wal-Mart moves on they leave their boxes. Those boxes are not bought up by other [businesses]; who can afford that huge of a store; that huge of a rent?" Herman Lee commented that there are parts of East Bakersfield that need revitalization. Yet, the proposed shopping centers are out in the southwest part of town. He queried, "What about the people on the

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6 City Council Member Maggard's comment at the February 2003 City Council meeting that BCLC's documentary support is merely fit "for recycling" demonstrates his lack of awareness of the relevant legal principles.

east side of town?" Some comments made at the February 2003 City Council meeting are also relevant. A representative of Save Mart Supermarkets spoke in opposition to the project and submitted the data concerning Oklahoma City. He stated that the addition of the two shopping centers will adversely affect existing shopping centers and asserted that the "[t]he potential for urban blight and decay is a matter which must be considered" in the EIR's. Another commercial property owner wrote that he had been unable to re-lease a building that formerly housed a grocery store and he ended up demolishing the building. When a grocery store closes, the remainder of the stores in the shopping center are likely to close. The center "could end up with many boarded up storefronts." Another citizen wrote a letter that included six examples of buildings in the City that formerly housed large retail stores and now are "vacant, rundown box buildings and shopping centers." He was concerned that the proposed projects would result in more "empty warehouse type, rundown buildings" littering the City. While these individuals are not experts in any sense of the word, their firsthand observations should not casually be dismissed as immaterial because "relevant personal observations are evidence." (*Bishop, supra,* 172 Cal.App.3d at p. 173; see also *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.)

The responses in the EIR's to these and other comments do not meaningfully address the issue of urban decay. The Gosford EIR states that vacant buildings "are part of the evolutional change of the retail environment." It then asserts that further analysis is outside the scope of CEQA because economic and social effects are not considered environmental effects under CEQA. The response in the Panama EIR is similarly incomplete. Ignoring the question of urban decay or deterioration, it simply replies that "blight" is a legal term that does not apply. It also asserts that vacancy rates and business closures are purely economic impacts and therefore outside of CEQA. Finally, it states that a survey of vacant buildings had been prepared and this survey demonstrated that

"retailers entering or leaving the market, relocations, re-leasing to new tenants or conversions to other uses is a normal part of a dynamic market."[7]

The Retail Impact Analysis (retail analysis) that was appended to the Panama EIR does not constitute an acceptable substitute for proper identification and analysis in an EIR. The retail analysis analyzed "the potential market support and retail sales impacts" of the Supercenter component of Panama. It found that general merchandise stores have a market area of approximately five miles; grocery stores have a market area of approximately two miles.[8] It concluded that there is sufficient capacity to sustain the Supercenter at Panama without causing closure of existing general merchandise or grocery stores. However, the Supercenter would reduce the business volume of existing stores. The retail analysis stated that the existing Wal-Mart store building could be utilized in another unspecified capacity.

The retail analysis did not reference Gosford or consider whether there is sufficient capacity to sustain both shopping centers. It did not analyze whether the combined influx of both shopping centers would lead to the closure of existing grocery or general merchandise stores, particularly where their market areas overlap. Rather, it focused on the single narrow question whether there is sufficient demand to sustain the Supercenter at Panama. It did not meaningfully consider whether addition of 1.1 million

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7 The parties did not mention this survey. Since the survey did not consider questions concerning the likely effects that addition of 1.1 million square feet of new retail space would have on the vacancy rate in the City or address the likelihood of re-leasing vacant premises that formerly were occupied by competitors of the proposed shopping centers, we find it unhelpful.

8 After stating that general merchandise stores have a market area of five miles or more, the retail analysis inexplicably assigns without explanation three miles as the relevant market area with respect to the Supercenter at Panama. Since this conclusion is not supported by any explanation or analysis and it is directly contradicted by other information in the retail analysis, we decline to afford it any weight.

square feet of new retail space, much of it housing Supercenters, Sam's Club and other large retailers such as Lowe's and Kohl's (who dominate individual merchandise areas and are sometimes referred to as "category killers") will displace older, smaller retail stores and shopping centers, leaving long-term vacancies that deteriorate and encourage graffiti and other unsightly conditions. Furthermore, the retail analysis fails to meaningfully address the question whether the building on White Lane that currently houses a Wal-Mart store will experience a long-term vacancy when this store is closed. No facts are offered in support of the retail analysis's conclusion that the building can be leased to another tenant. "Can" is not equivalent to "will" and the difference in the two words is crucial when assessing whether the store closure will result in an adverse environmental impact. The retail analysis characterizes vacancies as normal parts of a dynamic and evolving retail environment without considering whether those vacancies are clustered in one area or are likely to be long term.

We agree with BCLC that *Mt. Shasta, supra,* 198 Cal.App.3d 433 is analogous. Just as in *Mt. Shasta,* it is apparent that in this case the shopping centers could, individually and cumulatively, trigger the same downward spiral of business closures, vacancies and deterioration that other communities have experienced when they allowed similar saturation development. Therefore, CEQA requires analysis of this potential environmental impact.

C & C argues that the instant case is analogous to *Friends of Davis, supra,* 83 Cal.App.4th 1004. We disagree. *Friends of Davis* considered whether a supplemental EIR was required. No zoning change or nonconformity with the existing specific plan existed and retail development on the project site had already been subjected to full environmental review. In contrast here, there has not been any previous study of the environmental effects associated with the requested zoning changes and general plan amendments. No prior EIR's considered the consequences of building shopping centers on the project sites. Rather, it is the sufficiency of the initial EIR's that is at issue.

It must be mentioned that although we do not quarrel with the holding in *Apple Valley, supra,* 120 Cal.App.4th 396, it is factually distinguishable from this situation. Here, recognition of the characteristics of the shopping centers' tenants is a necessary prerequisite to accurate identification and analysis of the environmental consequences that will result from approval of the proposed projects. When the particular type of retail business planned for a proposed project will have unique or additional adverse impacts, then disclosure of the type of business is necessary in order to accurately recognize and analyze the environmental effects that will result from the proposed project. A rendering plant has different environmental impacts than a chandler. In the retail context, Supercenters are similarly unique. Unlike the vast majority of stores, many Supercenters operate 24 hours per day seven days a week. Such extended operational hours raise questions concerning increased or additional adverse impacts relating to lights, noise, traffic and crime. While specific identification of the name of the tenant may be unnecessary, to simply state as did the Gosford EIR that "no stores have been identified" without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity.

Accordingly, we hold that the omission of analysis on the issue of urban/suburban decay and deterioration rendered the EIR's defective as informational documents. (*Mt. Shasta, supra*, 198 Cal.App.3d at p. 446.) On remand, the EIR's must analyze whether the shopping centers, individually and/or cumulatively, indirectly could trigger the downward spiral of retail closures and consequent long-term vacancies that ultimately result in decay. (*Ibid.*; *Bishop, supra*, 172 Cal.App.3d at p. 171.)

IV. Cumulative Impacts

The Gosford EIR and the Panama EIR considered each shopping center in isolation. The cumulative impacts sections of each EIR does not reference the other shopping center and neither EIR contains any discussion of or reference to retail development in the area surrounding the project site. BCLC argues that the "failure to

treat Panama and Gosford as 'relevant projects' for purposes of evaluating cumulative effects" is "[a]n overarching legal flaw in both EIRs." We agree. The trial court correctly realized that the cumulative effect of the two shopping centers must be analyzed with respect to the topic of urban decay. However, it inexplicably failed to follow the applicable chain of reasoning to its logical conclusion and recognize that the cumulative effects analyses were fundamentally flawed because they did not recognize that the shopping centers were relevant projects and did not analyze the type and severity of impacts that will result from construction and operation of both projects.

"A fundamental purpose of CEQA is to ensure that governmental agencies regulate their activities 'so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.' [Citations.] The heart of CEQA is the EIR. [Citation.] Its purposes are manifold, but chief among them is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment. [Citations.] [¶] Part of this vital informational function is performed by a cumulative impact analysis." (*Reasonable Growth, supra,* 151 Cal.App.3d at pp. 72-73.) "The term '"[c]umulative impacts" refer[s] to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.'" (*Raptor, supra,* 27 Cal.App.4th at p. 739.) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (Guidelines, § 15130, subd. (a)(1).) "'The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.' (CEQA Guidelines, § 15355, subd. (b).)

'Cumulative impact analysis "assesses cumulative damage as a whole greater than the sum of its parts."'" (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1403.)

"The significance of a comprehensive cumulative impacts evaluation is stressed in CEQA." (*Schoen v. Department of Forestry & Fire Prevention* (1997) 58 Cal.App.4th 556, 572.) Proper cumulative impact analysis is vital "because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, fns. omitted; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) "[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306.)

When faced with a challenge that the cumulative impacts analysis is unduly narrow, the court must determine whether it was reasonable and practical to include the omitted projects and whether their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723 (*Farm Bureau*).)

It is beyond dispute that the two shopping centers are both "present" projects within the meaning of Guidelines section 15355, subdivision (b). They were proposed within a month of each other and both shopping centers were considered at the same

meetings of the City Planning Commission and the City Council. Many citizens, including BCLC, voiced their opinions about both shopping centers at the same time. Thus, the determinative question is whether Gosford and Panama also are "closely related" within the meaning of Guidelines section 15355, subdivision (b). We answer this question in the affirmative.

First, there is evidence showing that the two shopping centers will compete with each other. Some of the anchor tenants at both shopping centers are regional draws with a market area in excess of five miles. The Vencill report states that the market area for stores like Supercenters is about five miles. It concludes that the two shopping centers are in the same shopper catchment area and the Supercenters will compete with each other. Similarly, the retail analysis states that general merchandise stores have a market area of five miles or more. Grocery stores have a market area of two miles or more. Since Gosford and Panama are 3.6 miles apart, the two market areas necessarily overlap. As previously discussed, the record contains numerous studies analyzing the adverse effects other communities have experienced when a market area was saturated with large-scale retailers such as traditional Wal-Mart stores and their siblings, Supercenters and Sam's Clubs. Studies discussing the adverse effects that other communities experienced after similar retail development constitutes important anecdotal evidence about the adverse impacts that the City may experience.

Second, the Gosford EIR and the Panama EIR show that the two shopping centers share four arterial roadways: Pacheco Road, Panama Lane, Harris Road and White Lane. A planning commissioner stated that he was concerned that the two projects could have combined, unrecognized adverse impacts on traffic.

Third, ambient air quality is a serious concern. Each of the EIR's concluded that the proposed shopping center would have an unavoidable adverse impact on ambient air quality. The San Joaquin Valley Air Pollution Control District (SJVAPCD) expressed the opinion that each project "and others similar to it will cumulatively reduce air quality

in the San Joaquin Valley." This will "make it more difficult to meet mandated emission reductions and air quality standards."

When considered in its entirety, this evidence strongly supports BCLC's position that the two shopping centers are closely related and may have several cumulatively significant adverse impacts. Therefore, CEQA compels assessment and disclosure of these combined environmental effects.

There is no merit to the position of City and developers that cumulative impacts analysis does not require consideration of both shopping centers because, in each case, the other shopping center is outside the radius of the "project area" as defined in EIR's. An EIR is required to discuss significant impacts that the proposed project will cause in the area that is affected by the project. (CEQA Guidelines, § 15126.2, subd. (a).) This area cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting. Furthermore, Guidelines section 15130, subdivision (b)(1)(B)3 directs agencies to "define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." Neither the Gosford EIR nor the Panama EIR complied with this requirement. The EIR's state what has been determined to be the appropriate geographic area for each category of potential impacts, but no explanation was offered as to the criterion upon which this determination was made. Simply put, selection of "appropriate" geographic areas that just happen to narrowly miss the other large proposed shopping center in every category of impacts despite their overlapping market areas and shared roadways does not constitute the good faith disclosure and analysis that is required by CEQA. In *Raptor, supra*, 27 Cal.App.4th 713, we found the description of the environmental setting in an EIR prepared for a residential project to be deficient because it failed to mention nearby wetlands and a wildlife preserve. (*Id.* at pp. 722-729.) Omission of any reference in the EIR's to the other proposed shopping center is similarly "inaccurate and misleading." (*Id.* at p. 724.)

We are unpersuaded by C & C's argument that the cumulative impacts of the two projects were accounted for because the Gosford EIR based its discussion of certain environmental effects, such as air quality, on a summary of projections contained in an approved planning document. Use of a planning document does not preclude challenge to the accuracy or sufficiency of the cumulative impacts analysis. As recognized in a respected CEQA treatise, "[t]he summary-of-projections approach may present problems if the projections in the general plan or related planning document are inaccurate or outdated." (1 Kostka & Zischke, CEQA Practice, *supra*, § 13.39, p. 537.) Such is the case here. Both of the shopping center projects required amendment of the general plan. The addition of large regional shopping centers such as Gosford and Panama are not accounted for in the projections. We need not comment on the propriety of using the list of projects method for some aspects of cumulative impacts analysis and using the summary of projections for other aspects because, under either method, the cumulative impacts section is underinclusive. (*Id.* at § 13.39, pp. 537-538.)

Proper cumulative impacts analysis is absolutely critical to meaningful environmental review of the shopping center projects. Four analogous cases support our conclusion that the EIR's are legally inadequate due to their underinclusive and misleading cumulative impacts analysis.

In *Reasonable Growth, supra*, 151 Cal.App.3d 61, the appellate court ordered an EIR prepared for a high-rise project to be decertified because it underestimated the amount of new downtown development and consequently had not evaluated "the true severity and significance" of the cumulative impacts. (*Id.* at p. 80.) The court explained that the danger created by providing understated information subverts an agency's ability to adopt appropriate and effective mitigation measures, skews its perspective concerning the benefits of the particular projects under consideration and precludes it from gaining a true perspective on the consequences of approving the project. (*Ibid.*)

Similarly, in *Farm Bureau, supra,* 221 Cal.App.3d 692, this court determined that limiting the scope of cumulative impacts analysis to the mid-San Joaquin valley was unduly restrictive and resulted in an inaccurate minimization of the cumulative impacts on air quality resulting from construction of the proposed cogeneration plan together with the many other proposed energy projects. (*Id.* at pp. 721-724.)

Next, in *Raptor, supra,* 27 Cal.App.4th 713, we invalidated an EIR prepared for a housing project, in part because it failed to analyze the project in conjunction with other development projects in the surrounding area. (*Id.* at pp. 739-741.)

Most recently, in *Eel River, supra,* 108 Cal.App.4th 859, the court found that an EIR considering a project to divert water was legally inadequate because the cumulative impacts analysis did not take into account other pending proposals that would curtail water diversions. The court concluded that it was "reasonable and practical" to include other pending curtailment proposals in the cumulative impacts analysis and that this omission resulted in an EIR that failed to alert decision makers and the public to the possibility that the agency would not be able to supply water to its customers in an environmentally sound way. (*Id.* at pp. 868-872.)

Following and applying these authorities, we likewise conclude that the EIR's are inadequate because they did not analyze the cumulative environmental impacts of other past, present and reasonably foreseeable retail projects in the market areas served by the proposed shopping centers. Neither EIR meaningfully addressed comments stating that the two shopping centers will have cumulative adverse impacts. As a result, the cumulative impacts analyses in both EIR's are underinclusive and misleading.

The record raises numerous questions respecting the type and severity of cumulative adverse environmental impacts that likely will result from the two shopping centers. Topics such as traffic, noise, air quality, urban decay and growth inducement

immediately surface.[9] City and developers cannot fault BCLC because it does not have evidence answering these and other questions related to the cumulative impacts resulting from construction and operation of both Gosford and Panama. "To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information." (*Farm Bureau, supra,* 221 Cal.App.3d 692, 724.)

On remand, each EIR must analyze the cumulative impacts resulting from construction and operation of the proposed shopping center in conjunction with all other past, present or reasonably foreseeable retail projects that are or will be located within the proposed project's market area. This includes, but is not limited to, analysis of the combined adverse impacts resulting from construction and operation of Gosford and Panama.[10]

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[9] Specific questions such as the following immediately come to mind: How will traffic patterns be affected on the shared roadways? Will combined traffic cause an increase in mobile emissions that adversely affects sensitive receptors? Will the presence of two shopping centers containing large value-oriented retailers result in an overall increase in shoppers who may come from outlying areas because of the abundance of retail opportunities in a relatively small area? In other words, is there a synergy whereby one and one equals more than two? Alternatively, will Gosford and Panama draw customers from each other, thereby increasing the potential that one of the shopping centers will not be successful and could deteriorate? Does addition of multiple new shopping facilities stimulate growth in the surrounding area and if so, what type?

[10] This conclusion obviates any need to address BCLC's other claims concerning the sufficiency of the cumulative impacts analyses. However, we mention that when the City assesses the combined effects that the two shopping centers will have on ambient air quality, it must apply the principles we explained in *Farm Bureau, supra,* 221 Cal.App.3d 692. The magnitude of the current air quality problems in the San Joaquin Valley cannot be used to trivialize the cumulative contributions of the shopping centers and the scope of the analysis cannot be artificially limited to a restricted portion of the air basin. (*Id.* at pp. 718, 723.)

V. Failure to Correlate Adverse Air Quality Impacts to Resulting Adverse Health Impacts

The Gosford EIR concluded that Gosford would cause significant unavoidable direct adverse impacts to regional air quality from construction and operation. The direct adverse air quality impacts are derived "primarily from automobile emissions during operation and from architectural coatings and construction equipment during construction phase. No feasible mitigation measures are available that would reduce impacts to less than significant levels." Furthermore, Gosford "could potentially result in cumulatively considerable impacts to regional air quality from construction and operation."

Similarly, the Panama EIR concluded that Panama "may result in an overall increase in the local and regional pollutant load due to direct impacts from vehicle emissions and indirect impacts from electricity and natural gas consumption. This impact is considered significant and unavoidable for ROG and NOx." The Panama EIR reached a different conclusion than the Gosford EIR with respect to cumulative impacts, determining that a "less than significant" impact would occur in this regard.

BCLC contends that both EIR's omitted relevant information when they failed to correlate the identified adverse air quality impacts to resultant adverse health effects. We agree.

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, "health and safety problems caused by the physical changes" that the proposed project will precipitate. Both of the EIR's concluded that the projects would have significant and unavoidable adverse impacts on air quality. It is well known that air pollution adversely affects human respiratory health. (See, e.g., Bustillo, *Smog Harms Children's Lungs for Life, Study Finds*, L.A. Times (Sept. 9, 2004).) Emergency rooms crowded with wheezing sufferers are sad but common sights in the San Joaquin Valley and elsewhere. Air quality indexes are published daily in local newspapers, schools monitor air quality and restrict outdoor play when it is especially poor and the public is warned to limit their activities on days when air quality is particularly bad. Yet, neither EIR acknowledges the

health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as "air pollution" are brief references to respiratory illnesses. However, there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's.

VI. Prejudice

"When the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law.'" (*Peninsula, supra,* 87 Cal.App.4th at p. 118.) If the deficiencies in an EIR "preclude[] informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred." (*Id.* at p. 128.)

An EIR's role "as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return" (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810) is equally vital whether one is protecting our coastline and forests or preserving our inland neighborhoods as viable communities. For many of us, adverse environmental impacts such as reduction of endangered species habitat are regrettable but largely abstract harms. In contrast, deterioration of our local communities is a very real problem that directly impacts the quality of our daily life. When our morning commutes are marred by the sight of numerous vacant or half-vacant strip malls adorned with graffiti and weeds, when we hesitate to move into an established neighborhood because of the absence of close and convenient shopping and when it hurts to take a deep breath on hot August afternoons because of the poor air quality, the importance of thorough

environmental analysis and complete disclosure before new projects are approved is all too evident.

In this case, City's failure to assess whether the shopping centers, individually and cumulatively, will indirectly cause urban decay, to evaluate the cumulative impacts of both shopping centers and to correlate the adverse air quality impacts to resulting adverse health consequences, cannot be dismissed as harmless or insignificant defects. As a result of these omissions, meaningful assessment of the true scope of numerous potentially serious adverse environmental effects was thwarted. No discrete or severable aspects of the projects are unaffected by the omitted analyses; the defects relate to the shopping centers in their entirety, not just to one specific retailer. These deficiencies precluded informed public participation and decision making. Therefore, certification of the EIR's was a prejudicial abuse of discretion. (*Peninsula, supra,* 87 Cal.App.4th at p. 128.)

The Guidelines unequivocally require the lead agency to certify a legally adequate final EIR prior to deciding whether or not to approve or carry out a contested project. (Guidelines, §§ 15089 to 15092.) "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) Thus, the project approvals and associated land use entitlements also must be voided. (See, e.g., *Eel River, supra*, 108 Cal.App.4th at p. 882; *Raptor, supra*, 27 Cal.App.4th at pp. 742-743.)

VII. Additional Defects in the EIR's*

The defects and omissions identified in this portion of the opinion also must be corrected in the new EIR's.

A. Finding that Gosford will not Obstruct Implementation of the Air Quality Attainment Plan (Gosford EIR)

The Gosford EIR states: "[T]he California CAA requires non-attainment districts with severe air quality problems to provide for a five percent reduction in non-attainment emissions per year. The SJVAPCD prepared an Air Quality Attainment Plan ... in compliance with the requirements of the Act." The Gosford EIR concluded that Gosford would not conflict with or obstruct implementation of the Air Quality Attainment Plan because it "recognized growth of the population and economy within the air basin.... [Gosford] can be viewed as growth that was anticipated by the [Air Quality Plan]." The SJVAPCD commented, in relevant part, "[t]his project will make it more difficult to meet mandated emission reductions and air quality standards." The response to this letter acknowledges that "the proposed project will generate significant operational air quality impacts due to emissions that would be generated by vehicular trips to the site." However, it did not respond to SJVAPCD's concern that construction and operation of Gosford will make it more difficult to meet mandated air quality standards.

BCLC challenges the finding that Gosford will not conflict with or obstruct implementation of the Air Quality Attainment Plan, arguing that this finding is unsupported and is logically inconsistent with the conclusion that Gosford has significant and unavoidable direct and cumulative adverse air quality impacts. We agree; the two findings are inconsistent on their face.

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* See footnote, *ante*, page 1.

Under the chain of logic advanced in the Gosford EIR, virtually no new projects would impair the fulfillment of the Air Quality Attainment Plan despite serious adverse air quality impacts because such projects almost always could all be characterized by the applicant as "anticipated growth." The inherent tension between growth on the one hand and satisfaction of mandates to reduce emissions on the other should have been recognized and addressed in this section of the EIR. At a minimum, the Gosford EIR should have addressed this point in its response to SJVAPCD's comment letter. A good faith response should have acknowledged and grappled with SJVAPCD's assertion that Gosford will make it more difficult to meet mandated standards, which is another way of stating that it would make it harder to fulfill the Air Quality Attainment Plan. In this respect, the Gosford EIR "failed to acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR's analysis of this subject." (*Berkeley, supra,* Cal.App.4th at p. 1371.) We agree with BCLC that CEQA required the City to "take a hard look at [SJVAPCD's opinion] and supply the analytic framework for ignoring it."

B. Railroad Spur (Gosford EIR)

As part of the traffic analysis, the Gosford EIR considered whether Gosford would substantially increase roadway hazards due to a design feature or incompatible uses. In relevant part, the Gosford EIR states, "[a] railroad spur crossing along Pacheco Road and in the proposed parking lot may be constructed at a future time. This crossing would not have a significant impact on traffic in the area."

On June 28, 2002, the Resource Management Agency submitted a letter stating, in relevant part: "Issue XV Transportation and Traffic (d) states that a traffic study will be done to analyze the traffic flow around the project site. No mention is made of the future rail spur that is part of the project. Approval from the Public Utilities Commission is required for this aspect of the plan. This would be the second railroad crossing of

Pacheco in less than a half-mile, and a risk study may be necessary to assess the impacts from this." This letter preceded the public review period for the Gosford draft EIR.

BCLC argues that the Gosford EIR's conclusion respecting the railroad spur crossing is unsupported and lacks proper analysis and explanation. We agree. The Gosford EIR does not mention the important fact that the possible railroad spur crossing will be the second railroad crossing of Pacheco in less than half of a mile. It also did not support its conclusion that the railroad spur will not adversely affect traffic conditions with any analysis or explanation. This is insufficient. As we explained in *Irritated Residents, supra*, 107 Cal.App.4th 1383, "'The EIR must contain facts and analysis, not just the bare conclusions of the agency.' [Citation.] 'An EIR 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.* at p. 1390.) The treatment of the proposed rail spur does not satisfy these information obligations.

C. Kit Fox (Panama EIR)

i. Failure to Consult

Guidelines section 15086 requires the lead agency to "consult with and request comments on the draft EIR" from numerous entities, including "[a]ny … state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project." (Guidelines, § 15086, subd. (a)(3).) The San Joaquin Kit Fox (kit fox) is listed as endangered under the federal Endangered Species Act of 1973 and as threatened under the California Endangered Species Act. (16 U.S.C. §§ 1531 et seq.; Fish & G. Code, §§ 2050 et seq.) It is undisputed that the United States Fish and Wildlife Service (USFWS) exercises jurisdiction over resources that are affected by Panama, including the kit fox. It is also undisputed that the City did not consult with USFWS about Panama or request comments on the Panama draft EIR.

City and P99 argue that failure to notify and consult with USFWS was excused because the City and USFWS entered into an agreement in 1990, the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP), that obviated any requirement to consult with USFWS on specific projects. We reject this argument as unsubstantiated because the MBHCP is not part of the administrative record and we cannot assess the provisions of this agreement. Although the MBHCP was one of many documents the Panama EIR incorporated by reference, a copy of the MBHCP was not appended to the Panama EIR. A copy of the MBHCP was not before the City Council when it certified the Panama EIR. The trial court denied a request to take judicial notice of excerpted portions of the MBHCP and this evidentiary decision was not appealed. No party has asked this court to take judicial notice of the MBHCP.

On this limited record, we must agree with BCLC that the City erred by failing to "consult with and request comments" from the USFWS in compliance with subdivision (a)(3) of Guidelines section 15086. Although the Panama EIR states that "the Project is subject to [MBHCP]," it does not state that the MBHCP supplants or affects the rights and responsibilities of USFWS or California Department of Fish and Game with respect to the Panama site. We express no opinion on the question whether compliance with this subdivision legally can be excused by prior agreement because the issue has not been properly presented with an adequate record.

ii. Mitigation

The initial study indicated that the Panama site could be kit fox habitat and it recommended further analysis to determine whether Panama could adversely impact this protected species. The City retained a certified wildlife biologist who conducted a clearance survey on the Panama site. The biologist found several active kit fox dens and observed three kit fox on the site: an adult and two juveniles. He concluded that Panama could adversely impact kit fox and he recommended a series of mitigation measures. The Panama EIR exclusively references mitigation pursuant to the terms of the MBHCP. It

concluded that, as mitigated, Panama's impact on kit fox would be less than significant. The mitigation measures recommended in the Panama EIR do not track the measures recommended by the biologist. There is no explanation for the differences or discussion why some of the biologist's mitigation measures were rejected. For example, the biologist suggested the following mitigation measure that is not mentioned in the Panama EIR: "[T]he Endangered Species Recovery Program, California State University, Stanislaus, be encouraged to trap and collar the foxes as an aid in finding the foxes in the future."

BCLC contends that the City failed to adequately analyze and mitigate kit fox impacts and it challenges the EIR's conclusion that, as mitigated, kit fox impacts will be insignificant. Once again, we agree. Guidelines section 15126.4 requires an EIR to "describe feasible measures which could minimize significant adverse impacts." (Guidelines, § 15126.4, subd. (a)(1).) "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." (Guidelines, § 15126.4, subd. (a)(1)(B).) The Panama EIR does not discuss all of the mitigation measures suggested by the biologist or explain why mitigation measures other than those referenced in the MBHCP were rejected. The record does not support the Panama EIR's conclusion that the limited mitigation measures identified in the EIR will mitigate kit fox impacts to insignificance.

We reject as unsubstantiated City and P99's assertion that it was only required to discuss mitigation measures contained in the MBHCP. As previously discussed, the MBHCP is not part of the administrative record.

Accordingly, based on this limited record, we conclude that the Panama EIR failed to adequately analyze and mitigate kit fox impacts. We express no opinion on the question whether mitigation solely pursuant to the MBHCP can be legally sufficient because the issue has not been properly presented with an adequate record.

VIII. Severance

We have found numerous grounds of CEQA noncompliance and we agree with BCLC that these errors compel decertification of the EIR's and voiding of the contested project approvals and associated land use entitlements. As previously explained, the defects in the EIR's apply to the entirety of the contested projects, not a single retailer or a severable facet of the shopping centers. We also have rejected C & C's contention that BCLC's single focus was to stop the Supercenter component of the shopping centers.

The narrow remedy issued by the trial court pursuant to section 21168.9, subdivision (b) is premised on the erroneous conclusion that the sole defect in the EIR's was the failure to study urban decay. Since this determination has been rejected, the trial court's associated finding regarding severability pursuant to section 21168.9, subdivision (b) necessarily falls as well. Neither City nor developers argued that even if there are multiple insufficiencies in the EIR's and even if these insufficiencies are caused by the entirety of the projects, we should still leave the project approvals and associated land use entitlements intact.

IX. Rejected Challenges

BCLC has raised additional challenges to the sufficiency of the EIR's, arguing that the air quality and traffic analyses are deficient in various respects and it contends that preparation of a health risk assessment after expiration of the comment period necessitated recirculation of the Panama EIR. We have considered and rejected all of these additional contentions because they lack factual and legal merit.

DISPOSITION

The judgments are reversed and the actions are remanded to the Superior Court of Kern County. BCLC is awarded its statutory costs in both actions. C & C is to pay the

entirety of the cost award in the Gosford action; P99 is to pay the entirety of the cost award in the Panama action. (Cal. Rules of Court, rule 27(a)(4).) BCLC's request for judicial notice is granted.

Upon remand, the superior court is directed as follows in both actions:

(1) To issue new peremptory writs of mandate ordering the City to void its certification of the EIR's and findings of overriding considerations and to void its approval of the projects and associated zoning changes, general plan amendments and other related land use entitlements;

(2) To issue orders, after notice and hearing, that set a date by which the City must certify new EIR's in accordance with CEQA standards and procedures, including provisions for public comment, and make any findings that CEQA may require. These orders are to require the City, after full CEQA compliance is effected, to determine upon further consideration and in accordance with all applicable laws, whether or not to reapprove the projects and grant associated zoning changes, general plan amendments and land use entitlements. The City may require modification of the projects and/or additional mitigation measures as conditions of reapproval; it may require completed portions of the projects to be changed or removed;

(3) To determine, after notice and hearing, whether continuance of construction and retail activities on the project sites prior to full CEQA compliance and reapproval will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project and to issue appropriate relief pursuant to section 21168.9. As part of this determination it is to consider the following: (i) continuance of construction activities, other than those necessary to ensure safety; (ii) continued operation of businesses that currently are open to the public; (iii) opening of new businesses; (iv) expansion of existing businesses;

(4) To determine, after notice and hearing, whether BCLC should be awarded attorney fees and costs pursuant to Code of Civil Procedure section 1021.5, the proper

amounts, the party or parties against whom the fee awards should be assessed and to issue appropriate orders.

Buckley, Acting P.J.

WE CONCUR:

Wiseman, J.

Levy, J.

MEMORANDUM, City of Lodi, Community Development Department

To: Planning Commission

From: Community Development Department

Date: December 8, 2004

Subject: The request of Browman Development Company to certify Final Environmental Impact Report EIR 03-01, approve Use Permit U-02-12 to allow the construction of a commercial center in the C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Tentative Parcel Map 03-P-001 to create 12 parcels for the project at 2640 W. Kettleman Lane

RECOMMENDATION:

Staff recommends that the Planning Commission certify the Final Environmental Impact Report and approve the Use Permit and Tentative Parcel Map requests, subject to the conditions listed in the Draft Resolution as submitted.

SUMMARY:

The requests by the applicant are the necessary steps to allow the construction of a commercial center of approximately 330,000 square feet that will be anchored by a Wal-Mart Supercenter. This center represents the last corner of commercial development envisioned by the General Plan at this intersection. The mix of uses within this proposal will provide a wide array of goods and services to the community.

BACKGROUND:

The City's General Plan designated this intersection for the construction of large-scale retail development nearly 15 years ago. Since that time, the centers on the other three corners have built out as envisioned. Major national retailers such as Wal-Mart, J.C. Penney, Target, and Lowe's have occupied space at this location. This center is proposed to be anchored by a Wal-Mart Supercenter. This type and scale of development is consistent with the activity that has occurred at the other corners of Lower Sacramento Road and Kettleman Lane. This direction was underscored with the adoption of the Central City Revitalization Program in 1995.

The City's Zoning Ordinance requires that all plot plans for projects within the C-S, Commercial Shopping District receive Planning Commission approval. Over time, this review has been done through the Use Permit process. The Zoning Ordinance also requires Use Permit approval for the sale of alcoholic beverages. Finally, the applicant is requesting a Parcel Map in order to divide the property into 12 lots that will correspond to the number of buildings anticipated.

The Planning Commission held a public meeting on the Draft Environmental Impact report on September 9, 2004. At that meeting, comments were made as well as in writing as shown in the final document. Each comment has been reviewed carefully and a

response given that either answers a question posed, modifies the document or refutes the statement with additional information. This Final EIR represents the City's opinion as to the environmental effects of establishing this project. Where practical, mitigation is proposed for significant impacts. In the case of two areas of study, no viable mitigation could be found that would lessen the impact to a less than significant level. For these, a Statement of Overriding Consideration has been made and can be found in the Draft Resolution for the EIR.

In addition to providing background material for the EIR, a fiscal impact analysis was prepared by the firm of Applied Development Economics. Those studies can be found in the appendices of the Draft EIR. With regard to the potential impacts on the downtown area, the consultant found that there would be an approximate 5.1 percent decrease in activity. This decrease is not considered significant.

ANALYSIS:

The site contains approximately 36 acres and is bordered by Kettleman Lane to the north, Lower Sacramento Road to the east and a new street, Westgate Drive to the west. An additional 3.65-acre site is located across Westgate Drive to be used as an interim storm drain basin. The project includes 12 building sites with a maximum of 330,000 square feet. As has been the practice in the past, the design of the major tenant has been detailed to a level consistent with the requirements of the Site Plan and Architectural Review Committee (SPARC). The balance of the building locations are shown on the site plan for the Planning Commission's review and approval. Subsequent approval for each of these buildings is required by SPARC. As shown on the site plan, significant public improvements are required in order to build this project. The applicant will be responsible for the construction of Westgate Drive from Kettleman Lane to the southerly project boundary as well as the frontage improvements on Kettleman Lane and Lower Sacramento Road.

ENVIRONMENTAL IMPACT REPORT (EIR)

The Final Environmental Impact Report outlines the potential impacts associated with the development of the subject property with the project envisioned. The role and purpose of an EIR are defined by the California Environmental Quality Act (CEQA). First and foremost, it is an informational document, which should aid decision-makers in determining the potential impacts of a given project. The EIR should identify ways to minimize any significant negative impact and describe reasonable alternatives to the project. The second purpose of an EIR is to analyze a project to a sufficient degree. An evaluation need not be exhaustive, but does need to be reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the disagreement should be outlined. As is the case with this document, people have commented on a variety of issues. Staff and our consultants have attempted to respond to those comments with the previously mentioned purposes in mind. When all is said and done, it is not required that everyone agrees or is happy with the outcome.

This EIR analyzes 13 required areas of impact. For those, 25 mitigation measures are proposed that reduce the impact to a less than significant level. There are two areas of impact that cannot be mitigated to this less than significant level. The two areas are impacts to agricultural resources and regional air quality both on a project specific and

cumulative basis. Staff's perspective on both these issues is addressed in the Final document. In order for the Commission to allow the project to move forward given these significant unavoidable impacts, the Statement of Overriding Considerations is required as outlined in the Resolution to certify this document.

Perhaps the most controversial issue that exists regarding one of these unavoidable impacts is the loss of prime farmland. As was the case with the Lowe's project, it is staff's belief that no mitigation is available to reduce this impact to a less than significant level. Quite simply, prime farmland cannot be created; therefore the only way in which to reduce the impact is to not convert the property to any urban use. Arguments have and will be made that suggest the City should require the applicant to purchase a conservation easement on some other prime farmland elsewhere as mitigation for this loss. It is our opinion that such a condition, while a laudable gesture, does not actually reduce the impact of this project as required by CEQA. Our rationale can be found in the response to comments section of the final EIR.

There is one impact identified in the EIR that is no longer significant by the re-design of Lower Sacramento Road as shown on the plans before the Commission for approval. Impact H7, which dealt with the design of the left-turn access into the middle driveway adjacent to the existing Food 4 Less now meets the City's standards for taper lengths. As such, the Resolution certifying the Final EIR specifically makes a finding that appropriate mitigation has been provided that does not require any further action.

USE PERMITS

As mentioned previously, the Zoning Ordinance requirements within this designation are specific to the Planning Commission's review of the proposed plot plan. I believe the applicant has provided a plan that sufficiently shows the various aspects of their proposal to a degree that the Planning Commission may take action. Further discussion of the design of the project will take place under the Large Scale Standards heading. Remember that it is not the Commission's role to determine whether this use should go forward. Specifically, it is the Commission's jurisdiction to determine if the project, as proposed, meets the City's requirements for development. If you should decide that it does not, then specific direction should be given to staff and the applicant as to what needs to change in order for the project to be acceptable.

As for the Use Permit to allow the sale of alcoholic beverages, the Planning Commission has previously found that this type of sale is incidental in a super market location such as the Supercenter. Moreover, it would be inconsistent to not allow this type of sale as every other major super market in Lodi. Statistically, the site is within Census Tract 41.03. This Tract extends westerly one mile west of Lower Sacramento Road and past Harney Lane to the south. It would be the only outlet within this Census Tract. The Police Department did not have any specific concerns related to this request. Staff has included our standard conditions relating to off-sale establishments in the resolution provided.

PARCEL MAP

As is typically the situation with the development of a large shopping center, the applicant has prepared a Parcel Map that will divide the site into 12 parcels. This will allow each building to sit on an individual parcel. From a planning perspective, there are no specific issues with this request. The Commission will find conditions regarding the processing and recordation of the map within the resolution of approval.

DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS

With previous projects that have come before the Commission, the question of what scale is appropriate or what design issues have merit have been central to this discussion. In an attempt to be clear about the City's expectations, the City Council adopted standards in April of this year. As a result, this project must adhere to those requirements. As can be imagined, I have spent a great deal of time reviewing the various iterations of this project for compliance to these detailed standards. While most of the issues can be dealt with at this stage of the process, many such as landscaping, colors and materials are best suited for the SPARC review.

It is my opinion that this project meets each of the requirements as outlined in the Ordinance with the provision that those that are not applicable at this time will be dealt with at the appropriate level such as the Site Plan and Architectural Review Committee.

CONCLUSION

This project has clearly generated more controversy than any other in Lodi's recent past. Whether this controversy started many years ago when the first Wal-Mart was built or with the approval of the recently opened Lowe's across the street from this location is not important. From staff's perspective the process of beginning with a request to the hearing this evening has been instructional, beneficial and frustrating at the same time. I believe that it is necessary for the City to be fair and consistent. What the community leaders believed to be the best in 1991 when the General Plan was adopted has been the basis for significant investment of both time and money. As I've spent countless hours analyzing this project, I believe it meets the requirements of the General Plan and Zoning Ordinance with particular emphasis on the Large Scale Design Standards that were approved earlier this year. That is not to say that there are not conditions proposed that I believe are warranted. Those conditions can all be found in the Resolution for the project. Significant among those is a prohibition from the issuance of a building permit for the new Wal-Mart store until a tenant for the existing store has been secured. I have been clear with the developer and Wal-Mart from day one that this condition would appear in my recommendation on the project.

Therefore, I would recommend that the Planning Commission certify the Final EIR and approve the two Use Permit requests and the Parcel Map as submitted.

Respectfully submitted,

Konradt Bartlam
Community Development Director

CITY OF LODI
PLANNING COMMISSION
Staff Report

MEETING DATE:	December 8, 2004
APPLICATION NO:	Environmental Impact report EIR-03-01, Use Permit U-02-12 and Parcel Map 03-P-001
REQUEST:	The request of Browman Development Company to Certify the Final Environmental Impact Report, Approve the Use Permit to establish a shopping center in the C-S, Commercial Shopping District Zone and allow the sale of alcoholic beverages at the proposed Wal-Mart Supercenter store and a Parcel Map to create 12 new parcels.
LOCATION:	2640 West Kettleman Lane
APPLICANT:	Browman Development Company 100 Swan Way Suite 206 Oakland, CA 94621
PROPERTY OWNER:	Lodi Southwest Associates LP 301 S. Ham Lane Suite A Lodi, CA 95242

Site Characteristics: The project site is approximately 36.18 acres located at the southwest corner of Lower Sacramento Road and Kettleman Lane. Additionally, a 3.65-acre site is proposed west of the new Westgate Drive for purposes of providing temporary storm drainage for the project. The site has historically been used for various agricultural uses, but has been fallow for a number of years. There are no structures on the property with the exception of two agricultural wells and associated concrete standpipes and electrical service.

General Plan Designation: NCC, Neighborhood/Community Commercial

Zoning Designation: C-S, Commercial Shopping District

Property Size: The project site is 36.18 acres. The interim storm drain basin is 3.65 acres.

Adjacent Zoning and Land Use:

North: C-S, Commercial Shopping Center. The property to the north across Kettleman Lane is the developing Vintner's Square Shopping Center anchored by the Lowe's Home Improvement store.

South: AG-40 Urban Reserve. The property to the south is currently within the County and is planted as a vineyard. An application to annex the property is currently being processed for residential purposes.

East: C-S, Commercial Shopping Center. To the west is the Sunwest Plaza shopping center that was built ten plus years ago. Just south of the commercial property are a few rural residences within the County. As with the property to the south, this area is being processed for annexation to a residential designation.

West: AG-40 Urban Reserve and PUB, Public. The property to the west is slated as the site for the interim storm drain basin for the project. The site is currently farmed in alfalfa. The property is currently being processed for annexation and will eventually be designated for residential uses. North of this site is a 4-acre parcel owned by the City of Lodi and will be used for an electric sub-station and water well site.

Neighborhood Characteristics: The project site is located at the western edge of the current City limits and is surrounded by a mix of urban and rural uses. The lands to the north and east are developed with commercial uses similar to the proposed center. The lands adjacent to the south and west are agricultural in nature, but as stated above have made application for annexation to the City and will be designated for residential use.

ENVIRONMENTAL ASSESSMENTS: Final Environmental Impact report EIR 03-01 has been prepared for the project. This EIR meets the requirements of the California Environmental Quality Act.

PUBLIC HEARING NOTICE:

Legal Notice for the project was published on November 24, 2004. A total of 21 notices were sent to all property owners of record within a 300-foot radius of the subject property.

RECOMMENDATION: Staff recommends that the Planning Commission certify the Final Environmental Impact Report and approve the Use Permits to establish the center and allow the sale of alcoholic beverages and Parcel Map as proposed.

ALTERNATIVE PLANNING COMMISSION ACTIONS:
Approve the requests with alternate conditions
Deny the requests
Continue the requests
Certify the EIR and deny the Use Permit requests

ATTACHMENTS:
1. Final EIR 03-01 (under separate cover)
2. Vicinity Map
3. Site Plan, Floor Plan and Elevations of the Wal-Mart Supercenter building
4. Draft Resolutions

MEMORANDUM, City of Lodi, Public Works Department

To: Rad Bartlam, Community Development Director

From: Richard Prima, Public Works Director

Date: November 30, 2004

Subject: Recommended Vesting Tentative Parcel Map and Use Permit Conditions for 2640 West Kettleman Lane and 1265 South Lower Sacramento Road File #03-P-001 and U-02-12

The conditions of approval required for the subject project per City codes and standards are listed below.

The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:

1. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
   a) Street right-of-way dedications on Westgate Drive shall be in conformance with the traffic study for the project and City of Lodi requirements and shall be consistent with the West Side Facility Master Plan. The north and south legs of Westgate Drive must be in alignment through the intersection at Kettleman Lane. Construction of full width street improvements to and including the west curb and gutter is required. Acquisition of additional right-of-way from adjacent parcels to the west is the responsibility of the developer and must be supplied prior to recordation of any final parcel map. In the event the developer is unable to acquire the additional right-of-way from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required street right-of-way dedications within the boundaries of the map.
   b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the project traffic study and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. The right-of-way width and lane geometry for Kettleman Lane need to be compatible with the improvement plans prepared by Mark Thomas & Company for the Vintner's Square Shopping Center on the north side of Kettleman Lane. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
   c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements. At the signalized intersection and the driveway immediately north, the right-of-way dedications and driveway design shall provide for 60-foot radius truck turning movements as set forth in the Caltrans Highway Design Manual.

d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.

2. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
   a) An existing public utility easement (PUE) lies within the proposed Westgate Drive right-of-way. The existing PUE shall be abandoned and an equal replacement PUE conforming to City of Lodi requirements shall be provided immediately adjacent to and west of the west right-of-way line of Westgate Drive. Acquisition of the replacement PUE from adjacent parcels to the west is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map. In the event the developer is unable to acquire the replacement PUE from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required PUE dedications within the boundaries of the map.
   b) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.
   c) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
   d) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.

3. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.

4. Submit final map per City requirements including the following:
   a) Preliminary title report.
   b) Standard note regarding requirements to be met at subsequent date.

5. Payment of the following:
   a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.

The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:

6. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
   a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide a detailed ~~utility~~ *drainage* master plan~~s~~, including engineering calculations, for the entire area as well as all phases of the proposed project. City staff will assist in this process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.
   b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
   c) Grading, drainage and erosion control plan.
   d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
   e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
   f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
   g) Undergrounding of existing overhead utilities, excluding transmission lines.
   h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.
   i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway ~~in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.~~ *to widen the driveway to the south as shown on the site plan and construct a driveway return comparable to the existing driveway return.*
   j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
   k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

   A complete plan check submittal package including all the items listed above plus engineering plan check fees is required to initiate the Public Works Department plan review process for the engineered improvement plans.

7. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road

wastewater line is not available, master plan wastewater facilities shall be constructed to serve the project.

8. Installation of all public utilities and street improvements in conformance with City of Lodi master plans and design standards and specifications, including, but not limited to, the following:
   a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems. All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require Caltrans approval. Additional right-of-way acquisition outside the limits of the map may be required and shall be the responsibility of the developer.
   b) The extension/installation of all public utilities, including, but not limited to, the extension of master plan water, wastewater, storm drainage and reclaimed water mains to the south end of Westgate Drive and the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
   c) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
   d) Storm drainage design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP. If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.
   e) The lane configuration for Westgate Drive shall be consistent with the West Side Facility Master Plan. The street improvements will include a landscaped median and parkways. Improvements on Westgate Drive shall extend to and include the installation of the westerly curb and gutter. Acquisition of street, public utility and construction easements from the adjoining property may be necessary to allow this construction and shall be the responsibility of the developer. Street improvements for Westgate Drive shall be constructed from the signalized intersection on Kettleman Lane to the south boundary of the parcel map.
   f) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns. Acquisition of additional right-of-way and construction easements from the adjacent property to the south may be necessary to accomplish this work and shall be the responsibility of the developer.

   All public improvements to be installed under the terms of an improvement agreement to be approved by the City Council prior to development of the first parcel.

9. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City Council. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. If a temporary outlet from the drainage basin to the public storm drain system in Lower Sacramento Road is desired, developer's engineer shall contact the Public Works Department to coordinate this work with the City's Lower Sacramento Road Widening Project.

10. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will only allow landscape and irrigation improvements within their right-of-way if the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways. The City will accept maintenance responsibilities for all landscape and irrigation improvements in the median.

11. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

    Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40.

12. Parcels 1 through 12 are zoned C-S to allow development of a commercial shopping center. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
    a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
    b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
    c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
    d) Temporary storm drainage detention basin to serve the project.

13. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.

14. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.

15. Payment of the following:
    a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
    b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of payment and as provided by Resolution 2004-238 adopted by the City Council on November 3, 2004.
    c) Wastewater capacity fee at building permit issuance.
    d) Reimbursement fees per existing agreements:
        i) Reimbursement Agreement RA-02-02. The reimbursement fee for 2004 is $32,307.78. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment.

ii) The Vintner's Square shopping center on the north side of Kettleman Lane is currently under construction. We anticipate that the developer of the Vintner's Square project will submit a request for reimbursement in conformance with LMC 16.40 Reimbursements for Construction covering public improvements in Kettleman Lane and Westgate Drive constructed with that development which benefit the Lodi Shopping Center project when the Vintner's Square improvements are complete. Upon submittal, the reimbursement agreement will be prepared by City staff and presented to the City Council for approval. Any reimbursement fees approved by the City Council that affect the Lodi Shopping Center site will have to be paid in conjunction with the development of the first parcel.

e) Reimbursement to the City for the installation and/or design costs for the following improvements to be included in City's Lower Sacramento Road project:
   i) Installation of 10-inch water main and storm drain lines, including appurtenant facilities, in Lower Sacramento Road in conformance with LMC §16.40 Reimbursements for Construction.
   ii) Water, wastewater and storm drain stubs to serve the shopping center project.
   ~~iii) Street improvements, including but not limited to, curb, gutter, sidewalk, street pavement, traffic control or other regulatory/street signs and street lights, within 34 feet of the west Lower Sacramento Road right-of way, except in those locations where auxiliary lanes are being constructed to accommodate the shopping center. In those areas, the width of the auxiliary lane improvements shall not be a part of the 34 feet.~~
   iv) Any other costs associated with changes/additions necessary to accommodate the Lodi Shopping Center project, including, but not limited to, any utility alignment changes for public utilities to be extended through the site and the proposed dual northbound left turn lanes and conduit crossings for the traffic signal improvements at the main shopping center driveway.

f) The project shall contribute its fair share cost to the installation of a permanent traffic signal at Lower Sacramento Road and Harney Lane. Until the intersection improvements are made and traffic signals are installed, the project applicant shall contribute its fair share cost for the installation of a temporary traffic signal with left-turn pockets on all four approaches to the Lower Sacramento Road/ Harney Lane intersection.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

16. Obtain the following permits:
   a) San Joaquin County well/septic abandonment permit.
   b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

17. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:
   a) Master plan storm drain lines.
   b) Master plan water mains.
   c) Master plan reclaimed water mains.
   d) Industrial waste line.

Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City. *Using other wastewater funds, the City will participate in the construction cost for the industrial waste line (100%) and domestic wastewater line (oversizing costs).*

The following comments are provided as a matter of information. The items listed are not requirements of the Public Works Department, but indicate conditions normally imposed by other City departments or agencies which affect and/or need to be coordinated with the design and installation of Public Works requirements:

1. On-site fire protection as required by the Fire Department.
2. Landscaping and irrigation system as required by the Community Development Department.
3. Applicable agreements and/or deed restrictions for access, use and maintenance of shared, private facilities to Community Development Department approval.

Richard C. Prima, Jr.
Public Works Director

RCP/SAW
cc: Senior Civil Engineer - Development Services
Senior Traffic Engineer
Senior Engineering Technician
Browman Development Corporation
Doucet & Associates, Inc.
Phillippi Engineering

MEMORANDUM, City of Lodi, Public Works Department

To: Rad Bartlam, Community Development Director

From: Richard Prima, Public Works Director

Date: November 30, 2004

Subject: Recommended Vesting Tentative Parcel Map and Use Permit Conditions for 2640 West Kettleman Lane and 1265 South Lower Sacramento Road File #03-P-001 and U-02-12

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   i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway ~~in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.~~ *to widen the driveway to the south as shown on the site plan and construct a driveway return comparable to the existing driveway return.*
   j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
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   A complete plan check submittal package including all the items listed above plus engineering plan check fees is required to initiate the Public Works Department plan review process for the engineered improvement plans.

7. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road

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   c) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
   d) Storm drainage design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP. If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.
   e) The lane configuration for Westgate Drive shall be consistent with the West Side Facility Master Plan. The street improvements will include a landscaped median and parkways. Improvements on Westgate Drive shall extend to and include the installation of the westerly curb and gutter. Acquisition of street, public utility and construction easements from the adjoining property may be necessary to allow this construction and shall be the responsibility of the developer. Street improvements for Westgate Drive shall be constructed from the signalized intersection on Kettleman Lane to the south boundary of the parcel map.
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   All public improvements to be installed under the terms of an improvement agreement to be approved by the City Council prior to development of the first parcel.

9. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City Council. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. If a temporary outlet from the drainage basin to the public storm drain system in Lower Sacramento Road is desired, developer's engineer shall contact the Public Works Department to coordinate this work with the City's Lower Sacramento Road Widening Project.

10. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will only allow landscape and irrigation improvements within their right-of-way if the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways. The City will accept maintenance responsibilities for all landscape and irrigation improvements in the median.

11. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

    Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40.

12. Parcels 1 through 12 are zoned C-S to allow development of a commercial shopping center. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
    a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
    b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
    c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
    d) Temporary storm drainage detention basin to serve the project.

13. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.

14. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.

15. Payment of the following:
    a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
    b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of payment and as provided by Resolution 2004-238 adopted by the City Council on November 3, 2004.
    c) Wastewater capacity fee at building permit issuance.
    d) Reimbursement fees per existing agreements:
        i) Reimbursement Agreement RA-02-02. The reimbursement fee for 2004 is $32,307.78. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment.

ii) The Vintner's Square shopping center on the north side of Kettleman Lane is currently under construction. We anticipate that the developer of the Vintner's Square project will submit a request for reimbursement in conformance with LMC 16.40 Reimbursements for Construction covering public improvements in Kettleman Lane and Westgate Drive constructed with that development which benefit the Lodi Shopping Center project when the Vintner's Square improvements are complete. Upon submittal, the reimbursement agreement will be prepared by City staff and presented to the City Council for approval. Any reimbursement fees approved by the City Council that affect the Lodi Shopping Center site will have to be paid in conjunction with the development of the first parcel.

e) Reimbursement to the City for the installation and/or design costs for the following improvements to be included in City's Lower Sacramento Road project:

i) Installation of 10-inch water main and storm drain lines, including appurtenant facilities, in Lower Sacramento Road in conformance with LMC §16.40 Reimbursements for Construction.

ii) Water, wastewater and storm drain stubs to serve the shopping center project.

~~iii) Street improvements, including but not limited to, curb, gutter, sidewalk, street pavement, traffic control or other regulatory/street signs and street lights, within 34 feet of the west Lower Sacramento Road right-of-way, except in those locations where auxiliary lanes are being constructed to accommodate the shopping center. In those areas, the width of the auxiliary lane improvements shall not be a part of the 34 feet.~~

iv) Any other costs associated with changes/additions necessary to accommodate the Lodi Shopping Center project, including, but not limited to, any utility alignment changes for public utilities to be extended through the site and the proposed dual northbound left turn lanes and conduit crossings for the traffic signal improvements at the main shopping center driveway.

f) The project shall contribute its fair share cost to the installation of a permanent traffic signal at Lower Sacramento Road and Harney Lane. Until the intersection improvements are made and traffic signals are installed, the project applicant shall contribute its fair share cost for the installation of a temporary traffic signal with left-turn pockets on all four approaches to the Lower Sacramento Road/ Harney Lane intersection.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

16. Obtain the following permits:
    a) San Joaquin County well/septic abandonment permit.
    b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

17. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:
    a) Master plan storm drain lines.
    b) Master plan water mains.
    c) Master plan reclaimed water mains.
    d) Industrial waste line.

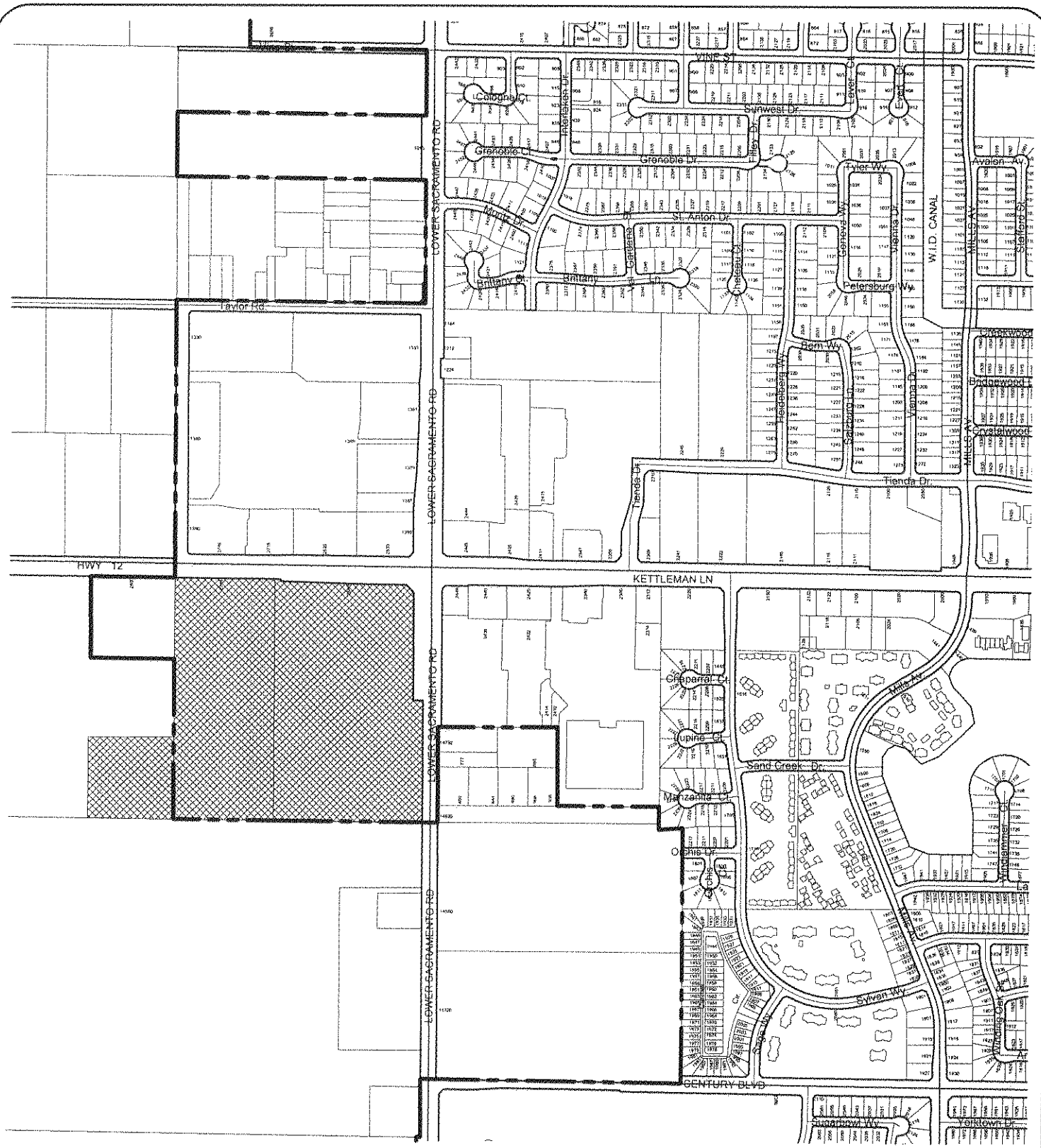
Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City. *Using other wastewater funds, the City will participate in the construction cost for the industrial waste line (100%) and domestic wastewater line (oversizing costs).*

The following comments are provided as a matter of information. The items listed are not requirements of the Public Works Department, but indicate conditions normally imposed by other City departments or agencies which affect and/or need to be coordinated with the design and installation of Public Works requirements:

1. On-site fire protection as required by the Fire Department.
2. Landscaping and irrigation system as required by the Community Development Department.
3. Applicable agreements and/or deed restrictions for access, use and maintenance of shared, private facilities to Community Development Department approval.

Richard C. Prima, Jr.
Public Works Director

RCP/SAW
cc: Senior Civil Engineer - Development Services
Senior Traffic Engineer
Senior Engineering Technician
Browman Development Corporation
Doucet & Associates, Inc.
Phillippi Engineering



VICINITY MAP

Browman Development Co.
Environmental Impact Report, EIR-03-01;
Use Permit, U-02-012;
Tentative Parcel Map, 03-P-001
Shopping Center
2640 W. Kettleman Ln.

N

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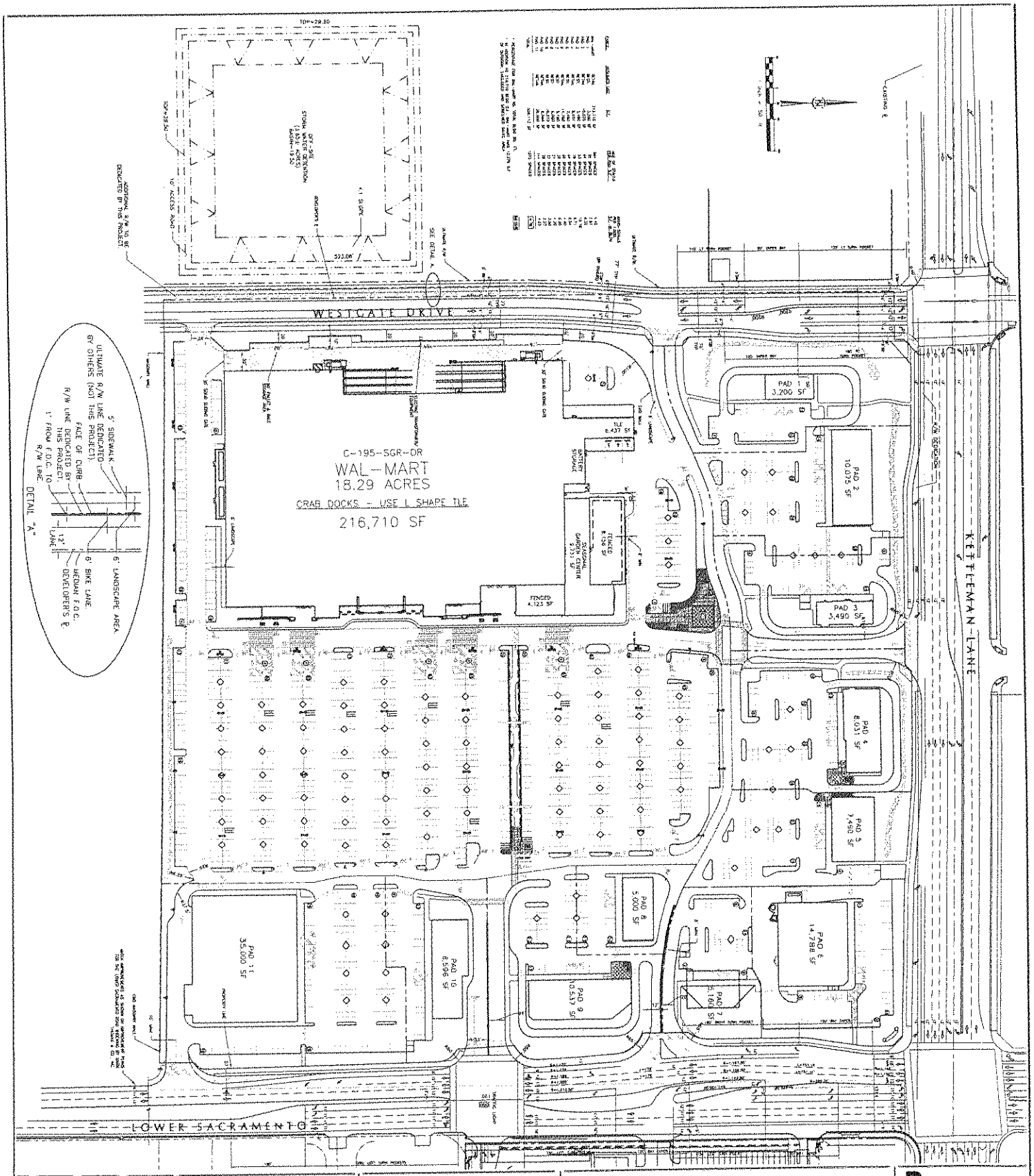
WESTGATE DRIVE
KETTLEMAN LANE
LOWER SACRAMENTO
C-195-SGR-DR
WAL-MART
18.29 ACRES
CRAB DOCKS - USE L SHAPE TLE
216,710 SF
PAD 1 & 3,200 SF
PAD 2 10,075 SF
PAD 3 3,490 SF
PAD 4 6,031 SF
PAD 5 7,490 SF
PAD 6 14,788 SF
PAD 7 1,767 SF
PAD 8 5,000 SF
PAD 9 10,517 SF
PAD 10 8,596 SF
PAD 11 35,000 SF
FENCED 4,123 SF
FENCED 8,104 SF
SEASONAL GARDEN CENTER 9,231 SF
TLE 6,437 SF
DETAIL "A"
ULTIMATE R/W LINE DEDICATED BY OTHERS (NOT THIS PROJECT)
5' SIDEWALK DEDICATED BY THIS PROJECT
FACE OF CURB
R/W LINE DEDICATED BY THIS PROJECT
1' FROM F.O.C. TO R/W LINE
6' LANDSCAPE AREA
6' BIKE LANE
MEDIAN F.O.C.
DEVELOPER'S ℄
12' LANE
ADDITIONAL R/W TO BE DEDICATED BY THIS PROJECT
10' ACCESS ROAD
STORM WATER DETENTION (1.83 AC ACRES) BASIN-1.83 AC
EXISTING ℄
SEE DETAIL "A"
ULTIMATE R/W
LOT LINE
PROPERTY LINE
EXISTING R/W
EXISTING CURB
EXISTING SIDEWALK
EXISTING LANDSCAPE
EXISTING TREE
EXISTING LIGHT
EXISTING FIRE HYDRANT
EXISTING WATER VALVE
EXISTING SANITARY SEWER MANHOLE
EXISTING STORM DRAIN MANHOLE
EXISTING SIGN
EXISTING ELECTRIC MANHOLE
EXISTING TELEPHONE MANHOLE
EXISTING GAS MANHOLE
EXISTING CATCH BASIN
EXISTING ELECTRIC LIGHT
EXISTING TELEPHONE LIGHT
EXISTING GAS LIGHT
EXISTING TRAFFIC LIGHT
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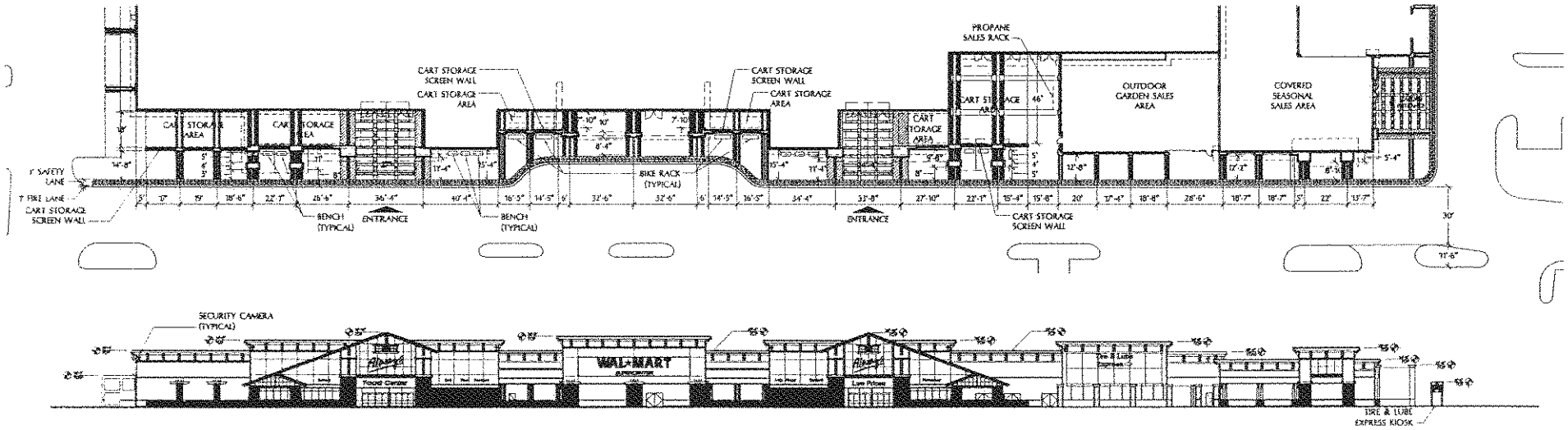
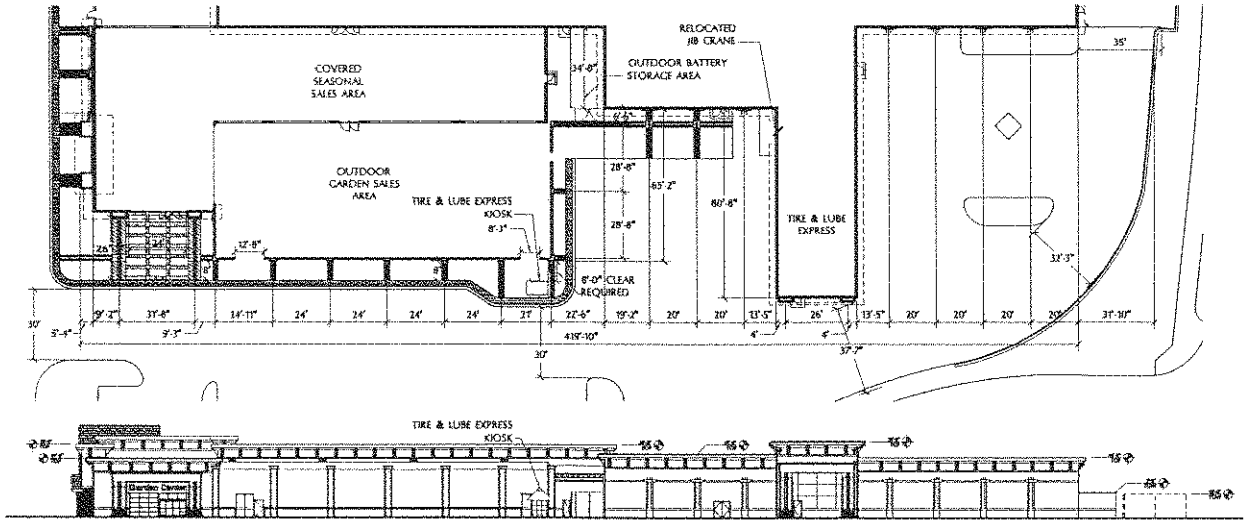


EAST ELEVATION



NORTH ELEVATION

Elevations and Hardscape Plan

Sheet 1 of 3

		REVISIONS	BY
Project No:	WMT NCA 02-0206		
Scale:	1" = 20'-0"		
Issue Date:	11/29/04		
Prepared By:	ADV		
Checked By:	PEB		
DDC:	WAP		

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WAL★MART

Lodi, California

Store No. 1789-03

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consultants, inc.
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west covina, ca 91790
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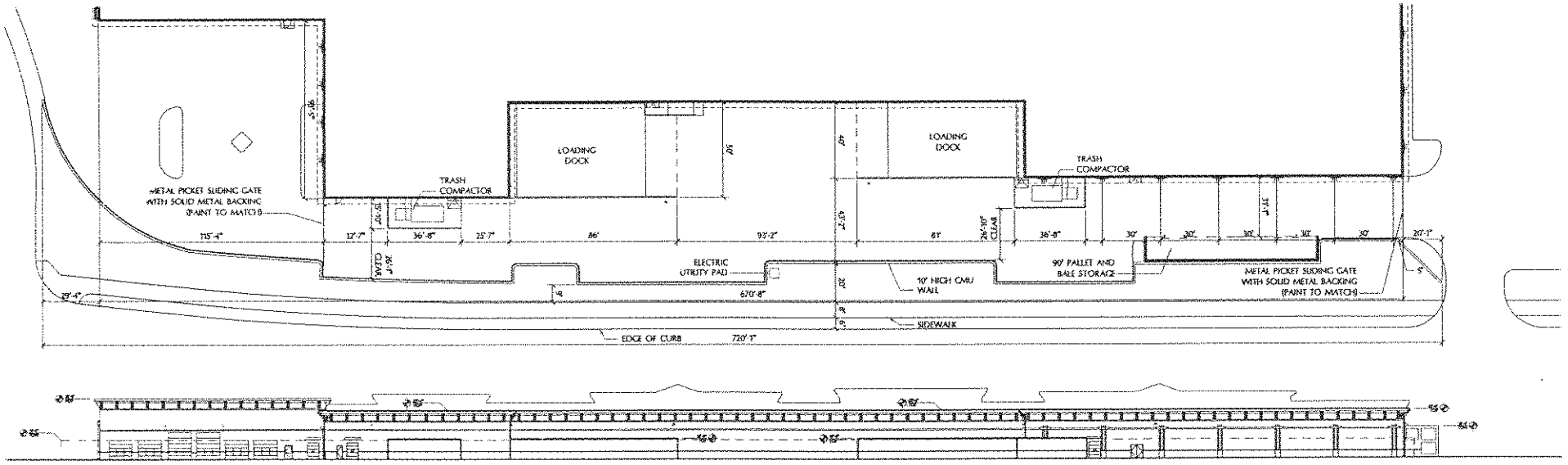
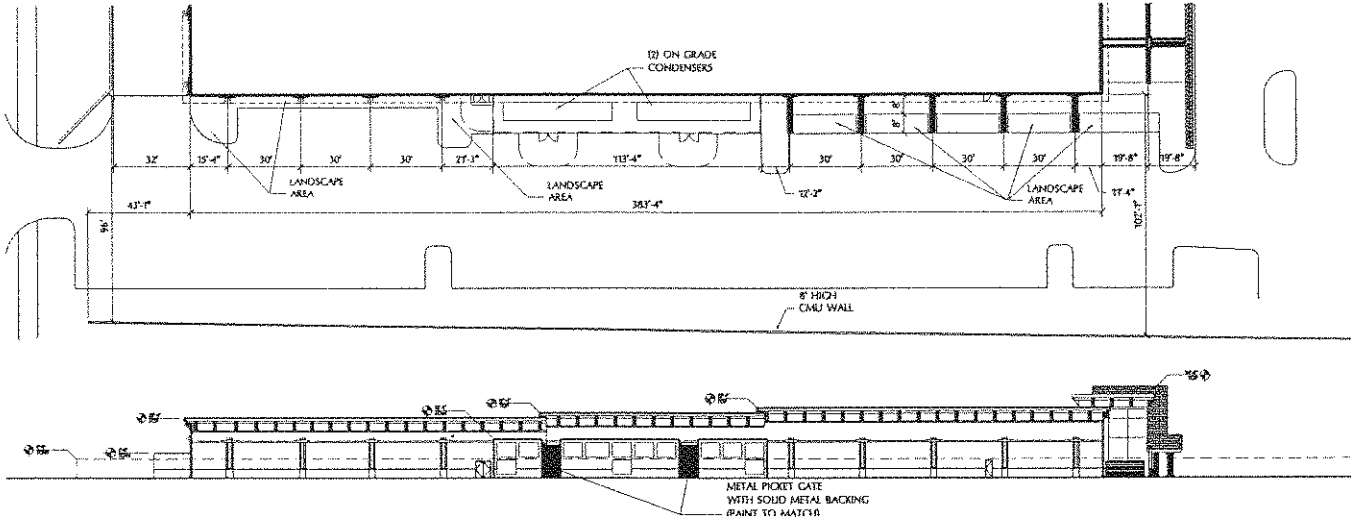
f . 626.917.5808
w . www.wpddc.com



WEST ELEVATION



SOUTH ELEVATION

Elevations and Hardscape Plan

Project No:	WMT NCA 02-0208	REVISIONS	BY
Scale:	1" = 20'-0"		
Issue Date:	12/29/04		
Prepared By:	ACV		
Checked By:	PLB		
SDC:	WAP		

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w . www.wpddc.com

METAL PICKET SLIDING GATE WITH SOLID METAL BACKING (PAINT TO MATCH)

90" PALLET AND BALE STORAGE

TRASH COMPACTOR WITH 9' HIGH SCREEN WALL

10' HIGH SCREEN WALL

ELECTRIC UTILITY PAD

10' HIGH CMU WALL

10' HIGH SCREEN WALL

TRASH COMPACTOR WITH 9' HIGH SCREEN WALL

METAL PICKET SLIDING GATE WITH SOLID METAL BACKING (PAINT TO MATCH)

RECEIVING AND STOCK

LOADING DOCK

LOADING DOCK

RECEIVING AND STOCK

8' HIGH CMU WALL

TIRE & LUBE EXPRESS

ON GRADE CONDENSER AREA WITH 18' HIGH SCREEN WALL

OUTDOOR BATTERY STORAGE AREA

TIRE & LUBE EXPRESS KIOSK

GROCERY AREA

SALES AREA

OUTSIDE BAG GOODS

PORTRAIT STUDIO

PHARMACY

DINING AREA

TENENT SPACE

HAIR SALON

SALES

TENENT SPACE

VISION CENTER

OUTSIDE PLANTS GOODS

SEASONAL INDOOR SALES

STORAGE

STORAGE

*NOTE:
FOR HARDSCAPE DIMENSIONS REFERENCE SHEET 1 AND 2

Department Plan

Sheet 3 of 3

Project No:	WMS NCV 02-0206
Scale:	1" = 150'-0"
Issue Date:	10/29/04
Prepared By:	NCV
Checked By:	PLB
SDC:	WAF

REVISIONS	BY

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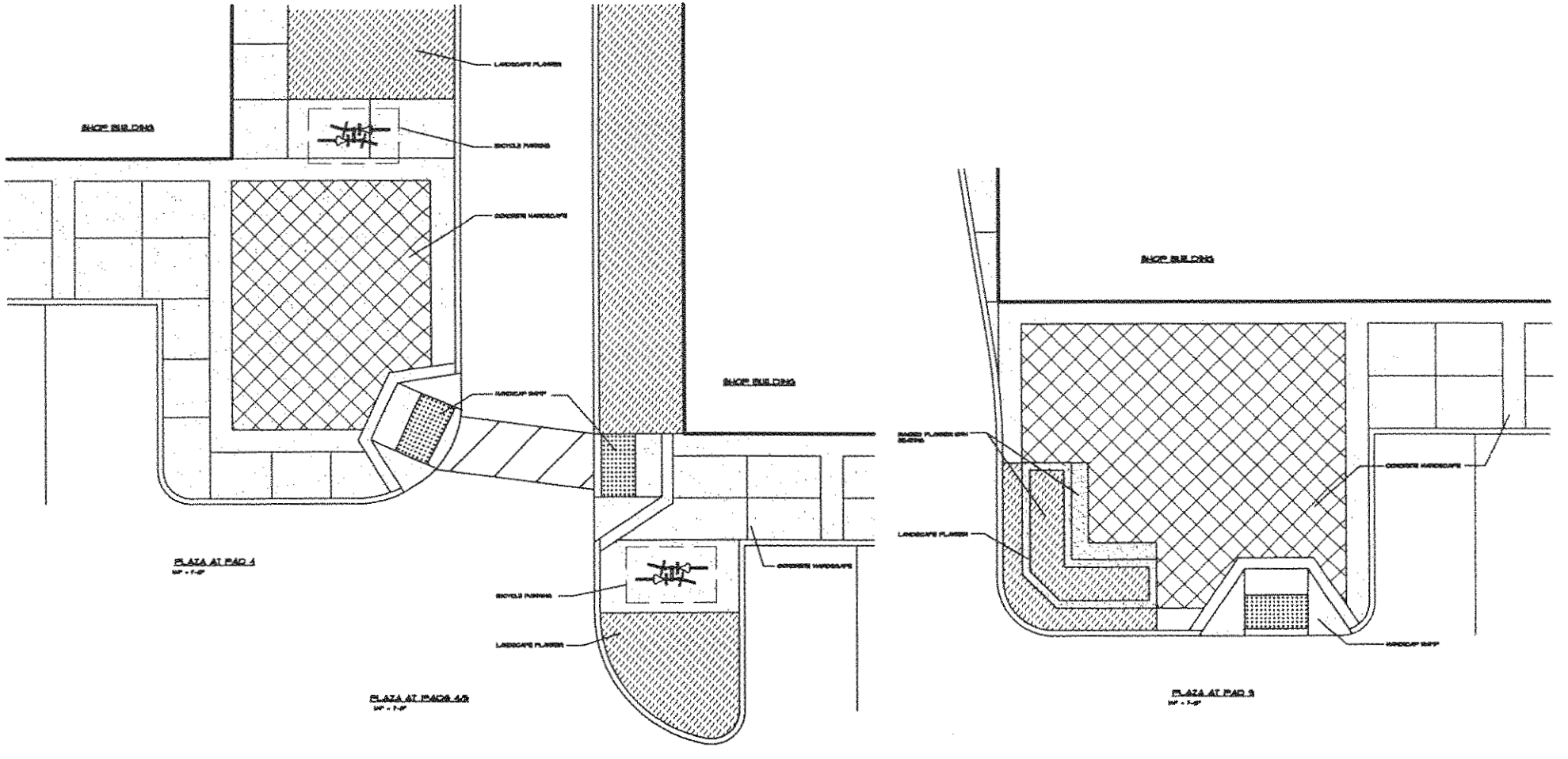


Project: Retail Center, Site Features
Lower Sacramento Road and Kettleman Road
Lodi, California

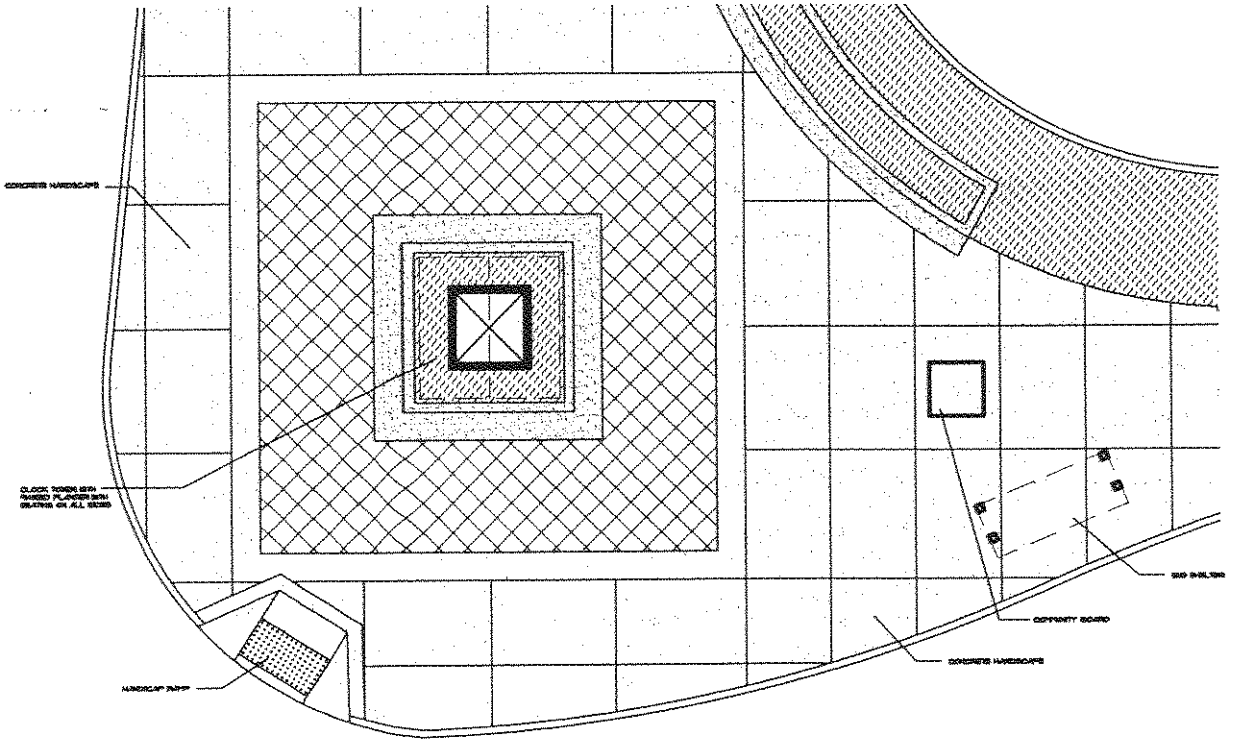
Developer: Browman Development Co., Inc.
100 Swan Way, Suite 206
Oakland, CA 94621-1459
510-430-9701

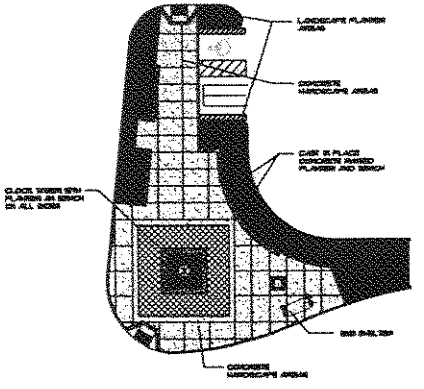
Jerold L. Dougal
ARCHITECT
1309 Retreat Way
Roseville, CA 95747
916.783-8540, Fax 916.784-3647

November 11, 2004

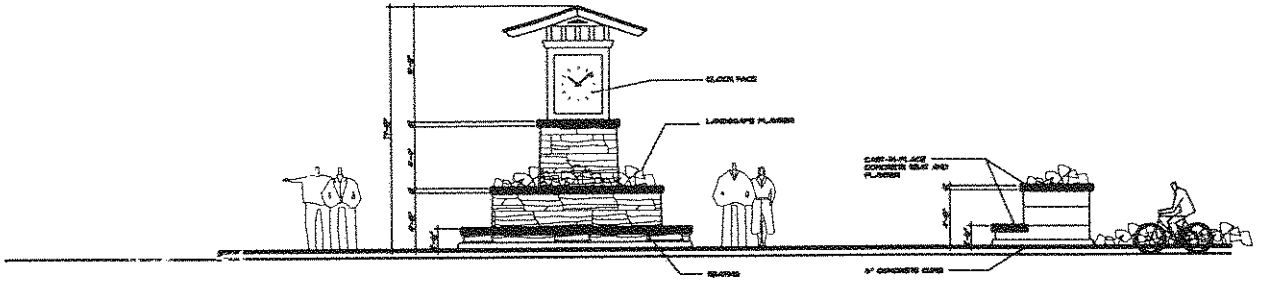
Hardscape Plans

A





OVERALL PLAZA PLAN



PLAZA ELEVATION

Project: Retail Center, Site Features

Lower Sacramento Road and Kettleman Road
Lodi, California

Developer: Browman Development Co., Inc.

100 Swan Way, Suite 206
Oakland, CA 94621-1459
510-430-9701

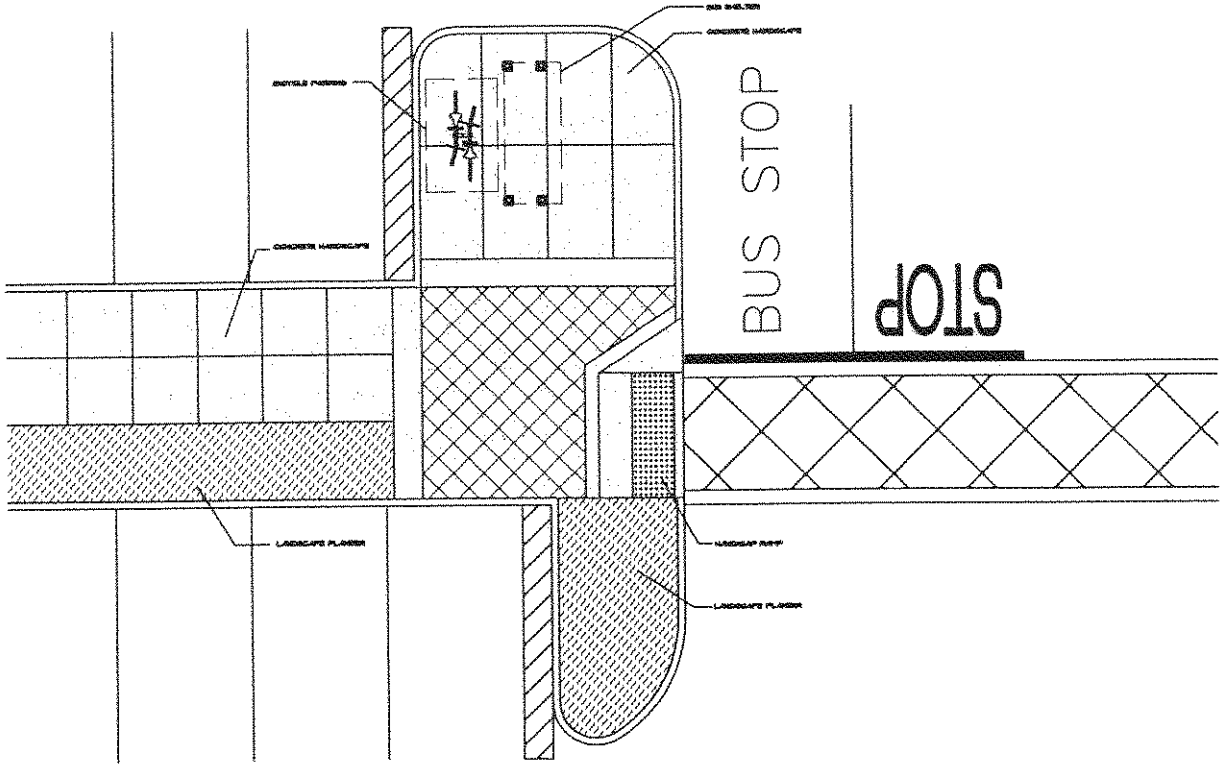
Jerold L. Dougal
ARCHITECT

1309 Retreat Way
Roseville, CA 95747
916.783-8540, Fax 916.784-3647

November 11, 2004

Hardscape Plan/Elevations

B



PLAZA AT SP141 SER BUS STOP

Project: Retail Center, Site Features
Lower Sacramento Road and Kettleman Road
Lodi, California

Developer: Browman Development Co., Inc.
100 Swan Way, Suite 206
Oakland, CA 94621-1459
510-430-9701

Jerold L. Dougal
ARCHITECT
1309 Retreat Way
Roseville, CA 95747
916,783-8540, Fax 916,784-3647

August 26, 2004

Hardscape Plan

C

RESOLUTION NO. P.C. ___

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT EIR-03-01 RELATING TO THE LODI SHOPPING CENTER; STATE CLEARINGHOUSE NO. 2003042113

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel numbers 058-030-08 and 058-030-02, and a portion of 058-030-09; and

WHEREAS, the Community Development Director made a determination that the project may have impact on the environment and ordered the preparation of an Environmental Impact Report; and

WHEREAS, the Notice of Preparation (NOP) of the Draft EIR was prepared and distributed to reviewing agencies on April 14, 2003; and

WHEREAS, the Draft Environmental Impact Report (DEIR) was released on August 5, 2004, for circulation; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on September 9, 2004. Public comments on the DEIR were taken at this hearing; and

WHEREAS, a Final EIR (FEIR) responding to all public comments on the DEIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on November 22, 2004; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Planning Commission of the City of Lodi has reviewed and considered the Final Environmental Impact Report prepared for the project; and

WHEREAS, the California Environmental Quality Act (CEQA) requires that, in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant effects, the decision-making agency make certain findings regarding those effects;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct.

2. THAT THE PLANNING COMMISSION hereby finds that full and fair public hearings have been held on the Environmental Impact Report and the Planning Commission having considered all comments received thereon, said Environmental Impact Report is hereby determined to be adequate and complete; and said Environmental Impact Report is hereby incorporated herein by reference.

3. THAT THE PLANNING COMMISSION hereby determines, in connection with the recommended approval of the proposed Use Permit application for the Lodi Shopping Center, that the Final Environmental Impact Report (FEIR) for those actions has been prepared in compliance with the California Environmental Quality Act (CEQA) and the state and local environmental guidelines and regulations, that it has independently reviewed and analyzed the information contained therein, including the written comments received during the EIR review period and the oral comments received at the public hearings, and that the Final EIR represents the independent judgement of the City of Lodi as Lead Agency for the project.

4. THAT THE PLANNING COMMISSION does hereby find and recognize that the Final EIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft EIR and also incorporates text changes to the EIR based on information obtained from the City since the Draft EIR was issued. The Planning Commission does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of the California Environmental Quality Act because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the Draft EIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the Draft EIR have been proposed that would lessen the significant environmental impacts of the project. Accordingly, the Planning Commission hereby finds and determines that recirculation of the Final EIR for further public review and comment is not warranted; and

5. THAT THE PLANNING COMMISSION does hereby make the following findings with respect to the significant effects on the environment resulting from the project, as identified in the hereinbefore mentioned Final EIR, with the stipulation that (i) all information in these findings is intended as a summary of the full administrative record supporting the Final EIR, which full administrative record is available for review through the Director of Community Development at his office in City Hall at 221 West Pine Street, Lodi, 95241, and (ii) any mitigation measures and/or alternatives that were suggested by the commentators on the Draft EIR and were not adopted as part of the Final EIR are hereby expressly rejected for the reasons stated in the responses to comments set forth in the Final EIR and elsewhere on the record.

I. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. **Impact**: The project would convert approximately 40 acres of prime agricultural land to urban uses. As stated in the City's General Plan, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)

2. **Mitigation**: No feasible mitigation is available.

3. **Finding**: There are no feasible mitigation measures available that would reduce or avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   As discussed in the Draft EIR and Final EIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land resulting from the project to a less-than-significant level. The project's significant and unavoidable impacts to agricultural resources could be avoided by denying the project or requiring a reduced project, which would prevent the conversion of all or a portion of the site to urban uses. However, this action would not meet the objective of the applicant or the City of Lodi of developing the site for a commercial retail shopping plaza in conformance with the General Plan and zoning designations applicable to the site. In addition, denial of the project would not constitute a "feasible mitigation," and therefore would not be required under Section 15126.4 of the state CEQA Guidelines.

   Although project-specific impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

   The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

   The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural

uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land not on the project site, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, 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. 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.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact**: Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)

2. **Mitigation**: Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact**: There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)

2. **Mitigation**: If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and these buildings will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. Implementation of the recommendations will be ensured by the Public Works Department and Building Division through their routine inspection and permitting functions. These facts support the City's findings.

C. STORMWATER BASIN BANK INSTABILITY

1. **Impact**: There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)

2. **Mitigation**: Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed along with the design-level improvement plans for the stormwater basin, and the Public Works Director will ensure that the basin is be constructed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's findings.

D. SOIL CONSOLIDATION AND COLLAPSE

1. **Impact**: Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)

2. **Mitigation**: The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

E. EXPANSIVE SOILS

1. **Impact**: There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)

2. **Mitigation**: The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

F. SOIL CORROSIVITY

1. **Impact**: The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)

2. **Mitigation**: The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the City's approval specific buried utilities and foundation systems for buildings, and these features will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

1. **Impact**: During grading and construction, erosion of exposed soils and pollutants from equipment may result in water quality impacts to downstream water bodies. (Significant Impact)

2. **Mitigation**: A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. Typical measures required by the City of Lodi to be implemented during the grading and construction phase include the following:

   - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
   - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
   - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
   - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
   - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
   - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
   - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.
   - Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.
   - Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.
   - Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.
   - Collect construction waste daily and deposit in covered dumpsters.
   - After construction is completed, clean all drainage culverts of accumulated sediment and debris.

The project also is required to comply with NPDES permit requirements, file a Notice of Intent with the Regional Water Quality Control Board and prepare a Storm Water Pollution Prevention Plan.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The above mitigation measures are derived from Best Management Practices (BMPs) recommended by the Regional Water Quality Control Board, and are to be included in the Storm Water Pollution Prevention Plan (SWPPP) to be prepared and implemented by the project proponent in conformance with the state's General Permit for Discharges of Storm Water Associated with Construction Activity. In addition, the project grading plans will conform to the drainage and erosion control standards of the City of Lodi, and will be incorporated into the project Improvement Plans to be approved by the City. Implementation of the erosion control measures will be monitored and enforced by City grading inspectors. These facts support the City's finding.

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact**: The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)

2. **Mitigation**: The project shall include stormwater controls to reduce nonpoint source pollutant loads.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   In January 2003, the City adopted a Stormwater Management Plan (SMP) to implement the provisions of its Phase II NPDES stormwater permit issued by the State Water Resources Control Board. The SMP contains a comprehensive program for the reduction of surface water pollution. The project includes feasible structural BMPs (Best Management Practices) such as vegetated swales and a stormwater basin. Much of the stormwater runoff generated in the northern and southern portions of the site will be conveyed to vegetated swales or bioswales which will provide partial filtering of pollutants and sediments. This partially treated runoff, along with all other parking lot and roof runoff from the project will be conveyed to the 3.65-acre stormwater basin planned adjacent to the southwest corner of the site. The basin would serve as a settling pond where suspended sediments and urban pollutants would settle out prior to discharge of the collected stormwater into the City's storm drain system, thereby reducing potential surface water quality impacts to drainages and water bodies. The pump intake for the

basin will be located two feet above the bottom to provide for accumulation of sediments which would be cleaned out on a regular basis.

Non-structural BMPs typically required by the City include the implementation of regular maintenance activities (e.g., damp sweeping of paved areas; inspection and cleaning of storm drain inlets; litter control) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Stormwater catch basins will be required to be stenciled to discourage illegal dumping. In the landscaped areas, chemicals and irrigation water will be required to be applied at rates specified by the project landscape architect to minimize potential for contaminated runoff. Additional BMPs, as identified from a set of model practices developed by the state, may be required as appropriate at the time of Improvement Plan approval. These facts support the City's finding.

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact**: The project would result in the loss of approximately 40 acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)

2. **Mitigation**: In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (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.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently $862 per acre (2004). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently $1,724 per acre (2004). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. These facts support the City's finding.

B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact**: The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that may establish nests in trees along the project boundaries prior to construction. (Significant Impact)

2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:

   - If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
   - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. As specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species

are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

1. **Impact**: It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)

2. **Mitigation**: Implementation of the following measures will mitigate any potential impacts to cultural resources:

   - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
   - In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
   - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the detailed site reconnaissance by Basin Research Associates indicated that there is no evidence to suggest that cultural resources may be buried on site, the mitigation measure is a standard contingency that is applied in all but the least archaeologically sensitive areas. In the unlikely event artifacts are encountered during grading or excavation, the Public Works Director will enforce any required work stoppages, and the Community Development Director will contact the project archaeologist and will ensure

that the archaeologist's recommendations are implemented. These facts support the City's finding.

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact**: The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road / Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)

2. **Mitigation**: The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates calculated that with the above mitigation in place, the level of service at the affected intersection would rise to Level of Service C and thus meet the service standards of the City of Lodi. These facts support the City's finding.

B. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT SIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD FRONTAGE

1. **Impact**: During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95th Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)

2. **Mitigation**: Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

C. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT NORTHERN UNSIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD

1. **Impact**: The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)

2. **Mitigation**: The following mitigations shall be implemented:
   a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
   b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
   c. Extend the southbound left-turn pocket by 100 feet;
   d. Extend the taper from 60 feet to a City standard 120-foot taper;
   e. Eliminate the northbound left-turn lane into the northern driveway.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact**: On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)

2. **Mitigation**: The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the potential for traffic conflicts arising from inadequate queuing capacity on Westgate Drive would be eliminated. These facts support the City's finding.

E. INADEQUATE LEFT-TURN LANE TAPER ON LOWER SACRAMENTO ROAD

1. **Impact**: On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper is proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)

2. **Mitigation**: The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

F. PUBLIC TRANSIT SERVICE

1. **Impact**: Development of the project would create a demand for increased public transit service above that which is currently provided or planned. (Significant Impact)

2. **Mitigation**: The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the additional demand for transit service generated by the project would not exceed the capacity of the transit system. These facts support the City's finding.

G. PUBLIC TRANSIT STOP

1. **Impact**: Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)

2. **Mitigation**: Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the transit service to the site would be adequate to meet ridership demand and would be provided in a manner which is convenient to transit riders, and which avoids traffic and circulation conflicts or congestion. These facts support the City's finding.

H. PEDESTRIAN FACILITIES

1. **Impact**: Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)

2. **Mitigation**: Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the pedestrian facilities provided in the project would be adequate to meet demand and provide for safe pedestrian movement throughout the project. These facts support the City's finding.

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

1. **Impact**: Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)

2. **Mitigation**: The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

   Rooftop Mechanical Equipment. To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (L_{eq}-hour) for any residential yards.

   Parking Lot Cleaning. To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   The City of Lodi Building Official will require demonstration of compliance with noise specifications for rooftop mechanical equipment in conjunction with each individual building permit required for the project. The enforcement of the City Noise Regulations with respect to leaf blower noise will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact**: Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)

2. **Mitigation**: The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:

   1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.

   2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   The City of Lodi Public Works Director will require demonstration of compliance with noise specifications for the basin pump in conjunction with the Improvement Plans for the project. The enforcement of the City Noise Regulations with respect to the hours of pump operation will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

C. CONSTRUCTION NOISE

1. **Impact**: Noise levels would be temporarily elevated during grading and construction. (Significant Impact)

2. **Mitigation**: Short-term construction noise impacts shall be reduced through implementation of the following measures:

   Construction Scheduling. The applicant/contractor shall limit noise-generating construction activities to daytime, weekday, (non-holiday) hours of 7:00 a.m. to 6:00 p.m.

   Construction Equipment Mufflers and Maintenance. The applicant/contractor shall properly muffle and maintain all construction equipment powered by internal combustion engines.

Idling Prohibitions. The applicant/contractor shall prohibit unnecessary idling of internal combustion engines.

Equipment Location and Shielding. The applicant/contractor shall locate all stationary noise-generating construction equipment such as air compressors as far as practicable from existing nearby residences. Acoustically shield such equipment as required to achieve continuous noise levels of 55 dBA or lower at the property line.

Quiet Equipment Selection. The applicant/contractor shall select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

Notification. The applicant/contractor shall notify neighbors located adjacent to, and across the major roadways from, the project site of the construction schedule in writing.

Noise Disturbance Coordinator. The applicant/contractor shall designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would notify the City, determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and would institute reasonable measures to correct the problem. Applicant/contractor shall conspicuously post a telephone number for the disturbance coordinator at the construction site, and include it in the notice sent to neighboring property owners regarding construction schedule. All complaints and remedial actions shall be reported to the City of Lodi by the noise disturbance coordinator.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

1. **Impact**: Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)

2. **Mitigation**: Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM_{10} emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District).

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   Each phase of grading and construction will be required to implement the dust control measures specified in the San Joaquin Valley Air Pollution Control District's Regulation VIII, as well as additional practices itemized in the FEIR and as otherwise required by the City of Lodi. The dust control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. The Public Works Department will monitor and enforce the dust suppression requirements as part of their site inspection duties. Violations of the requirements of Regulation VIII are also subject to enforcement action by the Air District. Violations are indicated by the generation of visible dust clouds and/or generation of complaints. These facts support the City's finding.

B. REGIONAL AIR QUALITY

1. **Impact**: Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)

2. **Mitigation**: Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.

3. **Finding**: While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts to less-than-significant levels. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

C. RESTAURANT ODORS

1. **Impact**: The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)

2. **Mitigation**: All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

1. **Impact**: The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)

2. **Mitigation**: No feasible mitigation is available.

3. **Finding**: As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   As discussed in the Draft EIR and Final EIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

   The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

   The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land

Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, 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 as mitigation for agricultural conversions due to development projects. 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.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with the City's growth control measures prioritizing in-fill

development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

B. REGIONAL AIR QUALITY IMPACTS

1. **Impact**: Emissions from project-generated traffic, combined with the emissions of other foreseeable projects in the area, would result in air pollutant emissions affecting the entire air basin. (Significant Cumulative Impact)

2. **Mitigation**: For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.

3. **Finding**: While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would far exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts resulting from the proposed project to less-than-significant levels. Other foreseeable projects in the area may be more suitable for the implementation of TDM measures to reduce emissions on an individual project basis; however, the cumulative impact would not be reduced to a less-than-significant level. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project

will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

FINDINGS CONCERNING ALTERNATIVES

Under CEQA, an EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the 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. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the Final EIR are described below.

I. NO PROJECT ALTERNATIVE

A. **Description of the Alternative**: The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.

B. **Comparison to the Project**: The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the impact fees paid by the project which would help fund vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

II. REDUCED PROJECT SIZE ALTERNATIVE

A. **Description of the Alternative**: This alternative would consist of a substantially reduced project site of approximately 24 acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of 40 acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.

B. **Comparison to the Project**: The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the impact fees paid by the project to help fund vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

III. ALTERNATIVE PROJECT LOCATION

A. **Description of the Alternative**: An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton Road, just east of I-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.

B. **Comparison to the Project**: The impacts associated with development of the Flag City site would be somewhat greater than for the proposed project site. Although the impacts for many categories would be similar for both project locations, development of the Flag City site would result in negative effects in terms of land use policy, and the resulting potential for growth inducement, which would not occur with the proposed project site. Traffic impacts would be greater for the Flag City site, as would impacts to utilities and public services, although these impacts would be less than significant or could be fully mitigated. More importantly, the alternative project site would result in the same significant and unavoidable impacts to

agricultural resources and air quality as are associated with the proposed project. Therefore, the alternative site would not lessen or avoid the significant and unavoidable impacts of the project.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The alternative project site is not environmentally superior to the proposed project site. In addition, due to its location outside the City of Lodi, the alternative site would not provide the benefits associated with the proposed project including increased municipal revenues and impact fees for providing services, creation of employment opportunities for City residents, construction of vital municipal infrastructure improvements, and the opportunity to implement City goals and policies with respect to the commercial development of the project site (consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries), and the chance to provide a high quality development at the western gateway to the City.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

The CEQA Guidelines, at Section 15126.6(e)(2), require that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected by the applicant because it would not fulfill the project objective of a 30-acre minimum project size needed for project feasibility. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the proposed project site with commercial retail uses.

In conclusion, there are no feasible environmentally superior alternatives to the project (other than the No Project alternative) which would avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

MITIGATION MONITORING PROGRAM

Attached to this resolution and incorporated and adopted as part thereof, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091-15093, the Planning Commission of the City of Lodi hereby adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the project and the anticipated economic, social and other benefits of the project.

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts which are included in the record, the Planning Commission has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. These impacts cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

B. Overriding Considerations

The Planning Commission specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project.

The Planning Commission has considered the EIR, the public record of proceedings on the proposed project and other written materials presented to the City, as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Project Will Generate City Sales Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.

2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special

skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center.

3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.

4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.

5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's recently adopted Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.

The Planning Commission has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

6. The Final Environmental Impact Report for the Lodi Shopping Center project is hereby certified pursuant to the California Environmental Quality Act. All feasible mitigation measures for the project identified in the Environmental Impact Report and accompanying studies are hereby incorporated into this resolution.

Dated: December 8, 2004

I hereby certify that Resolution No. 04-____ was passed and adopted by the Planning Commission of the City of Lodi at their meeting held on December 8, 2004, by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST:_____

Secretary, Planning Commission

RESOLUTION NO. P.C. ___

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI, APPROVING USE PERMIT FILE NO. U-02-12, TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER AND TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER

WHEREAS, An application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 & portion of 058-030-09; and

WHEREAS, the application's are for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages as well as a Parcel map to create 12 parcels for the project.

WHEREAS, the Planning Commission of the City of Lodi has reviewed and considered the Final Environmental Impact Report prepared on the Lodi Shopping Center; and,

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the project is consistent with all elements of the General Plan. In particular, the following Goals and Policies:

A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."
B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."
C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."
D. Housing Element, Goal C, "To ensure the provision of adequate public facilities and services to support existing and future residential development".
E. Circulation Element, Goal G, "To encourage a reduction in regional vehicle miles traveled."
F. Circulation Element, Goal A, Policy 1, "The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility."
G. Noise Element, Goal A, "To ensure that City residents are protected from excessive noise."
H. Conservation Element, Goal C, Policy 1, "The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices."
I. Health and Safety Element, Goals A, B, C, and D, "To prevent loss of lives, injury and property damage due to flooding". "To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake". "To prevent loss of lives, injury, and property

damage due to urban fires". "To prevent crime and promote the personal security of Lodi residents."

J. Urban Design and Cultural resources, Goal C, "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments, and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards, and

WHEREAS, these findings as well as the findings made within Resolution No. P.C. ____certifying Final Environmental Impact Report EIR-03-01 are supported by substantial evidence in the record of this proceeding and before this body.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct.

2. Said Tentative Parcel Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.

3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.

4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.

   A. The approval of the Use Permit expires within 24 months from the date of this Resolution. The Final Parcel Map conforming to this conditionally approved Tentative Parcel Map shall be filed with the City Council in time so that the Council may approve said map before its expiration, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the final map, as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refilling of the Tentative Parcel Map and new review processing of the map.

   B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant shall sign a notarized affidavit stating that "I (we), ____, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the Planning Commission approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.

C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.

D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:

1. All buildings shall meet the required setbacks for the C-S zoning district.
2. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
3. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.
4. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
5. All drive-through facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
6. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited.
7. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
8. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.
9. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
10. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
11. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.

E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and

replaced within 30 days following written notice from the Community Development Director.

F. The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:

1. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
   a) Street right-of-way dedications on Westgate Drive shall be in conformance with the traffic study for the project and City of Lodi requirements and shall be consistent with the West Side Facility Master Plan. The north and south legs of Westgate Drive must be in alignment through the intersection at Kettleman Lane. Construction of full width street improvements to and including the west curb and gutter is required. Acquisition of additional right-of-way from adjacent parcels to the west is the responsibility of the developer and must be supplied prior to recordation of any final parcel map. In the event the developer is unable to acquire the additional right-of-way from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required street right-of-way dedications within the boundaries of the map.
   b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the project traffic study and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. The right-of-way width and lane geometry for Kettleman Lane need to be compatible with the improvement plans prepared by Mark Thomas & Company for the Vintner's Square Shopping Center on the north side of Kettleman Lane. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
   c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements. At the signalized intersection and the driveway immediately north, the right-of-way dedications and driveway design shall provide for 60-foot radius truck turning movements as set forth in the Caltrans Highway Design Manual.
   d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
   e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the

proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.

2. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
   a) An existing public utility easement (PUE) lies within the proposed Westgate Drive right-of-way. The existing PUE shall be abandoned and an equal replacement PUE conforming to City of Lodi requirements shall be provided immediately adjacent to and west of the west right-of-way line of Westgate Drive. Acquisition of the replacement PUE from adjacent parcels to the west is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map. In the event the developer is unable to acquire the replacement PUE from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required PUE dedications within the boundaries of the map.
   b) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.
   c) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
   d) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.

3. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.

4. Submit final map per City requirements including the following:
   a) Preliminary title report.
   b) Standard note regarding requirements to be met at subsequent date.

5. Payment of the following:
   a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.

G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:

1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
   a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide detailed utility master plans, including engineering calculations, for the entire area as well as all phases of the proposed project. City staff will assist in this process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.
   b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
   c) Grading, drainage and erosion control plan.
   d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
   e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
   f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
   g) Undergrounding of existing overhead utilities, excluding transmission lines.
   h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.
   i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
   j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
   k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package including all the items listed above plus engineering plan check fees is required to initiate the Public Works Department plan review process for the engineered improvement plans.

2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, master plan wastewater facilities shall be constructed to serve the project.

3. Installation of all public utilities and street improvements in conformance including, but not limited to, the following:
   a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems. All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require Caltrans approval. Additional right-of-way acquisition outside the limits of the map may be required and shall be the responsibility of the developer.
   b) The extension/installation of all public utilities, including, but not limited to, the extension of master plan water, wastewater, storm drainage and reclaimed water mains to the south end of Westgate Drive and the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
   c) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
   d) Storm drainage design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP. If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.
   e) The lane configuration for Westgate Drive shall be consistent with the West Side Facility Master Plan. The street improvements will include a landscaped median and parkways. Improvements on Westgate Drive shall extend to and include the installation of the westerly curb and gutter. Acquisition of street, public utility and construction easements from the adjoining property may be necessary to allow this construction and shall be the responsibility of the developer. Street improvements for Westgate Drive shall be constructed from the signalized intersection on Kettleman Lane to the south boundary of the parcel map.

f) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns. Acquisition of additional right-of-way and construction easements from the adjacent property to the south may be necessary to accomplish this work and shall be the responsibility of the developer.

All public improvements to be installed under the terms of an improvement agreement to be approved by the City Council prior to development of the first parcel.

4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City Council. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. If a temporary outlet from the drainage basin to the public storm drain system in Lower Sacramento Road is desired, developer's engineer shall contact the Public Works Department to coordinate this work with the City's Lower Sacramento Road Widening Project.

5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will only allow landscape and irrigation improvements within their right-of-way if the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways. The City will accept maintenance responsibilities for all landscape and irrigation improvements in the median.

6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

   Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40.

7. Parcels 1 through 12 are zoned C-S to allow development of a commercial shopping center. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
   a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.

b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
d) Temporary storm drainage detention basin to serve the project.

8. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.

9. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.

10. Payment of the following:
    a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
    b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of payment and as provided by Resolution 2004-238 adopted by the City Council on November 3, 2004.
    c) Wastewater capacity fee at building permit issuance.
    d) Reimbursement fees per existing agreements:
        I. Reimbursement Agreement RA-02-02. The reimbursement fee for 2004 is $32,307.78. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment.
        II. The Vintner's Square shopping center on the north side of Kettleman Lane is currently under construction. We anticipate that the developer of the Vintner's Square project will submit a request for reimbursement in conformance with LMC 16.40 Reimbursements for Construction covering public improvements in Kettleman Lane and Westgate Drive constructed with that development which benefit the Lodi Shopping Center project when the Vintner's Square improvements are complete. Upon submittal, the reimbursement agreement will be prepared by City staff and presented to the City Council for approval. Any reimbursement fees approved by the City Council that affect the Lodi Shopping Center site will have to be paid in conjunction with the development of the first parcel.
    e) Reimbursement to the City for the installation and/or design costs for the following improvements to be included in City's Lower Sacramento Road project:
        I. Installation of 10-inch water main and storm drain lines, including appurtenant facilities, in Lower Sacramento Road in conformance with LMC §16.40 Reimbursements for Construction.
        II. Water, wastewater and storm drain stubs to serve the shopping center project.
        III. Street improvements, including but not limited to, curb, gutter, sidewalk, street pavement, traffic control or other regulatory/street signs and street lights, within 34 feet of the west Lower Sacramento Road right-of way, except in those locations where auxiliary lanes are being constructed to

accommodate the shopping center. In those areas, the width of the auxiliary lane improvements shall not be a part of the 34 feet.

IV. Any other costs associated with changes/additions necessary to accommodate the Lodi Shopping Center project, including, but not limited to, any utility alignment changes for public utilities to be extended through the site and the proposed dual northbound left turn lanes and conduit crossings for the traffic signal improvements at the main shopping center driveway.

f) The project shall contribute its fair share cost to the installation of a permanent traffic signal at Lower Sacramento Road and Harney Lane. Until the intersection improvements are made and traffic signals are installed, the project applicant shall contribute its fair share cost for the installation of a temporary traffic signal with left-turn pockets on all four approaches to the Lower Sacramento Road/ Harney Lane intersection.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

11. Obtain the following permits:
    a) San Joaquin County well/septic abandonment permit.
    b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

12. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:
    a) Master plan storm drain lines.
    b) Master plan water mains.
    c) Master plan reclaimed water mains.

    Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City.

H. Install fire hydrants at locations approved by the Fire Marshal.

I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.

J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.

K. Vending machines, video games, ATM machines, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones and drinking fountains shall be permitted subject to the review and approval of the Community Development Director.

L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.

M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with "NO PARKING – LOADING ONLY" signs to the satisfaction of the Community Development Director.

N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:

1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.

2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.

O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.

P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.

Q. All construction activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.

R. No building permit shall be issued for the proposed Wal-Mart until a tenant for the existing Wal-Mart building located at 2350 West Kettleman Lane has been secured. For purposes of this condition, secured means a signed lease for more than 50 percent of the space. Further, Wal-Mart shall not restrict the type of tenant that may occupy the building.

S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.

T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.

U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.

V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.

W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.

X. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report EIR-03-01 for the project.

Y. The submitted Use Permit, Parcel Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.

Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.

AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knox box system at each gate for Fire Department access.

BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.

CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.

DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.

5. The Planning Commission hereby certifies that a copy of this Resolution and Final Environmental Impact Report are kept on file with the City of Lodi Community Development Department, 221 West Pine Street, Lodi, CA 95240.

Dated: December 8, 2004

I hereby certify that Resolution No. 04-___ was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on December 8, 2004, by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST: _____
Secretary, Planning Commission

RESOLUTION NO. P.C. 04- 64

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT EIR-03-01 RELATING TO THE LODI SHOPPING CENTER; STATE CLEARINGHOUSE NO. 2003042113

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel numbers 058-030-08 and 058-030-02, and a portion of 058-030-09; and

WHEREAS, the Community Development Director made a determination that the project may have impact on the environment and ordered the preparation of an Environmental Impact Report; and

WHEREAS, the Notice of Preparation (NOP) of the Draft EIR was prepared and distributed to reviewing agencies on April 14, 2003; and

WHEREAS, the Draft Environmental Impact Report (DEIR) was released on August 5, 2004, for circulation; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on September 9, 2004. Public comments on the DEIR were taken at this hearing; and

WHEREAS, a Final EIR (FEIR) responding to all public comments on the DEIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on November 22, 2004; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Planning Commission of the City of Lodi has reviewed and considered the Final Environmental Impact Report prepared for the project; and

WHEREAS, the California Environmental Quality Act (CEQA) requires that, in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant effects, the decision-making agency make certain findings regarding those effects;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct.

2. THAT THE PLANNING COMMISSION hereby finds that full and fair public hearings have been held on the Environmental Impact Report and the Planning Commission having considered all comments received thereon, said Environmental Impact Report is hereby determined to be adequate and complete; and said Environmental Impact Report is hereby incorporated herein by reference.

3. THAT THE PLANNING COMMISSION hereby determines, in connection with the recommended approval of the proposed Use Permit application for the Lodi Shopping Center, that the Final Environmental Impact Report (FEIR) for those actions has been prepared in compliance with the California Environmental Quality Act (CEQA) and the state and local environmental guidelines and regulations, that it has independently reviewed and analyzed the information contained therein, including the written comments received during the EIR review period and the oral comments received at the public hearings, and that the Final EIR represents the independent judgement of the City of Lodi as Lead Agency for the project.

4. THAT THE PLANNING COMMISSION does hereby find and recognize that the Final EIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft EIR and also incorporates text changes to the EIR based on information obtained from the City since the Draft EIR was issued. The Planning Commission does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of the California Environmental Quality Act because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the Draft EIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the Draft EIR have been proposed that would lessen the significant environmental impacts of the project. Accordingly, the Planning Commission hereby finds and determines that recirculation of the Final EIR for further public review and comment is not warranted; and

5. THAT THE PLANNING COMMISSION does hereby make the following findings with respect to the significant effects on the environment resulting from the project, as identified in the hereinbefore mentioned Final EIR, with the stipulation that (i) all information in these findings is intended as a summary of the full administrative record supporting the Final EIR, which full administrative record is available for review through the Director of Community Development at his office in City Hall at 221 West Pine Street, Lodi, 95241, and (ii) any mitigation measures and/or alternatives that were suggested by the commentators on the Draft EIR and were not adopted as part of the Final EIR are hereby expressly rejected for the reasons stated in the responses to comments set forth in the Final EIR and elsewhere on the record.

I. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. **Impact**: The project would convert approximately 40 acres of prime agricultural land to urban uses. As stated in the City's General Plan, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)

2. **Mitigation**: No feasible mitigation is available.

3. **Finding**: There are no feasible mitigation measures available that would reduce or avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   As discussed in the Draft EIR and Final EIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land resulting from the project to a less-than-significant level. The project's significant and unavoidable impacts to agricultural resources could be avoided by denying the project or requiring a reduced project, which would prevent the conversion of all or a portion of the site to urban uses. However, this action would not meet the objective of the applicant or the City of Lodi of developing the site for a commercial retail shopping plaza in conformance with the General Plan and zoning designations applicable to the site. In addition, denial of the project would not constitute a "feasible mitigation," and therefore would not be required under Section 15126.4 of the state CEQA Guidelines.

   Although project-specific impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

   The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

   The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural

uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land not on the project site, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, 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. 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.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact**: Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)

2. **Mitigation**: Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact**: There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)

2. **Mitigation**: If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and these buildings will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. Implementation of the recommendations will be ensured by the Public Works Department and Building Division through their routine inspection and permitting functions. These facts support the City's findings.

C. STORMWATER BASIN BANK INSTABILITY

1. **Impact**: There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)

2. **Mitigation**: Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed along with the design-level improvement plans for the stormwater basin, and the Public Works Director will ensure that the basin is be constructed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's findings.

D. SOIL CONSOLIDATION AND COLLAPSE

1. **Impact**: Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)

2. **Mitigation**: The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

E. EXPANSIVE SOILS

1. **Impact**: There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)

2. **Mitigation**: The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

F. SOIL CORROSIVITY

1. **Impact**: The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)

2. **Mitigation**: The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   As part of the mitigation for this impact, geotechnical investigations will be completed prior to the City's approval specific buried utilities and foundation systems for buildings, and these features will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

1. **Impact**: During grading and construction, erosion of exposed soils and pollutants from equipment may result in water quality impacts to downstream water bodies. (Significant Impact)

2. **Mitigation**: A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. Typical measures required by the City of Lodi to be implemented during the grading and construction phase include the following:

   - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
   - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
   - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
   - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
   - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
   - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
   - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.
   - Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.
   - Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.
   - Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.
   - Collect construction waste daily and deposit in covered dumpsters.
   - After construction is completed, clean all drainage culverts of accumulated sediment and debris.

The project also is required to comply with NPDES permit requirements, file a Notice of Intent with the Regional Water Quality Control Board and prepare a Storm Water Pollution Prevention Plan.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The above mitigation measures are derived from Best Management Practices (BMPs) recommended by the Regional Water Quality Control Board, and are to be included in the Storm Water Pollution Prevention Plan (SWPPP) to be prepared and implemented by the project proponent in conformance with the state's General Permit for Discharges of Storm Water Associated with Construction Activity. In addition, the project grading plans will conform to the drainage and erosion control standards of the City of Lodi, and will be incorporated into the project Improvement Plans to be approved by the City. Implementation of the erosion control measures will be monitored and enforced by City grading inspectors. These facts support the City's finding.

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact**: The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)

2. **Mitigation**: The project shall include stormwater controls to reduce nonpoint source pollutant loads.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   In January 2003, the City adopted a Stormwater Management Plan (SMP) to implement the provisions of its Phase II NPDES stormwater permit issued by the State Water Resources Control Board. The SMP contains a comprehensive program for the reduction of surface water pollution. The project includes feasible structural BMPs (Best Management Practices) such as vegetated swales and a stormwater basin. Much of the stormwater runoff generated in the northern and southern portions of the site will be conveyed to vegetated swales or bioswales which will provide partial filtering of pollutants and sediments. This partially treated runoff, along with all other parking lot and roof runoff from the project will be conveyed to the 3.65-acre stormwater basin planned adjacent to the southwest corner of the site. The basin would serve as a settling pond where suspended sediments and urban pollutants would settle out prior to discharge of the collected stormwater into the City's storm drain system, thereby reducing potential surface water quality impacts to drainages and water bodies. The pump intake for the

basin will be located two feet above the bottom to provide for accumulation of sediments which would be cleaned out on a regular basis.

Non-structural BMPs typically required by the City include the implementation of regular maintenance activities (e.g., damp sweeping of paved areas; inspection and cleaning of storm drain inlets; litter control) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Stormwater catch basins will be required to be stenciled to discourage illegal dumping. In the landscaped areas, chemicals and irrigation water will be required to be applied at rates specified by the project landscape architect to minimize potential for contaminated runoff. Additional BMPs, as identified from a set of model practices developed by the state, may be required as appropriate at the time of Improvement Plan approval. These facts support the City's finding.

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact**: The project would result in the loss of approximately 40 acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)

2. **Mitigation**: In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (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.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently $862 per acre (2004). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently $1,724 per acre (2004). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. These facts support the City's finding.

B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact**: The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that may establish nests in trees along the project boundaries prior to construction. (Significant Impact)

2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:

   - If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
   - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. As specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species

are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

1. **Impact**: It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)

2. **Mitigation**: Implementation of the following measures will mitigate any potential impacts to cultural resources:

   - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
   - In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
   - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the detailed site reconnaissance by Basin Research Associates indicated that there is no evidence to suggest that cultural resources may be buried on site, the mitigation measure is a standard contingency that is applied in all but the least archaeologically sensitive areas. In the unlikely event artifacts are encountered during grading or excavation, the Public Works Director will enforce any required work stoppages, and the Community Development Director will contact the project archaeologist and will ensure

that the archaeologist's recommendations are implemented. These facts support the City's finding.

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact**: The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road / Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)

2. **Mitigation**: The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates calculated that with the above mitigation in place, the level of service at the affected intersection would rise to Level of Service C and thus meet the service standards of the City of Lodi. These facts support the City's finding.

B. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT SIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD FRONTAGE

1. **Impact**: During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95th Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)

2. **Mitigation**: Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

C. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT NORTHERN UNSIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD

1. **Impact**: The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)

2. **Mitigation**: The following mitigations shall be implemented:
   a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
   b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
   c. Extend the southbound left-turn pocket by 100 feet;
   d. Extend the taper from 60 feet to a City standard 120-foot taper;
   e. Eliminate the northbound left-turn lane into the northern driveway.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact**: On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)

2. **Mitigation**: The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the potential for traffic conflicts arising from inadequate queuing capacity on Westgate Drive would be eliminated. These facts support the City's finding.

E. INADEQUATE LEFT-TURN LANE TAPER ON LOWER SACRAMENTO ROAD

1. **Impact**: On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper is proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)

2. **Mitigation**: The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

F. PUBLIC TRANSIT SERVICE

1. **Impact**: Development of the project would create a demand for increased public transit service above that which is currently provided or planned. (Significant Impact)

2. **Mitigation**: The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the additional demand for transit service generated by the project would not exceed the capacity of the transit system. These facts support the City's finding.

G. PUBLIC TRANSIT STOP

1. **Impact**: Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)

2. **Mitigation**: Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the transit service to the site would be adequate to meet ridership demand and would be provided in a manner which is convenient to transit riders, and which avoids traffic and circulation conflicts or congestion. These facts support the City's finding.

H. PEDESTRIAN FACILITIES

1. **Impact**: Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)

2. **Mitigation**: Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.

3. **Finding**: The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the pedestrian facilities provided in the project would be adequate to meet demand and provide for safe pedestrian movement throughout the project. These facts support the City's finding.

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

1. **Impact**: Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)

2. **Mitigation**: The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

   Rooftop Mechanical Equipment. To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (L_{eq}-hour) for any residential yards.

   Parking Lot Cleaning. To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   The City of Lodi Building Official will require demonstration of compliance with noise specifications for rooftop mechanical equipment in conjunction with each individual building permit required for the project. The enforcement of the City Noise Regulations with respect to leaf blower noise will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact**: Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)

2. **Mitigation**: The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:

   1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.

   2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   The City of Lodi Public Works Director will require demonstration of compliance with noise specifications for the basin pump in conjunction with the Improvement Plans for the project. The enforcement of the City Noise Regulations with respect to the hours of pump operation will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

C. CONSTRUCTION NOISE

1. **Impact**: Noise levels would be temporarily elevated during grading and construction. (Significant Impact)

2. **Mitigation**: Short-term construction noise impacts shall be reduced through implementation of the following measures:

   Construction Scheduling. The applicant/contractor shall limit noise-generating construction activities to daytime, weekday, (non-holiday) hours of 7:00 a.m. to 6:00 p.m.

   Construction Equipment Mufflers and Maintenance. The applicant/contractor shall properly muffle and maintain all construction equipment powered by internal combustion engines.

Idling Prohibitions. The applicant/contractor shall prohibit unnecessary idling of internal combustion engines.

Equipment Location and Shielding. The applicant/contractor shall locate all stationary noise-generating construction equipment such as air compressors as far as practicable from existing nearby residences. Acoustically shield such equipment as required to achieve continuous noise levels of 55 dBA or lower at the property line.

Quiet Equipment Selection. The applicant/contractor shall select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

Notification. The applicant/contractor shall notify neighbors located adjacent to, and across the major roadways from, the project site of the construction schedule in writing.

Noise Disturbance Coordinator. The applicant/contractor shall designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would notify the City, determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and would institute reasonable measures to correct the problem. Applicant/contractor shall conspicuously post a telephone number for the disturbance coordinator at the construction site, and include it in the notice sent to neighboring property owners regarding construction schedule. All complaints and remedial actions shall be reported to the City of Lodi by the noise disturbance coordinator.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

1. **Impact**: Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)

2. **Mitigation**: Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM_{10} emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District).

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   Each phase of grading and construction will be required to implement the dust control measures specified in the San Joaquin Valley Air Pollution Control District's Regulation VIII, as well as additional practices itemized in the FEIR and as otherwise required by the City of Lodi. The dust control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. The Public Works Department will monitor and enforce the dust suppression requirements as part of their site inspection duties. Violations of the requirements of Regulation VIII are also subject to enforcement action by the Air District. Violations are indicated by the generation of visible dust clouds and/or generation of complaints. These facts support the City's finding.

B. REGIONAL AIR QUALITY

1. **Impact**: Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)

2. **Mitigation**: Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.

3. **Finding**: While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts to less-than-significant levels. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

C. RESTAURANT ODORS

1. **Impact**: The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)

2. **Mitigation**: All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.

3. **Finding**: The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact will be reduced to a less-than-significant level.

   While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

1. **Impact**: The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)

2. **Mitigation**: No feasible mitigation is available.

3. **Finding**: As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   As discussed in the Draft EIR and Final EIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

   The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

   The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land

Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, 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 as mitigation for agricultural conversions due to development projects. 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.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with the City's growth control measures prioritizing in-fill

development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

B. REGIONAL AIR QUALITY IMPACTS

1. **Impact**: Emissions from project-generated traffic, combined with the emissions of other foreseeable projects in the area, would result in air pollutant emissions affecting the entire air basin. (Significant Cumulative Impact)

2. **Mitigation**: For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.

3. **Finding**: While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.

4. **Facts in Support of Finding**: The following facts indicate that the identified impact is significant and unavoidable.

   Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would far exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts resulting from the proposed project to less-than-significant levels. Other foreseeable projects in the area may be more suitable for the implementation of TDM measures to reduce emissions on an individual project basis; however, the cumulative impact would not be reduced to a less-than-significant level. These facts support the City's finding.

5. **Statement of Overriding Considerations**: The following is a summary of the benefits that the Planning Commission has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project

will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

FINDINGS CONCERNING ALTERNATIVES

Under CEQA, an EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the 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. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the Final EIR are described below.

I. NO PROJECT ALTERNATIVE

A. **Description of the Alternative**: The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.

B. **Comparison to the Project**: The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the impact fees paid by the project which would help fund vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

II. REDUCED PROJECT SIZE ALTERNATIVE

A. **Description of the Alternative**: This alternative would consist of a substantially reduced project site of approximately 24 acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of 40 acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.

B. **Comparison to the Project**: The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the impact fees paid by the project to help fund vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

III. ALTERNATIVE PROJECT LOCATION

A. **Description of the Alternative**: An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton Road, just east of I-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.

B. **Comparison to the Project**: The impacts associated with development of the Flag City site would be somewhat greater than for the proposed project site. Although the impacts for many categories would be similar for both project locations, development of the Flag City site would result in negative effects in terms of land use policy, and the resulting potential for growth inducement, which would not occur with the proposed project site. Traffic impacts would be greater for the Flag City site, as would impacts to utilities and public services, although these impacts would be less than significant or could be fully mitigated. More importantly, the alternative project site would result in the same significant and unavoidable impacts to

agricultural resources and air quality as are associated with the proposed project. Therefore, the alternative site would not lessen or avoid the significant and unavoidable impacts of the project.

C. **Finding**: This alternative is hereby rejected for the reasons set forth below.

The alternative project site is not environmentally superior to the proposed project site. In addition, due to its location outside the City of Lodi, the alternative site would not provide the benefits associated with the proposed project including increased municipal revenues and impact fees for providing services, creation of employment opportunities for City residents, construction of vital municipal infrastructure improvements, and the opportunity to implement City goals and policies with respect to the commercial development of the project site (consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries), and the chance to provide a high quality development at the western gateway to the City.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

The CEQA Guidelines, at Section 15126.6(e)(2), require that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected by the applicant because it would not fulfill the project objective of a 30-acre minimum project size needed for project feasibility. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the proposed project site with commercial retail uses.

In conclusion, there are no feasible environmentally superior alternatives to the project (other than the No Project alternative) which would avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

MITIGATION MONITORING PROGRAM

Attached to this resolution and incorporated and adopted as part thereof, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091-15093, the Planning Commission of the City of Lodi hereby adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the project and the anticipated economic, social and other benefits of the project.

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts which are included in the record, the Planning Commission has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. These impacts cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

B. Overriding Considerations

The Planning Commission specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project.

The Planning Commission has considered the EIR, the public record of proceedings on the proposed project and other written materials presented to the City, as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Project Will Generate City Sales Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.

2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special

skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center.

3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.

4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.

5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's recently adopted Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.

The Planning Commission has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

6. The Final Environmental Impact Report for the Lodi Shopping Center project is hereby certified pursuant to the California Environmental Quality Act. All feasible mitigation measures for the project identified in the Environmental Impact Report and accompanying studies are hereby incorporated into this resolution.

Dated: December 8, 2004

I hereby certify that Resolution No. 04-64 was passed and adopted by the Planning Commission of the City of Lodi at their meeting held on December 8, 2004, by the following vote:

AYES:	Commissioners:	Aguirre, Heinitz, Mattheis, Moran, White and Chairman Haugan
NOES:	Commissioners:	
ABSENT:	Commissioners:	Phillips
ABSTAIN:	Commissioners:	

ATTEST:_____

Secretary, Planning Commission

RESOLUTION NO. P.C. 04-65

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI, APPROVING USE PERMIT FILE NO. U-02-12, TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER AND TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER

WHEREAS, An application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 & portion of 058-030-09; and

WHEREAS, the application's are for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages as well as a Parcel map to create 12 parcels for the project.

WHEREAS, the Planning Commission of the City of Lodi has reviewed and considered the Final Environmental Impact Report prepared on the Lodi Shopping Center; and,

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the project is consistent with all elements of the General Plan. In particular, the following Goals and Policies:

A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."
B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."
C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."
D. Housing Element, Goal C, "To ensure the provision of adequate public facilities and services to support existing and future residential development".
E. Circulation Element, Goal G, "To encourage a reduction in regional vehicle miles traveled."

F. Circulation Element, Goal A, Policy 1, "The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility."
G. Noise Element, Goal A, "To ensure that City residents are protected from excessive noise."
H. Conservation Element, Goal C, Policy 1, "The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices."
I. Health and Safety Element, Goals A, B, C, and D, "To prevent loss of lives, injury and property damage due to flooding". "To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake". "To prevent loss of lives, injury, and property damage due to urban fires". "To prevent crime and promote the personal security of Lodi residents."
J. Urban Design and Cultural resources, Goal C, "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments, and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards, and

WHEREAS, these findings as well as the findings made within Resolution No. P.C. 04-64 certifying Final Environmental Impact Report EIR-03-01 are supported by substantial evidence in the record of this proceeding and before this body.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct.

2. Said Tentative Parcel Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.

3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.

4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.

A. The approval of the Use Permit expires within 24 months from the date of this Resolution. Should any litigation be filed regarding this project, the time limit shown shall be tolled during the pendency of the litigation. Parcel Map conforming to this conditionally approved Tentative Parcel Map shall be filed with the City Council in time so that the Council may approve said map before its expiration, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the final map, as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refilling of the Tentative Parcel Map and new review processing of the map.

B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant shall sign a notarized affidavit stating that "I (we), ____, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the Planning Commission approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.

C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.

D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:

    1. All buildings shall meet the required setbacks for the C-S zoning district. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
    2. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.

3. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
4. All drive-through eating facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
5. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited.
6. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
7. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.
8. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
9. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
10. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.

E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced within 30 days following written notice from the Community Development Director.

F. The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:

1. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:

a) Street right-of-way dedications on Westgate Drive shall be in conformance with the traffic study for the project and City of Lodi requirements and shall be consistent with the West Side Facility Master Plan. The north and south legs of Westgate Drive must be in alignment through the intersection at Kettleman Lane. Construction of full width street improvements to and including the west curb and gutter is required. Acquisition of additional right-of-way from adjacent parcels to the west is the responsibility of the developer and must be supplied prior to recordation of any final parcel map. In the event the developer is unable to acquire the additional right-of-way from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required street right-of-way dedications within the boundaries of the map.

b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the project traffic study and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. The right-of-way width and lane geometry for Kettleman Lane need to be compatible with the improvement plans prepared by Mark Thomas & Company for the Vintner's Square Shopping Center on the north side of Kettleman Lane. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.

c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements. At the signalized intersection and the driveway immediately north, the right-of-way dedications and driveway design shall provide for 60-foot radius truck turning movements as set forth in the Caltrans Highway Design Manual.

d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.

e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.

2. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
   a) An existing public utility easement (PUE) lies within the proposed Westgate Drive right-of-way. The existing PUE shall be abandoned and an equal replacement PUE conforming to City of Lodi requirements shall be provided immediately adjacent to and west of the west right-of-way line of Westgate Drive. Acquisition of the replacement PUE from adjacent parcels to the west is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map. In the event the developer is unable to acquire the replacement PUE from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required PUE dedications within the boundaries of the map.
   b) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.
   c) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
   d) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.

3. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.

Submit final map per City requirements including the following:

a) Preliminary title report.
b) Standard note regarding requirements to be met at subsequent date.

4. Payment of the following:
   a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.

G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:

1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:

   a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide detailed drainage master plans, including engineering calculations, for the entire area as well as all phases of the proposed project. City staff will assist in this process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.
   b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
   c) Grading, drainage and erosion control plan.
   d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
   e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
   f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
   g) Undergrounding of existing overhead utilities, excluding transmission lines.
   h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.

i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the south as shown on the site plan and construct a driveway return comparable to the existing driveway return.

j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.

k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package including all the items listed above plus engineering plan check fees is required to initiate the Public Works Department plan review process for the engineered improvement plans.

2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, master plan wastewater facilities shall be constructed to serve the project.

3. Installation of all public utilities and street improvements in conformance including, but not limited to, the following:

a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems. All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require Caltrans approval. Additional right-of-way acquisition outside the limits of the map may be required and shall be the responsibility of the developer.

b) The extension/installation of all public utilities, including, but not limited to, the extension of master plan water, wastewater, storm drainage and reclaimed water mains to the south end of Westgate Drive and the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.

c) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.

d) Storm drainage design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP. If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.

e) The lane configuration for Westgate Drive shall be consistent with the West Side Facility Master Plan. The street improvements will include a landscaped median and parkways. Improvements on Westgate Drive shall extend to and include the installation of the westerly curb and gutter. Acquisition of street, public utility and construction easements from the adjoining property may be necessary to allow this construction and shall be the responsibility of the developer. Street improvements for Westgate Drive shall be constructed from the signalized intersection on Kettleman Lane to the south boundary of the parcel map.

f) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns. Acquisition of additional right-of-way and construction easements from the adjacent property to the south may be necessary to accomplish this work and shall be the responsibility of the developer.

All public improvements to be installed under the terms of an improvement agreement to be approved by the City Council prior to development of the first parcel.

4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City Council. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. If a temporary outlet from the drainage basin to the public storm drain system in Lower Sacramento Road is desired, developer's engineer shall contact the Public Works Department to coordinate this work with the City's Lower Sacramento Road Widening Project.

5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will only allow landscape and irrigation improvements within their right-of-way if the City enters into an agreement with Caltrans covering maintenance responsibilities for those

improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways. The City will accept maintenance responsibilities for all landscape and irrigation improvements in the median.

6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

   Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40.

7. Parcels 1 through 12 are zoned C-S to allow development of a commercial shopping center. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
   a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
   b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
   c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
   d) Temporary storm drainage detention basin to serve the project.

8. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.

9. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.

Payment of the following:

a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.

b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of payment and as provided by Resolution 2004-238 adopted by the City Council on November 3, 2004.

c) Wastewater capacity fee at building permit issuance.

d) Reimbursement fees per existing agreements:

   I. Reimbursement Agreement RA-02-02. The reimbursement fee for 2004 is $32,307.78. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment.

   II. The Vintner's Square shopping center on the north side of Kettleman Lane is currently under construction. We anticipate that the developer of the Vintner's Square project will submit a request for reimbursement in conformance with LMC 16.40 Reimbursements for Construction covering public improvements in Kettleman Lane and Westgate Drive constructed with that development which benefit the Lodi Shopping Center project when the Vintner's Square improvements are complete. Upon submittal, the reimbursement agreement will be prepared by City staff and presented to the City Council for approval. Any reimbursement fees approved by the City Council that affect the Lodi Shopping Center site will have to be paid in conjunction with the development of the first parcel.

e) Reimbursement to the City for the installation and/or design costs for the following improvements to be included in City's Lower Sacramento Road project:

   I. Installation of 10-inch water main and storm drain lines, including appurtenant facilities, in Lower Sacramento Road in conformance with LMC §16.40 Reimbursements for Construction.

   II. Water, wastewater and storm drain stubs to serve the shopping center project.

   III. Any other costs associated with changes/additions necessary to accommodate the Lodi Shopping Center project, including, but not limited to, any utility alignment changes for public utilities to be extended through the site and the proposed dual northbound left turn lanes and conduit crossings for the traffic signal improvements at the main shopping center driveway.

f) The project shall contribute its fair share cost to the installation of a permanent traffic signal at Lower Sacramento Road and Harney Lane. Until the intersection improvements are made and traffic signals are installed, the project applicant shall contribute its fair share cost for the installation of a temporary traffic signal with left-turn pockets on all

four approaches to the Lower Sacramento Road/ Harney Lane intersection.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

10. Obtain the following permits:
    a) San Joaquin County well/septic abandonment permit.
    b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

11. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:
    a) Master plan storm drain lines.
    b) Master plan water mains.
    c) Master plan reclaimed water mains
    d) Industrial waste

    Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City.

H. Install fire hydrants at locations approved by the Fire Marshal.

I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.

J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.

K. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones, drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.

L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.

M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with "NO PARKING – LOADING ONLY" signs to the satisfaction of the Community Development Director.

N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:

1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.

2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.

O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.

P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.

Q. All construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.

R. No building permit shall be issued for the proposed Wal-Mart until a tenant for the existing Wal-Mart building located at 2350 West Kettleman Lane has been secured. For purposes of this condition, secured means a signed lease for more than 50 percent of the space. Further, Wal-Mart shall not restrict the type of tenant that may occupy the building.

S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.

T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.

U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.

V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.

W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.

X. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report EIR-03-01 for the project.

Y. The submitted Use Permit, Parcel Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.

Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.

AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knox box system at each gate for Fire Department access.

BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.

CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.

DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.

EE. Developer shall pay for the Linkage study that the City is required to do based on the recently adopted Housing Element portion of the General Plan and payment of any fees based upon the conclusion of the study.

5. The Planning Commission hereby certifies that a copy of this Resolution and Final Environmental Impact Report are kept on file with the City of Lodi Community Development Department, 221 West Pine Street, Lodi, CA 95240.

Dated: December 8, 2004

I hereby certify that Resolution No. 04-65 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on December 8, 2004, by the following vote:

AYES:	Commissioners:	Aguirre, Heinitz, Mattheis, Moran, White, and Haugan
NOES:	Commissioners:	
ABSENT:	Commissioners:	Phillips
ABSTAIN:	Commissioners:	

ATTEST: _____
Secretary, Planning Commission

DRAFT

MINUTES

LODI CITY PLANNING COMMISSION

CARNEGIE FORUM
305 WEST PINE STREET
LODI, CALIFORNIA

WEDNESDAY **December 8, 2004** **7:00 P.M.**

The Planning Commission met and was called to order by Chairman Haugan.

Commissioners Present: Eddie Aguirre, Randall Heinitz, Tim Mattheis, Gina Moran, David Phillips, Dennis White, and Chairman Haugan. ROLL CALL

Commissioners Absent: None

Others Present: Konradt Bartlam, Community Development Director, Janice Magdich, Deputy City Attorney, and Lisa Wagner, Secretary.

PUBLIC HEARINGS

The request of Browman Development Company to certify Final Environmental Impact Report EIR 03-01, approve Use Permit U-02-12 to allow the construction of a commercial center in the C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Tentative Parcel map 03-P-001 to create 12 parcels for the project at 2640 W. Kettleman Lane. Commission member Phillips excused himself from the item due to a conflict of interest since he may be doing business with a business within the project. Commissioners Heinitz, Mattheis, Moran, Haugan, and White noted that they had conversations with the applicant prior to the meeting. Konradt Bartlam, Community Development Director presented the item to the Commission. The site consists of 36 acres with a 3.65 acre site located across Westgate Drive to serve as an interim storm drain basin. The project will contain 12 building sites with a maximum of 330,000 square feet. Significant public improvements were being required in order to build the project. The applicant's requests were necessary steps to allow the construction of a commercial center that would be anchored by a Wal-Mart Supercenter. The centers on the other three corners have been developed with other large-scale developments (Lowe's, Target, and Food-4-Less). The subject property was the last corner of commercial development envisioned by the City's General Plan and designated 15 years ago for the construction of large-scale retail development.

He explained that the Final EIR document outlined the potential impacts associated with the development of the project. On September 9, 2004 a public meeting was held by the Planning Commission on the Draft Environmental Impact Report. Several comments were received and had been reviewed and addressed in the final document. The EIR analyzed 13 required areas of impact. For those, 25 mitigation measures were proposed that reduced the impact to a less than significant level. There were two areas of impact that could not be mitigated. Those two areas were impacts to agricultural resources and regional air quality. In order for the project to move forward given those significant unavoidable impacts, a Statement of Overriding Consideration was required.

In regards to the Use Permits being requested, Mr. Bartlam noted that the applicant had provided a plan that sufficiently showed the various aspects of the proposal. Mr. Bartlam reminded the Commission that it was not their role to determine the use, but to determine if the

proposed project met the City's requirements for development. Staff found that the request for the sale of alcoholic beverages was incidental to a super market and was requesting approval of the request.

The Parcel Map request was typical with the development of a large shopping center. The request was to divide the site into 12 parcels which will allow each building to sit on an individual parcel. In April 2004, the City Council adopted design standards; as a result, the project would have to adhere to the newly adopted design requirements. Issues such as landscaping, colors and materials will be reviewed at the Site Plan and Architectural Review Committee.

In conclusion, Mr. Bartlam stated that the project had generated more controversy than any other in Lodi. He believed the project met the requirements of the General Plan and Zoning Ordinances. He noted there were several conditions placed upon the project with the most significant being prohibition from the issuance of a building permit for the new Wal-Mart store until a tenant for the existing store had been secured. He was recommending approval of the Final EIR, the two Use Permits and the Parcel Map.

Hearing Opened to the Public

Darryl Browman, 100 Swan Way, Suite 206, Oakland, CA. Mr. Browman was the applicant. Mr. Browman thanked City staff for their efforts. He noted that the project had been in the planning stage for quite some time and that it would become a statement as well as a model project for Lodi. There would be a great deal of articulation and design throughout the project and it will be pedestrian friendly. The project will provide additional retail spaces, have ample parking, a 17-foot-tall clock tower, board advertising downtown businesses, outdoor seating, and meandering sidewalks throughout. He felt the project had been put under a microscope regarding potential environmental impacts and that those issues could be mitigated to a certain degree.

Mr. Browman had several concerns regarding conditions placed on the project. Condition F2b, was a PUE requirement along the southerly property line to accommodate the installation of electric utility overhead transmission lines and an underground conduit bank. The anticipated PUE would be on the order of 65 to 75 feet. Mr. Browman asked that the PUE requirement be reduced so that it would not impede into building pad 11; which would then need to be modified in size. Condition D4 was a requirement that all drive-through eating facilities have a "double service window." Mr. Browman felt the requirement was not appropriate and that the condition should apply to fast food restaurants only.

Mr. Browman asked for consideration regarding Condition #R which stated that no building permit would be issued for the proposed Wal-Mart until a tenant for the existing Wal-Mart had been secured. Secured meaning a signed lease for more than 50 percent of the space and that Wal-Mart shall not restrict the type of tenant that may occupy the building. He will be purchasing the old Wal-Mart building and finding tenants for the building. He asked the Commission to consider issuing the building permit for the new Wal-Mart store **before** a new tenant was secured for the existing Wal-Mart store building. He also requested that instead of having a percentage (50%) of the space leased that it be set at 40,000 square feet.

Kevin Lescotoff, 757 North Point, San Francisco. Mr. Lescotoff was a public affairs manager for Wal-Mart. He thanked staff and the community for their support of the project. He wanted to have the re-tenant issue assigned to Mr. Browman rather than Wal-Mart. He stated that he would provide Mr. Browman with all the resources available to find new tenants for the old Wal-Mart building.

Commissioner Heinitz questioned how many vacant Wal-Mart stores there were in California. Mr. Lausky replied that most of the stores were already leased out.

Commissioner Aguirre asked Mr. Lausky about the timeframe to fill a vacated Wal-Mart store. Mr. Lausky replied that most stores were under contract before the superstores were built.

Commissioner Aguirre asked Mr. Browman his timeframe from vacancy to occupancy of the old Wal-Mart store. Mr. Browman replied that the space could be revamped in 150 days and that he was already negotiating with tenants for the building.

In regards to the dual drive through requirement, Mr. Browman stated that with smaller retail spaces, a business could not accommodate a dual drive through window. Mr. Bartlam replied that the condition should not be based on the size of the business, but by land use. The condition was added to reduce the potential for car stacking within the project.

Commissioner Heinitz asked Mr. Bartlam about modifying condition "R" on the resolution. Mr. Bartlam replied that he was against modifying the condition.

Michael Folkner, 1718 Sylvan Way, Lodi. Mr. Folkner understood that not everyone was happy with the proposed project. He felt the new store would generate more sales tax revenues for the City. He asked the Commission to waive the requirement that the old Wal-Mart store be 50% leased before the building permit could be issued for the new store.

Iola M. Jochim, 1 N. Corinth Avenue, Lodi. Ms. Jochim has been a resident of Lodi for the past 37 years. She felt the new Super Wal-Mart would provide great revenues for the city.

Bill Crow, 907 W. Turner Road, Lodi. Mr. Crow has been a resident of Lodi for the past 60 years. He thanked staff for their work and felt a Super Wal-Mart would benefit the city.

Doris Johnson, 316 Walnut Street, Lodi. Ms. Johnson felt the Super Wal-Mart was necessary for people on fixed incomes.

Kathy King, 5298 E. Harney Lane, Lodi. Ms. King has been a resident for 49 years. She was excited about the new store since she liked one-stop shopping. She felt that Lodi was growing and needed some new stores. She also felt that the new store would not affect existing businesses in Lodi.

Wade King, 5298 E. Harney Lane, Lodi. Mr. King stated that he was desirous of having a Super Wal-mart store in Lodi.

Lester Hixon, 173 San Marcos Drive, Lodi. Mr. Hixon has been a resident for 41 years. He stated that everyone that was against Super Wal-Mart was against older people. If the Super Wal-Mart was not built in Lodi, he would shop in Stockton and spend his money there.

Ray Crow, 205 Daisy Avenue #4. Mr. Crow echoed his desire for one-stop shopping. He felt the new store would be one of the nicest buildings in town. He felt other businesses in town would not suffer if the new store were built.

Gladys Dollinger, 101 E. Highway 12, Lodi. Ms. Dollinger shops at the existing store everyday because they have the most reasonable prices. She felt the existing store was too small and that Wal-Mart customers were coming from neighboring counties to shop at the store.

Gerald Reich, 420 Howard Street, Lodi. Mr. Riech stated that the new store would benefit those on fixed incomes and generate tax revenue for the city. He felt that condition "R" was anti-business.

At 8:15 p.m. the Commission took a 15 minute break.

Pat Patrick, President of Lodi Chamber of Commerce. Mr. Patrick was pleased with the design of the project and felt the new store would be very attractive. He mentioned that Measure R was not about Wal-Mart and the people had already spoken with the defeat of Measure R.

Vic De Melo, Browman Development Company. Mr. De Melo is a 10-year employee with Browman Development. He handles the leasing of buildings for Browman Development. He stated he respected Mr. Bartlam's position on matter that the existing Wal-Mart store be 50% leased before the permit for the new store could be issued. Browman Development owned most of the buildings in the existing Sunwest shopping center. He felt that a 40,000-square foot limitation would make it easier to meet the requirement. If they are not able to find one tenant to occupy the entire building, they could possibly find several tenants (bookstore, clothes store) to occupy the space. They have a huge focus on this condition and were looking for a vital occupant for the center.

Brandon Nessler, 1811 S. Mills Avenue, Lodi. Mr. Nessler stated he was not trying to stop development but would like to see something else built rather than a super Wal-Mart that would bring something new to the City.

Boyd Fulller-1807 Santz Ynez Drive, Lodi. Mr. Fuller stated that he liked the selection of stores in town already. He was afraid that the new store would be similar to the new Super Wal-Mart store in Stockton.

Betsy Fiske, 727 S. Lee Avenue, Lodi. Ms. Fiske stated that there were vacant Wal-Mart stores located throughout the United States. She was concerned about the economic effects if a super Wal-Mart store were to be built in Lodi. She suggested a demolition bond for the old store.

Steve Herum, 2291 W. March Lane, Stockton. Mr. Herum represented Lodi First, a private group of citizens. He quoted from the Wall Street Journal that Wal-Mart still had 152 vacant stores across the nation and that Wal-Mart was the single largest owner of vacant retail space in the United States. He stated the project was inconsistent with the General Plan and Zoning classification for the project. The current General Plan designation for the property was NCC (Neighborhood Community Commercial); which provides for neighborhood and locally oriented retail service uses. The zoning Classification was C-S; (Commercial-Shopping); which was limited to only those uses permitted in the C-1 Neighborhood Commercial zone. He felt the proposed project was not a neighborhood shopping center. He felt that Condition R was well meaning; however, it was not strong enough. He stated that anyone could lease property and get a building permit. The Browman Company could form a subsidiary, lease it to the Browman subsidiary, get a building permit for tenant improvements, which would relieve him of the condition and would allow him to build it without anyone occupying the business. He recommended not allowing the new store to be built until the current building was totally occupied with tenants that produce the same tax revenue as the City would otherwise

have at the site. He pointed out that the EIR prepared for the project was legally defective for failing to comply with the requirements of Appendix "F" of the CEQA guidelines.

Commissioner Aguirre asked Mr. Herum if he had ever seen a perfect EIR? Mr. Herum replied that EIR's do not have to be perfect, but the one prepared was inadequate.

Commissioner Heinitz noted that since Mr. Browman was the current owner of Sunwest Plaza, he had a financial interest in keeping the center occupied.

Treacy Elliott, 1712 W. Lockeford Street, Lodi. Mr. Elliott asked that the Commission not certify the EIR. He felt the final report did not address the impact of other new stores being built in nearby cities. If the super center were to be built, many businesses would be put out of business; there would be increased stress on traffic and loss of agricultural land. He was also concerned that if the new store ever closed, what business would fill space?

Ismael Godoy, 428 Sonora Avenue, Lodi. Mr. Godoy was against a new super Wal-Mart Store. He had worked at one for seven years and felt there was not a need for more stores.

Kimberly Clark, 9487 Tuscany Circle, Stockton. Ms. Clark stated that she liked the design of proposed store. She felt Wal-mart was taking jobs away from Americans by importing goods.

Shara Guerrette, 209 Applewood Drive, Lodi. Ms. Guerrette was impressed with the layout of the new store. She stated that Lodi already had a Wal-Mart and that she was happy to drive 20 minutes to Stockton to shop at their super Wal-Mart. She was also concerned about increased traffic, air quality, and the loss of business for local merchants.

Ann Cerney, 905 W. Vine Street, Lodi. Ms. Cerney spoke as an individual, citizen, and representative for the Small Town Preservation Committee. She objected to certifying the EIR and both Use Permits. She stated the EIR document failed to comply with CEQA environmental requirements. She requested the document be re-circulated and that Mr. Herum's statements be read into her own statements.

Rick Salton. Mr. Salton represented 450 people from the Grocery Union. He asked the Commission to think about the people who work at the grocery stores and the loss of their jobs. He felt that Wal-Mart would have problems leasing out their old store and that another grocery store on the corner was not rational.

Richard Eklund, 19960 Elliott Road, Lockeford, CA. Mr. Eklund stated he did most of his bulk shopping in Lodi. He felt that air pollution was already bad in the area and that the Planning Commission had to take the "bull by the horns" to mitigate the pollution.

Hearing Closed to the Public

Commissioner Aguirre stated that Lodi was not your typical town and there was no guarantee of any business making it or not in any town.

Commissioner Heinitz felt the package presented by staff was good and well done. He was doubtful that the existing Wal-Mart store would remain vacant since Mr. Browman had a financial interest in the shopping center. He suggested eliminating the double service window condition, and put it on a land use basis.

Commissioner White wanted to hear from staff why the leasing of the existing Wal-Mart building should be tied to the issuance of the building permit rather than the Certificate of Occupancy for the new store. Mr. Bartlam replied that the City would have the biggest power before the Super Wal-Mart permit was issued. He stated that Wal-Mart's ability to restrict users may hinder certain tenants for the developer. The condition would be placed upon whoever owned the property currently, which is Wal-Mart.

Commissioner Moran asked Mr. Bartlam how long the required lease would be for the existing store and also the thought of a demolition bond. Mr. Bartlam replied that the demolition bond requirement could be added; however he noted that the City would not have some of the businesses today because the buildings would not be there for them to occupy if it were demolished. In regards to the term of tenancy, Mr. Bartlam noted that if a tenant were to sign a 5-year lease and go out of business in 3 years, the City would be left with an empty building. He recognized that the condition would be difficult to regulate over time.

Commissioner Mattheis stated he was having a difficult time finding an agreement with the Findings of Statement for Overriding Consideration that the Commission must find to make the project happen. The Commission's responsibility was to see that the project meets the standards of the City; which is not based on the user or the business. He was persuaded by the fairness argument more than anything. The process for this project had been in place for the past 15 to 20 years in terms of identifying the site as a place where "big box" businesses could be built. It did have a regional intent and had been reinforced through the downtown revitalization program and the developer had jumped through some hoops to get the project approved. He felt the developer had met the City Standards for the project. He was glad to see the requirement that the existing Wal-Mart must be leased prior to a building permit being issued for the new store. He disagreed with the EIR's conclusion regarding not being able to mitigate for the loss of farmland. There were ways to mitigate for the loss of farmland; however, since there was not current policy in place from the City or a land trust set up in the County, it would not be fair to place such a condition on the project. He also disagreed with the EIR's conclusion regarding affordable housing. He explained that there was a recent program adopted through Lodi's Housing Element (Program 11) that required when new commercial land was developed, that a study must be carried out by City staff to see if there was a linkage between the creation of low income jobs and affordable housing. He requested that this condition be added to the conditions of approval the developer be required to pay for the study and pay any fees required at the conclusion of the study. He felt that a drive-through double service window was appropriate to eliminate any auto air emissions. He was in favor of leaving condition "R" as proposed.

Mr. Bartlam stated that item 4 (d) regarding the drive-through facilities could be better clarified if the word "eating" was inserted before facilities so that it would read "All drive-through **eating** facilities shall have a double service window."

The Planning Commission on motion of Commissioner Haugan, Heinitz second, voted to approve the request of Browman Development Company to certify the Final Environmental Impact Report EIR 03-01 and recommend approval to the City Council by the following vote:

AYES:	Commissioners:	Aguirre, Heinitz, Mattheis, Moran, White, and Chairman Haugan
NOES:	Commissioners:	
ABSENT:	Commissioners:	Phillips
ABSTAIN:	Commissioners	

The Planning Commission on motion of Commissioner Haugan, Heinitz second, voted to approve Use Permit U-02-12 to allow the construction of a commercial center in the C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Tentative Parcel map 03-P-001 to create 12 parcels for the project at 2640 W. Kettleman Lane with changes to condition D-4 to add the word "**eating**" to the condition. This motion was **amended** by Commissioner Mattheis, Heinitz second to add item EE to the resolution to read "Developer shall pay for the Linkage Study that the City is required to do

based on the recently adopted Housing Element portion of the General Plan and payment of any fees based upon the conclusion of the study by the following vote:

AYES:	Commissioners:	Aguirre, Heinitz, Mattheis, Moran, White, and Haugan
NOES:	Commissioners:	
ABSENT:	Commissioners:	Phillips
ABSTAIN:	Commissioners	

UPDATE ON COMMUNITY SEPARATOR/GREENBELT TASK FORCE

Commissioner Phillips stated that the last meeting had been a very lively and well attended meeting. The Task Force presented a housing credit program to the property owners involved in the study area. Mr. Bartlam noted that the housing credit program was difficult for the property owners to comprehend and might take some time.

Commissioner Moran recommended that the Commission might want to take a look at a policy on farmland preservation since farmland was vanishing throughout the area. The other Commissioners agreed that a policy needed to be put in place for farmland mitigation.

ADJOURNMENT

As there was no further business to be brought before the Planning Commission, Chairman Haugan adjourned the session at 10:05 p.m.

Respectfully submitted,

Lisa Wagner

Lisa Wagner
Secretary

DRAFT

RESOLUTION NO. 2005-____

A RESOLUTION OF THE LODI CITY COUNCIL DENYING THE APPEAL OF NATALIE WEBER OF HERUM, CRABTREE, BROWN AND AFFIRMING THE PLANNING COMMISSION'S CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (EIR-03-01), APPROVAL OF USE PERMIT (U-02-12) AND PARCEL MAP (03-P-001) AND ALL PLANNING COMMISSION FINDINGS RELATIVE TO THE LODI SHOPPING CENTER PROJECT (WAL-MART SUPERCENTER) LOCATED AT 2640 WEST KETTLEMAN LANE

==========

WHEREAS, notice thereof having been published according to law, an affidavit of which is on file in the office of the City Clerk, a public hearing was held January 19, 2005, by the Lodi City Council to consider the appeal of Natalie Weber of Herum, Crabtree, Brown regarding the Planning Commission's approval of the request of the Browman Development Company to certify the Final Environmental Impact Report (EIR-03-01) and approve Use Permit (U-02-12) and Parcel Map (03-P-001) for the Lodi Shopping Center Project (Wal-Mart Supercenter) located at 2640 West Kettleman Lane, pursuant to the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby deny the appeal of Natalie Weber of Herum, Crabtree, Brown, and hereby affirms the Planning Commission's certification of the Final Environmental Impact Report (EIR-03-01), approval of Use Permit (02-12) and Parcel Map (03-P-001) with all Planning Commission findings (as outlined in Planning Commission Resolutions P.C. 04-64 and P.C. 04-65) relative to the Lodi Shopping Center Project (Wal-Mart Supercenter) located at 2640 West Kettleman Lane, pursuant to the California Environmental Quality Act.

Dated: January 19, 2005

==========

I hereby certify that Resolution No. 2005-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 19, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

RESOLUTION NO. 2005-____

A RESOLUTION OF THE LODI CITY COUNCIL DENYING THE APPEAL OF TIMOTHY CREMIN OF STEEFEL, LEVITT & WEISS AND AFFIRMING THE PLANNING COMMISSION'S DECISION ON DECEMBER 8, 2004 REGARDING TWO CONDITIONS RELATIVE TO THE LODI SHOPPING CENTER PROJECT (WAL-MART SUPERCENTER) LOCATED AT 2640 WEST KETTLEMAN LANE

==========

WHEREAS, notice thereof having been published according to law, an affidavit of which is on file in the office of the City Clerk, a public hearing was held January 19, 2005, by the Lodi City Council to consider the appeal of Timothy Cremin of Steefel, Levitt & Weiss regarding the Planning Commission's approval of two conditions contained within Planning Commission Resolution No. 04-65 relating to the Lodi Shopping Center Project (Wal-Mart Supercenter) located at 2640 West Kettleman Lane; and

WHEREAS, the two conditions appealed are shown as follows:

1.) Condition R: No building permit shall be issued for the proposed Wal-Mart until a tenant for the existing Wal-Mart building located at 2350 West Kettleman Lane has been secured. For purposes of this condition, secured means a signed lease for more than 50 percent of the space. Further, Wal-Mart shall not restrict the type of tenant that may occupy the building; and

2.) Condition EE: Developer shall pay for the Linkage study that the City is required to do based on the recently adopted Housing Element portion of the General Plan and payment of any fees based upon the conclusion of the study.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby deny the appeal of Timothy Cremin of Steefel, Levitt & Weiss, and hereby affirms the Planning Commission's decision of December 8, 2004 to include the two conditions as set out above, and all Planning Commission findings (as outlined in Planning Commission Resolution P.C. 04-65) relative to the Lodi Shopping Center Project (Wal-Mart Supercenter) located at 2640 West Kettleman Lane, pursuant to the California Environmental Quality Act.

Dated: January 19, 2005

==========

I hereby certify that Resolution No. 2005-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 19, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

CITY COUNCIL

JOHN BECKMAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702
FAX (209) 333-6807
cityclrk@lodi.gov

JANET S. KEETER
Interim City Manager

SUSAN J. BLACKSTON
City Clerk

D. STEPHEN SCHWABAUER
City Attorney

January 6, 2005

MAILED CERTIFIED MAIL
AND REGULAR U.S. POSTAL DELIVERY

Herum Crabtree Brown
Natalie M. Weber
2291 W. March Lane, Ste. B100
Stockton, CA 95207

NOTICE OF CITY COUNCIL PUBLIC HEARING – January 19, 2005

This letter is to notify you that a public hearing will be held by the City Council on **Wednesday, January 19, 2005**, at **7:00 p.m.**, or as soon thereafter as the matter can be heard, at the Carnegie Forum, 305 W. Pine Street, Lodi.

This hearing is being held to consider your appeal of the Planning Commission decision on 12/08/04 certifying Final EIR 03-01, approving Use Permit U-02-12, and Tentative Parcel Map 03-P-001.

If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. *Note: Written correspondence for the City Council may be mailed in c/o the City Clerk's Office, P.O. Box 3006, Lodi, CA 95241-1910, or delivered to the City Clerk at 221 West Pine Street, Lodi, California.*

Should you have any questions, please contact my office or Community Development Director Konradt Bartlam at (209) 333-6711.

Susan J. Blackston
City Clerk

cc: Community Development Director

CITY COUNCIL

JOHN BECKMAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

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JANET S. KEETER
Interim City Manager

SUSAN J. BLACKSTON
City Clerk

D. STEPHEN SCHWABAUER
City Attorney

January 6, 2005

MAILED CERTIFIED MAIL
AND REGULAR U.S. POSTAL DELIVERY

Steefel, Levitt & Weiss
Timothy Cremin
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719
January 6, 2005

NOTICE OF CITY COUNCIL PUBLIC HEARING – January 19, 2005

This letter is to notify you that a public hearing will be held by the City Council on **Wednesday, January 19, 2005**, at **7:00 p.m.,** or as soon thereafter as the matter can be heard, at the Carnegie Forum, 305 W. Pine Street, Lodi.

This hearing is being held to consider your appeal of the Planning Commission decision on 12/08/04 regarding two conditions: 1) Condition R of the use permit and tentative map approval resolution requiring signed leases for 50% of the existing Wal-Mart store before a building permit is issued for the new Supercenter and prohibits tenant restrictions; and 2) Condition requiring the project developer to fund the commercial linkage fee nexus study under Program 11 of the Housing Element and pay any adopted fees.

If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. *Note: Written correspondence for the City Council may be mailed in c/o the City Clerk's Office, P.O. Box 3006, Lodi, CA 95241-1910, or delivered to the City Clerk at 221 West Pine Street, Lodi, California.*

Should you have any questions, please contact my office or Community Development Director Konradt Bartlam at (209) 333-6711.

Susan J. Blackston
City Clerk

cc: Community Development Director

Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: **SET PUBLIC HEARING FOR JANUARY 19, 2005, TO CONSIDER TWO APPEALS OF THE PLANNING COMMISSION'S DECISION REGARDING THE LODI SHOPPING CENTER (WAL-MART SUPERCENTER) PROJECT LOCATED AT 2640 WEST KETTLEMAN LANE.**

LEGAL AD

PUBLISH DATE: **SATURDAY JANUARY 8, 2005**

TEAR SHEETS WANTED: **Three (3) please**

SEND AFFIDAVIT AND BILL TO:

SUSAN BLACKSTON, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, JANUARY 6, 2005

ORDERED BY:

Kari J. Chadwick
KARI J. CHADWICK
ADMINISTRATIVE CLERK

JACQUELINE L. TAYLOR, CMC
DEPUTY CITY CLERK

JENNIFER M. PERRIN, CMC
DEPUTY CITY CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

SEND PROOF OF ADVERTISEMENT. THANK YOU!!

Faxed to the Sentinel at 369-1084 at 11:30am (time) on 1/6/05 (date) 2 (pages)
LNS Dora Phoned to confirm receipt of all pages at 12:20 (time) Jac KJC Jen (initials)

N:\Administration\CLERK\FORMS\Advins1.doc

PROOF OF PUBLICATION

(2015.5 C.C.C.P.)

STATE OF CALIFORNIA

County of San Joaquin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Lodi News-Sentinel, a newspaper of general circulation, printed and published daily except Sundays and holidays, in the City of Lodi, California, County of San Joaquin and which newspaper had been adjudicated a newspaper of general circulation by the Superior Court, Department 3, of the County of San Joaquin, State of California, under the date of May 26th, 1953. Case Number 65990; that the notice of which the annexed is a printed copy (set in type not smaller than non-pareil) has been published in each regular and entire issue of said newspaper and not in any supplement thereto on the following dates to-wit:

January 8th .....

all in the year 2005.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Lodi, California, this 8th day of January, 2005

.....

Signature

This space is for the County Clerk's Filing Stamp

Proof of Publication of

Notice of Public Hearing
City of Lodi, City Council, January 19th, 2005

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Wednesday, January 19, 2005, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) Two appeals of the Planning Commission's decision regarding the Lodi Shopping Center (Wal-Mart Supercenter) project located at 2640 West Kettleman Lane.

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order of the Lodi City Council:
Susan J. Blackston
City Clerk

Dated: January 6, 2005
Approved as to form:
D. Stephen Schwabauer
City Attorney
January 8, 2005 — 7430

7430

DECLARATION OF POSTING

SET PUBLIC HEARING FOR JANUARY 19, 2005, TO CONSIDER TWO APPEALS OF THE PLANNING COMMISSION'S DECISION REGARDING THE LODI SHOPPING CENTER (WAL-MART SUPERCENTER) PROJECT LOCATED AT 2640 WEST KETTLEMAN LANE.

On Friday, January 7, 2005, in the City of Lodi, San Joaquin County, California, a copy of a Notice of Public Hearing to consider two appeals of the Planning Commission's decision regarding the Lodi Shopping Center (Wal-Mart Supercenter) project located at 2640 West Kettleman Lane (attached hereto, marked Exhibit "A"), was posted at the following four locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2005, at Lodi, California

ORDERED BY:

SUSAN J. BLACKSTON
CITY CLERK

Jacqueline L. Taylor, CMC
Deputy City Clerk

Kari J. Chadwick
Administrative Clerk

Jennifer M. Perrin, CMC
Deputy City Clerk

N:\Administration\CLERK\KJC\DECPOST1.DOC

DECLARATION OF MAILING

SET PUBLIC HEARING FOR JANUARY 19, 2005, TO CONSIDER TWO APPEALS OF THE PLANNING COMMISSION'S DECISION REGARDING THE LODI SHOPPING CENTER (WAL-MART SUPERCENTER) PROJECT LOCATED AT 2640 WEST KETTLEMAN LANE.

On January 7, 2005, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a notice to set public hearing for January 19, 2005, to consider two appeals of the Planning Commission's decision regarding the Lodi Shopping Center (Wal-Mart Supercenter) project located at 2640 West Kettleman Lane, marked Exhibit "A"; said envelopes were addressed as is more particularly shown on Exhibit "B" attached hereto.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2005, at Lodi, California.

ORDERED BY:

SUSAN BLACKSTON
CITY CLERK, CITY OF LODI

ORDERED BY:

JACQUELINE L. TAYLOR
DEPUTY CITY CLERK

JENNIFER M. PERRIN
DEPUTY CITY CLERK

Kari J. Chadwick
KARI J. CHADWICK
ADMINISTRATIVE CLERK

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: January 19, 2005

Time: 7:00 p.m.

For information regarding this notice please contact:
Susan J. Blackston
City Clerk
Telephone: (209) 333-6702

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, January 19, 2005,** at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) Two appeals of the Planning Commission's decision regarding the Lodi Shopping Center (Wal-Mart Supercenter) project located at 2640 West Kettleman Lane.

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order of the Lodi City Council:

Susan J. Blackston
City Clerk

Dated: January 6, 2005

Approved as to form:

D. Stephen Schwabauer
City Attorney

SET PUBLIC HEARING FOR JANUARY 19, 2005, TO CONSIDER TWO APPEALS OF THE PLANNING COMMISSION'S DECISION REGARDING THE LODI SHOPPING CENTER (WAL-MART SUPERCENTER) PROJECT LOCATED AT 2640 WEST KETTLEMAN LANE

1. 02741007;SACRAMENTO KETTLEMAN LLC;1954 MOUNT DIABLO BLVD SUITE A;WALNUT CREEK;CA;94596;2445;W;KETTLEMAN;LN
2. 05803002;LODI SOUTHWEST ASSOCIATES LP ;301 S HAM LN SUITE A ;LODI ;CA;95242;2640;W ;KETTLEMAN ;LN
3. 05814001;GREEN VALLEY GASOLINE LLC;30101 AGOURA CT SUITE 200;AGOURA HILLS;CA;91301;2448;W;KETTLEMAN;LN
4. 05814042;CHRISTIAN J KNOX & ASSOC INC;633 E VICTOR RD SUITE E;LODI;CA;95240;2442;W;KETTLEMAN;LN
5. 05814044;FIRST LODI PLAZA ASSOCIATES;100 SWAN WAY SUITE 206;OAKLAND;CA;94621;2430;W;KETTLEMAN;LN
6. 02705021;MEXICAN AMER CATHOLIC FED;PO BOX 553;LODI;CA;95241;341;E;ST RT 12;HY
7. 05803003;VAN RUITEN RANCH LTD;J401 W TURNER RD;LODI;CA;95242;14509;N;LOWER SAC;RD
8. 05803009;REICHMUTH, CAROLYN HINES;1358 MIDVALE RD;LODI;CA;95240;252;E;ST RT 12;HY
9. 05814004;FRAME, DEAN K & SHARON L TR;212 RUTLEDGE DR;LODI;CA;95242;14752;N;LOWER SAC;RD
10. 05814006;HERRMANN, VERNET & C TRS;1200 GLENHURST;LODI;CA;95240;800;E;OLIVE;AV
11. 05814007;DEL RIO, SANTIAGO M & RAMONA;865 E OLIVE AVE;LODI;CA;95242;844;E;OLIVE;AV
12. 05814011;GREVER, ZANE M & P TRS;1432 PARK ST;LODI;CA;95242;777;E;OLIVE;AV
13. 05814012;PETERSON, M BILL;P O BOX 473;LOCKEFORD;CA;95237;14500;N;LOWER SAC;RD
14. 05814014;PETERSON, RUTH SUSAN;PO BOX 331;SUTTER CREEK;CA;95685;14620;N;LOWER SAC;RD
15. Steefel, Levitt & Weiss; Timothy Cremin;One Embarcadero Center, 30th Floor; San Francisco;CA;9411-3719
16. Herum Crabtree Brown; Natalie Weber;2291 W. March Lane, Ste. B100; Stockton;CA;95207

I-1

RECEIVED
2005 JAN 19 PM 4:32
CITY CLERK
CITY OF LODI

January 19, 2005

To the City Council Members and Staff,

Yes on Measure R, which received over 43% of the vote, was designed to limit the size of retail buildings in Lodi to 125,000 square feet without voter approval. This initiative is similar to many others around the state and across the nation. Lodi's citizens are not alone in their fight to retain control of their town – everywhere a Wal-Mart Supercenter is headed, citizens are rising up to just say no.

If you spend just a little time researching the issue, you will find stories from all across the United States, stories of towns large and small that have been devastated, rather than "saved," by Wal-Mart. Rather than bringing in new jobs and more tax dollars, Wal-Mart has caused business closures and loss of tax revenues. Despite the rosy pictures painted by Wal-Mart executives and their publicity machines, the pictures that can be found are of empty store fronts and employees working for low wages, who are instructed in the ways of applying for state assistance.

I understand the financial bind that ties us today in Lodi. As a citizen who hasn't seen the whole of the city's budget and yet knows about the $30+ million owed to a Wall Street investment bank, the groundwater pollution that has yet to be cleaned up, rising costs for employees, and the threat of lawsuits, it scares the daylights out of me. Talk of raising rates to pay for these things leads me to wonder where I'm going to get the money to pay the bills sure to come my way.

I understand that the parcel in question is now zoned commercial. I get that. However, that doesn't mean you have to build one huge temple dedicated to rampant consumerism – instead of a erecting a building the size of 4 football fields, why not have 4 smaller buildings? Or 8 buildings? Who says that the commercial building on that corner has to be super-sized? Who says, beside Mr. Browman, that this is going to be the best looking Wal-Mart Supercenter ever? (Some would say to drive to Folsom to check out all the fancy architectural tricks on that store and some would say that you can put lipstick on a pig but it's still a pig.)

I understand the concern about "leakage." But I also understand that a Wal-Mart Supercenter is considered to be a "regional" store, rather than a local store. Proponents tout the fact that people will come from far and wide to shop there. However, there is now a Supercenter on Hammer Lane just off Hwy 99 in Stockton and apparently another one to be built at Eight Mile Rd. and I-5. There's even been talk of building one in Galt. So where will all these customers for the proposed Lodi store come from? And if the surrounding areas can't support all these mega-stores, which one will the corporate office close? My bet would be on Lodi – it's not on the major thoroughfares as are the Hammer Lane, Eight Mile Road and Galt stores. Then where would we be?

Lodi is in a bind and I just want you to be super sure that the cure you choose to use doesn't turn out to be worse than the disease.

Thank you.

Betsy Fiske

I-1

IN SUPPORT OF A WAL MART SUPER CENTER

When Measure R went on the ballot, The Small Preservation Committee said, "Let the people decide." The people decided and the measure failed. Now they still are not satisfied. They have changed their names to "Citizens for Open Government" and also another name so people will not know who they are. Instead of keeping their promise they are now going after the Environmental Report. Does these people know what the word "NO" means? They won,t give up until they get their way.

Wal Mart may or may not pay the best wages or Benefits but at least they are willing to give a lot of people jobs whomay not otherwise be able to find one. This way people can be proud of themselves that they are working and getting ahead instead of being on Welfare. Also Wal Mart is very Generous with the charities in Lodi.

I would like to know why Wal Mart has to have a special design and colors? Did Rancho San Miguel Market get special privileges for their design and colors? I agree the East side needed a supermarket and it is a very nice store on the inside. But who okayed the design and colors on the outside of that monstrosity? Lets be fair here. What is good for one store, should be good for everyone.

Did Safeway have to have a tenant for their empty building when they moved to the west side?

Also lets check the wages of some of these other stores before we pick on Wal Mart. I think a lot of people would be surprised at what they would hear.

We have a Wal Mart now and it has not hurt the Downtown businesses. They are Specialty shops and people who shop there,will continue to do so.

There are a lot of Seniors in Lodi who are on a fixed income. They need a Wal Mart super center to make their money buy the things they need and otherwise would not be able to afford.

Let the people have there Wal Mart Super Center!

Thank You
Marge Degenstein
2935 Rosewood Dr.
Lodi, Ca. 95242
209-368-4813

RECEIVED
JAN 18 2005
City Clerk
City of Lodi

✓ CC
✓ CM
✓ CA
✓ CD
__ EUD
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I-1

Susan Blackston

From: Susan Blackston

Sent: Wednesday, January 19, 2005 3:19 PM

To: City Council

Cc: Janet Keeter; Steve Schwabauer; Rad Bartlam

Subject: Item I-1, January 19, 2005

PHONE MESSAGE:
Lodi citizen Linda Pellegrini is opposed to the appeal by Steefel, Levitt & Weiss (on behalf of Wal-Mart) – specifically Condition R requiring signed leases for 50% of the existing Wal-Mart store. She feels that a tenant for the current Wal-Mart store should be found before the Supercenter is built.

Note: Ms. Pellegrini mentioned that she received a flier in the mail regarding this matter.

Susan J. Blackston, City Clerk
City of Lodi, P.O. Box 3006, Lodi, CA 95241
(209) 333-6702
cityclrk@lodi.gov

I-1

Susan Blackston

From: Susan Blackston

Sent: Wednesday, January 19, 2005 3:44 PM

To: 'Sue and Olen McCombs'

Cc: City Council; Janet Keeter; Steve Schwabauer

Subject: RE: WAL MART

Dear Ms. McCombs:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes:
1) Interim City Manager, 2) City Attorney, and 3) Community Development.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----
From: Sue and Olen McCombs [mailto:olen-sue@softcom.net]
Sent: Wednesday, January 19, 2005 3:39 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: WAL MART

Dear Council Members,

With every decision made regarding Wal Mart I think finally we will have a new, roomier store able to service the growing population in Lodi. For some reason there is always another argument about it. The council has voted and the people of Lodi turned down the restrictive size stipulation. Please, let's just get on with this project.

The new hurdle of forcing Wal Mart to lease the old location before approval can be given to build is totally unfair unless you require every other business who moves to a new location to lease the old one first. That I have not seen in in Lodi. You cannot require this of one business and not another. Was Plummer required to lease their previous location before you approved their new location? I don't think so, since there are still signs on their old buildings

You should also be thinking seriously about the revenues, which are decreasing in Lodi because people are going where there are more stores and more choices. I have heard a rumor from an employee from Joanne's that they will closing the Lodi store this year, closing the Stockton store and will be relocating in the Kohl's shopping area at Eight Mile Road in Stockton. There are a lot of dollars spent there and it is a great convenience for Lodi with sewing supplies and classes of various kinds. Another loss for Lodi! Another store that was NOT put out of business by Wal Mart.

You know, we are not all going to rush to Wal Mart for our groceries since I, for one, will continue to shop at Apple Marketplace and others where it is convenient for me, but it would be great for a lot of other people. What about the Mom who is shuffling two or three kids in and out of car seats and the convenience for her to be able to do more at one stop.

Just my opinion. Thanks for listening.

Sue McCombs