AGENDA ITEM B-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: **February 3, 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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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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4. Submit final map per City requirements including the following:
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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.
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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.

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    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.

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    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.

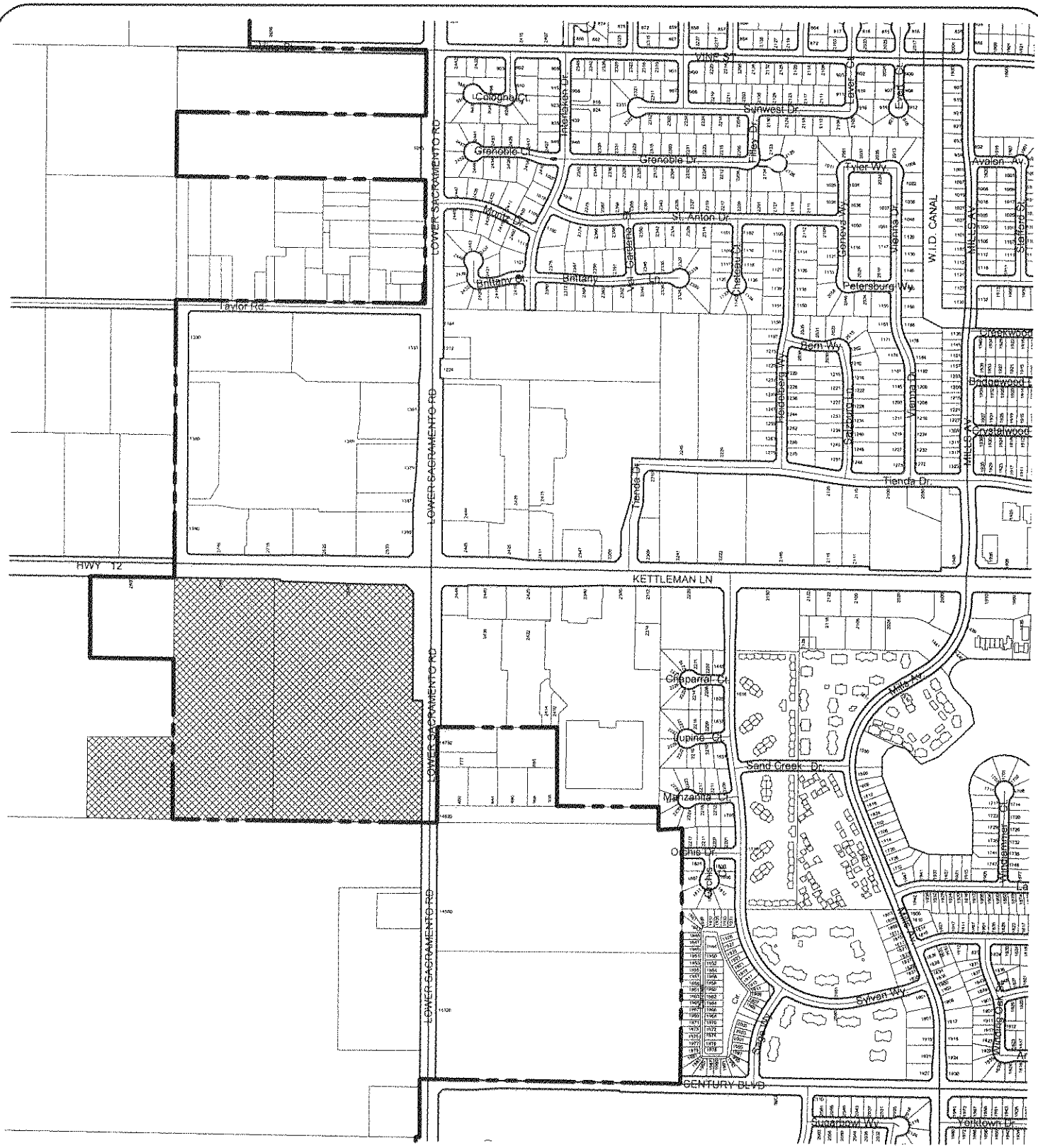
Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City. *Using other wastewater funds, the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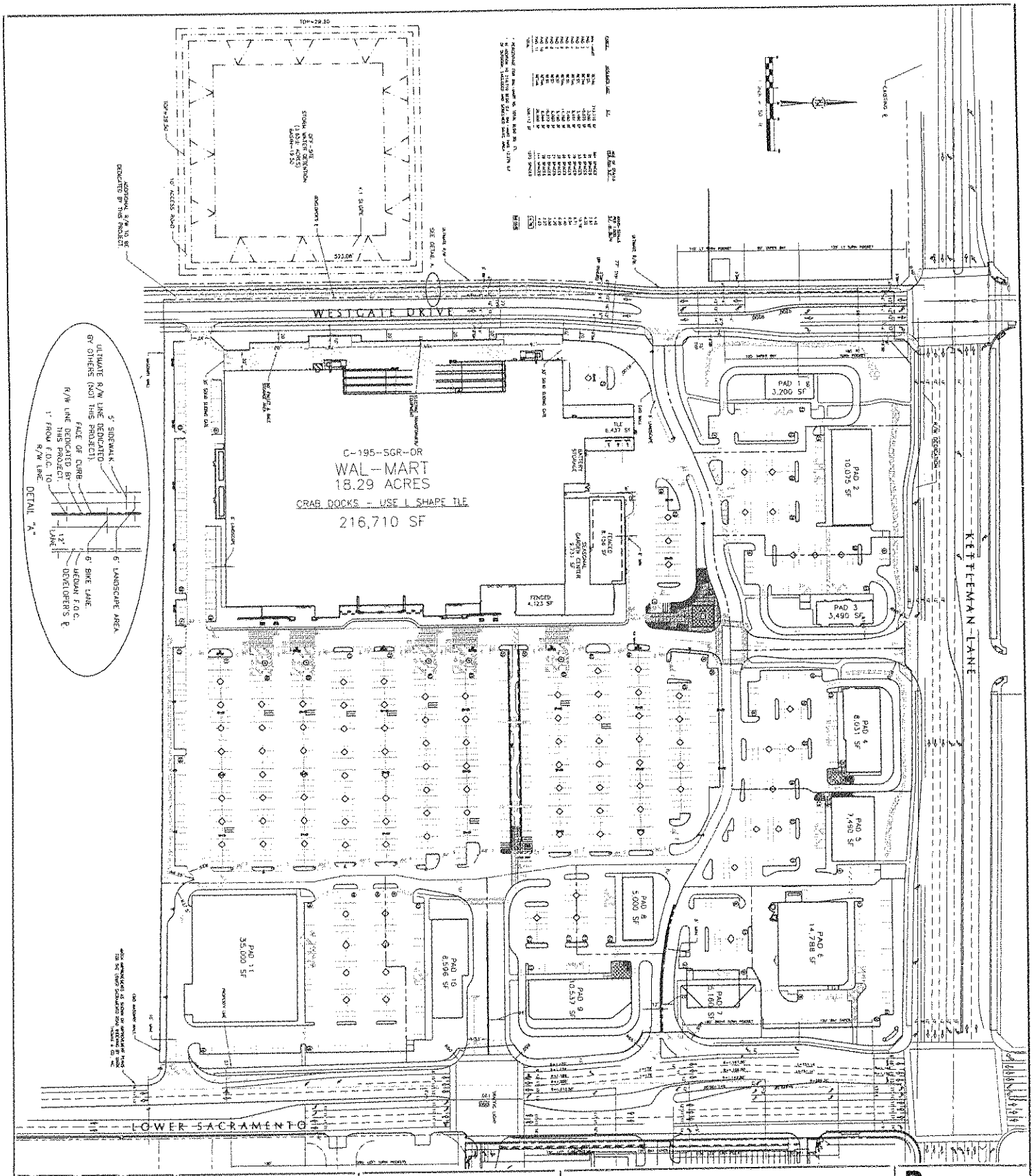
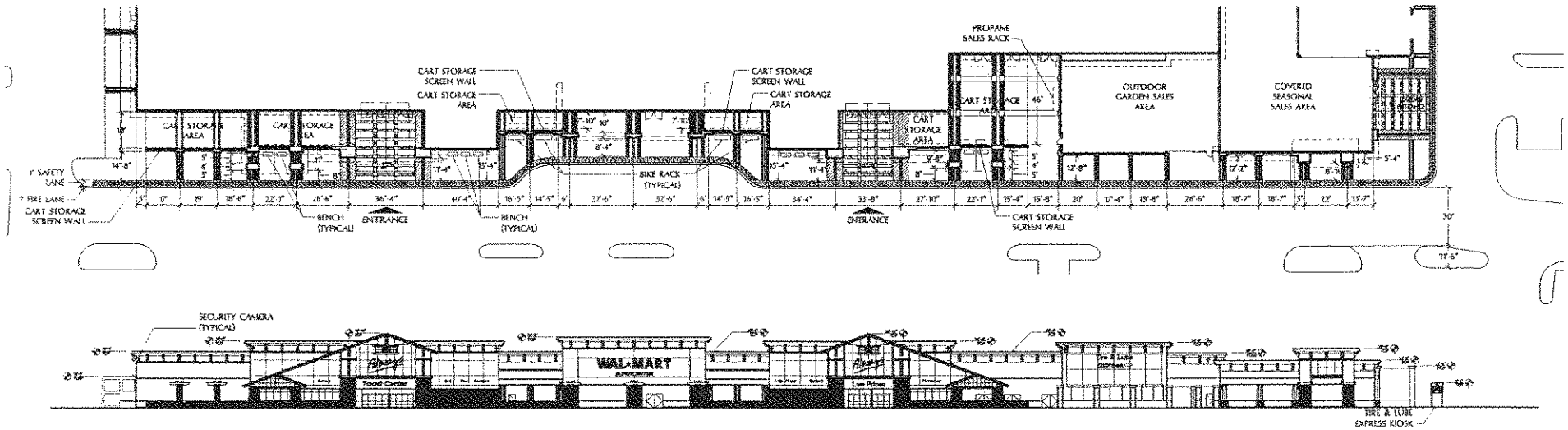


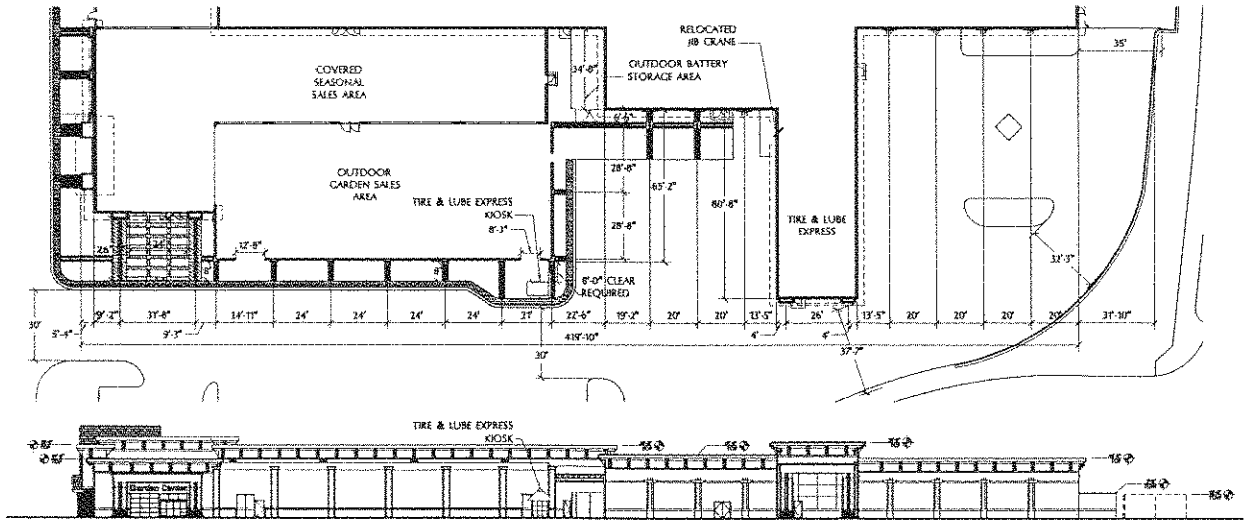
LODI SHOPPING CENTER
@ KETTLEMAN & LOWER
SACRAMENTO ROAD

BROWMAN DEVELOPMENT

SHEET 1 OF 1



EAST ELEVATION



NORTH ELEVATION

Elevations and Hardscape Plan

Sheet 1 of 3

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

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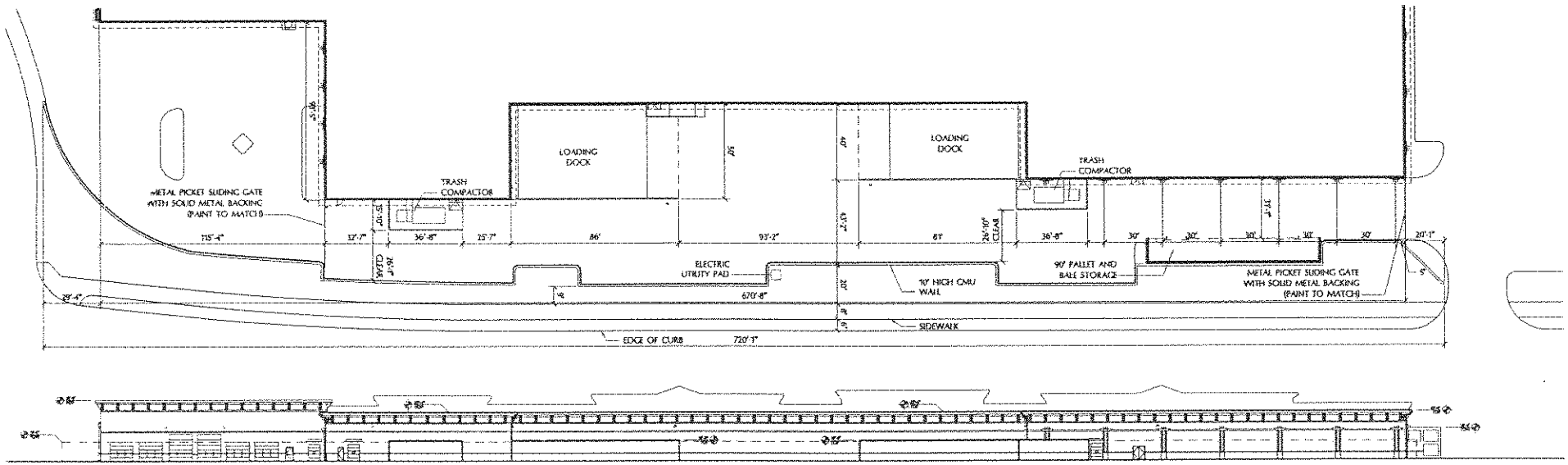
WAL★MART

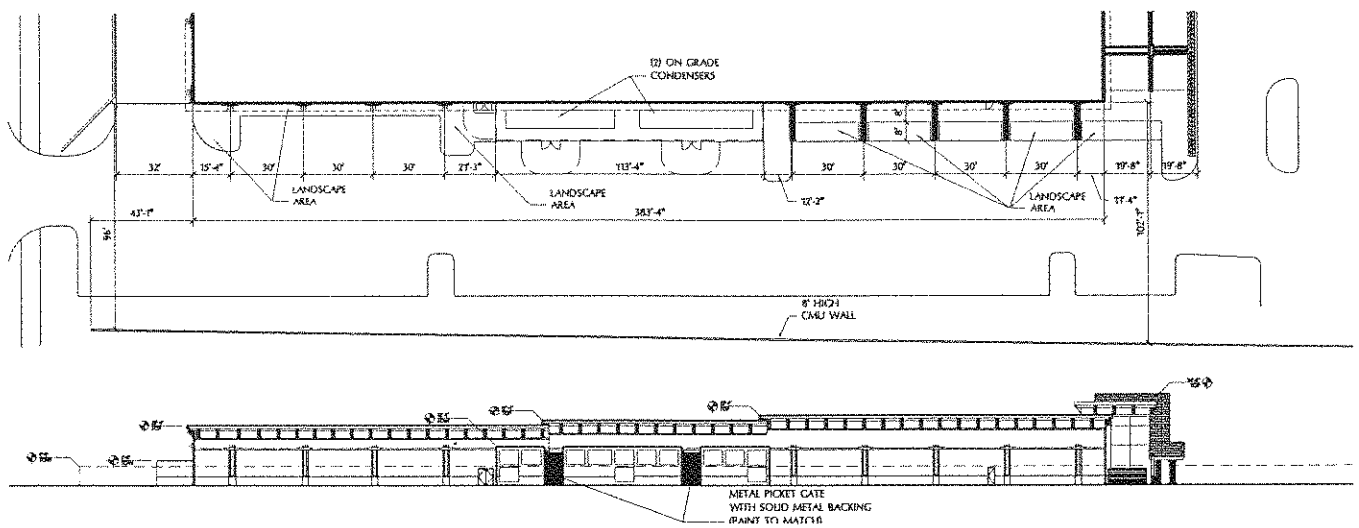
Lodi, California

Store No. 1789-03

william parrish design development consultants, inc.
1000 lakes drive, suite 405
west covina, ca 91790
p . 626.917.6800
f . 626.917.6808
w . www.wpddc.com



WEST ELEVATION



SOUTH ELEVATION

Elevations and Hardscape Plan

Sheet 2 of 3

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

WAL★MART

Lodi, California

Store No. 1789-03

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consultants, inc.
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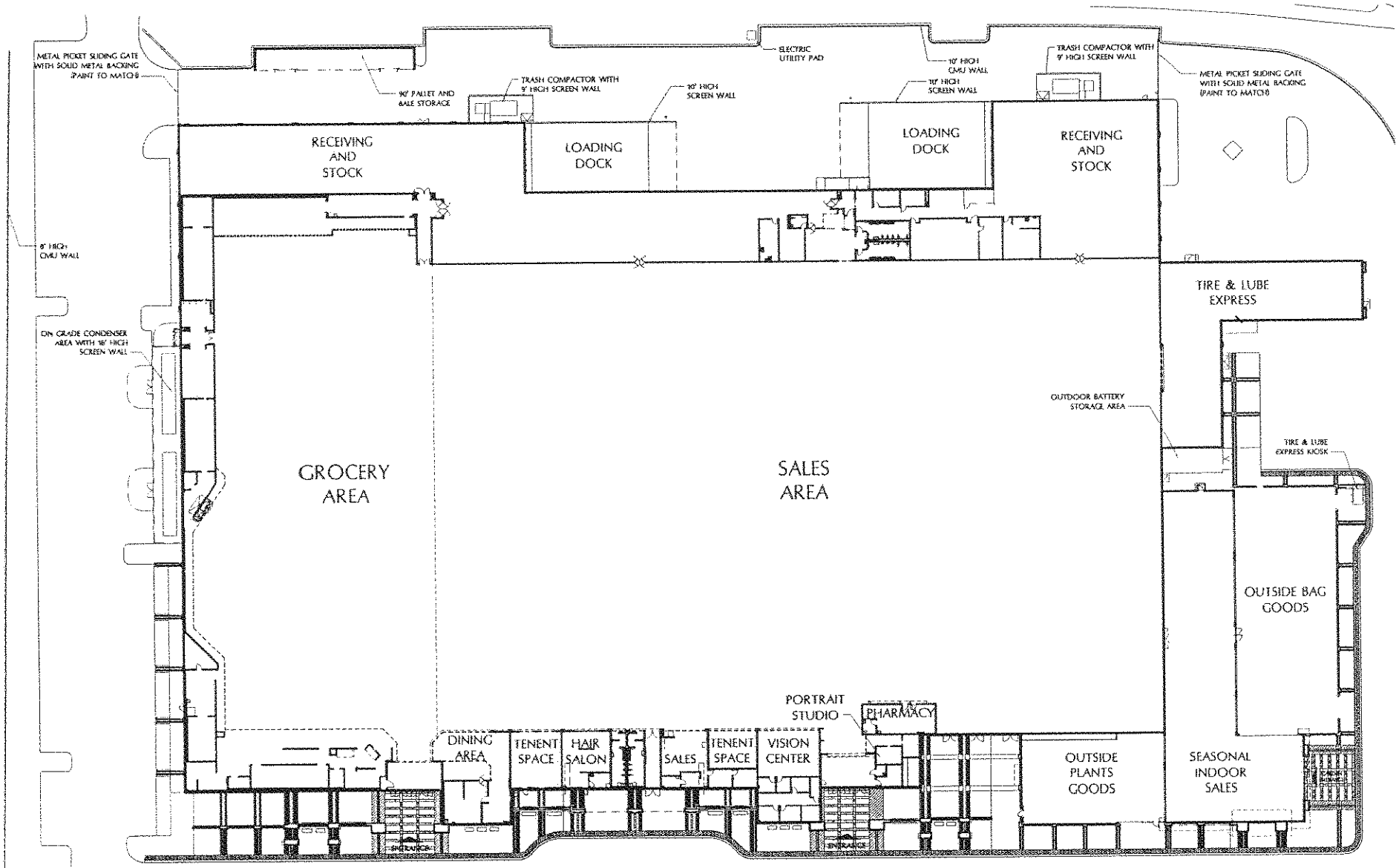

*NOTE:
FOR HARDSCAPE DIMENSIONS REFERENCE SHEET 1 AND 2

Department Plan

Sheet 3 of 3

Project No:	WMT NC# 02-0206	REVISIONS	BY
Scale:	1" = 20'-0"		
Issue Date:	11/29/04		
Prepared By:	ACV		
Checked By:	PLR		
SDC:	WAF		

WAL★MART

Lodi, California
Store No. 1789-03

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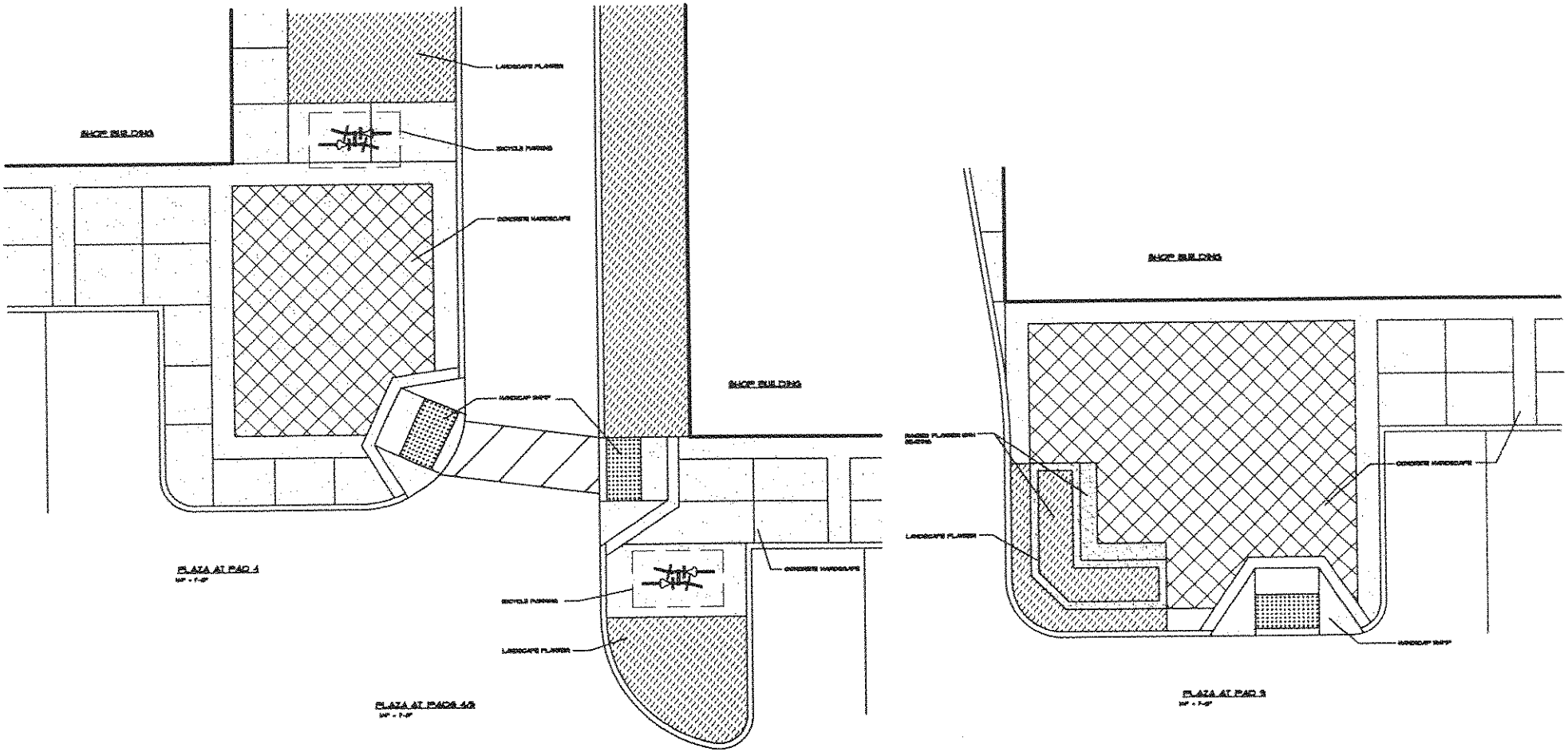


Project: Retail Center, Site Features

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

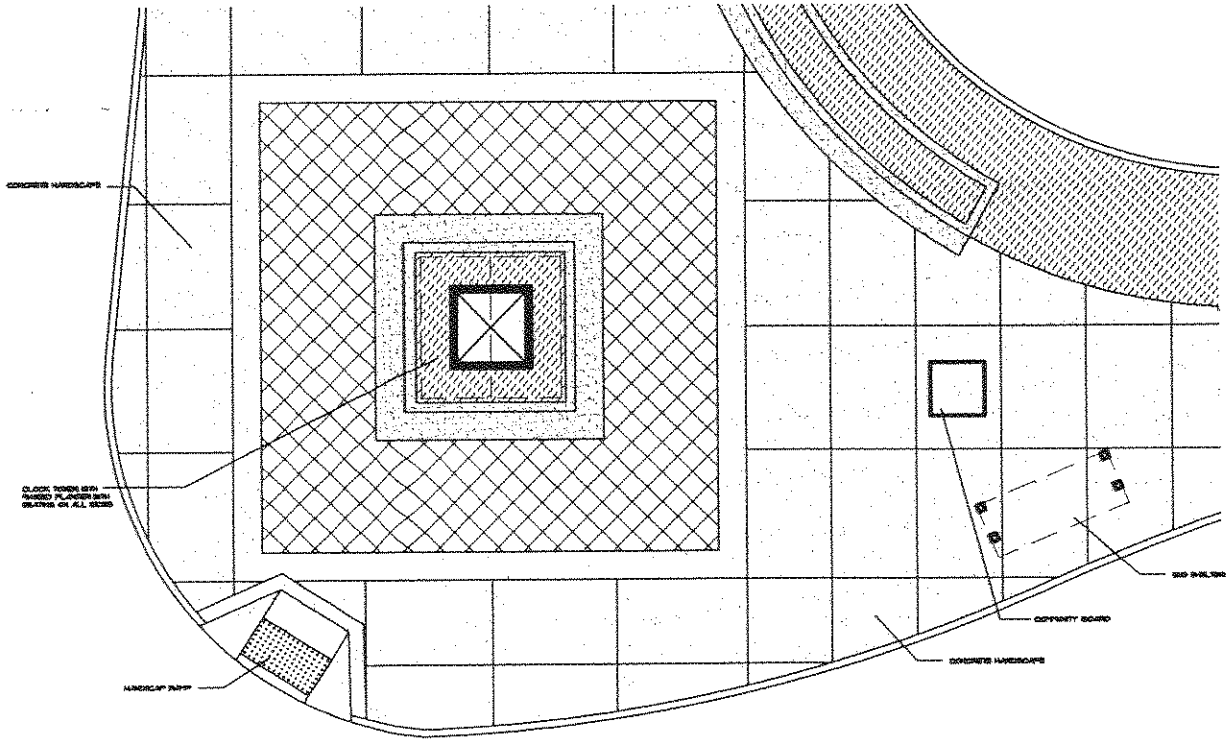
Jerold L. Dougal
ARCHITECT

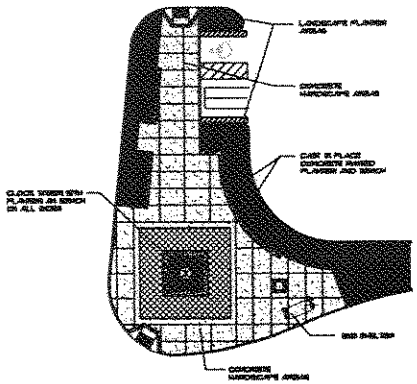
1309 Retreat Way
Roseville, CA 95747
916.783-8540, Fax 916.784-3647

November 11, 2004

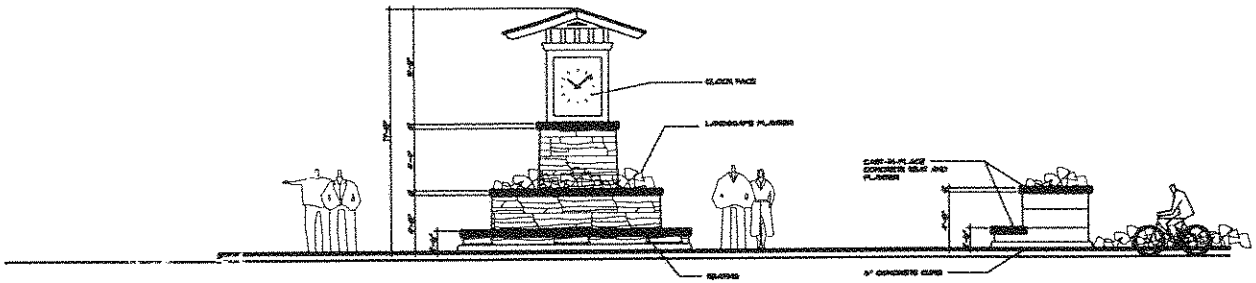
Hardscape Plans

A





OVERALL PLAZA PLAN
NO SCALE



PLAZA ELEVATION
1/4" = 1'-0"

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

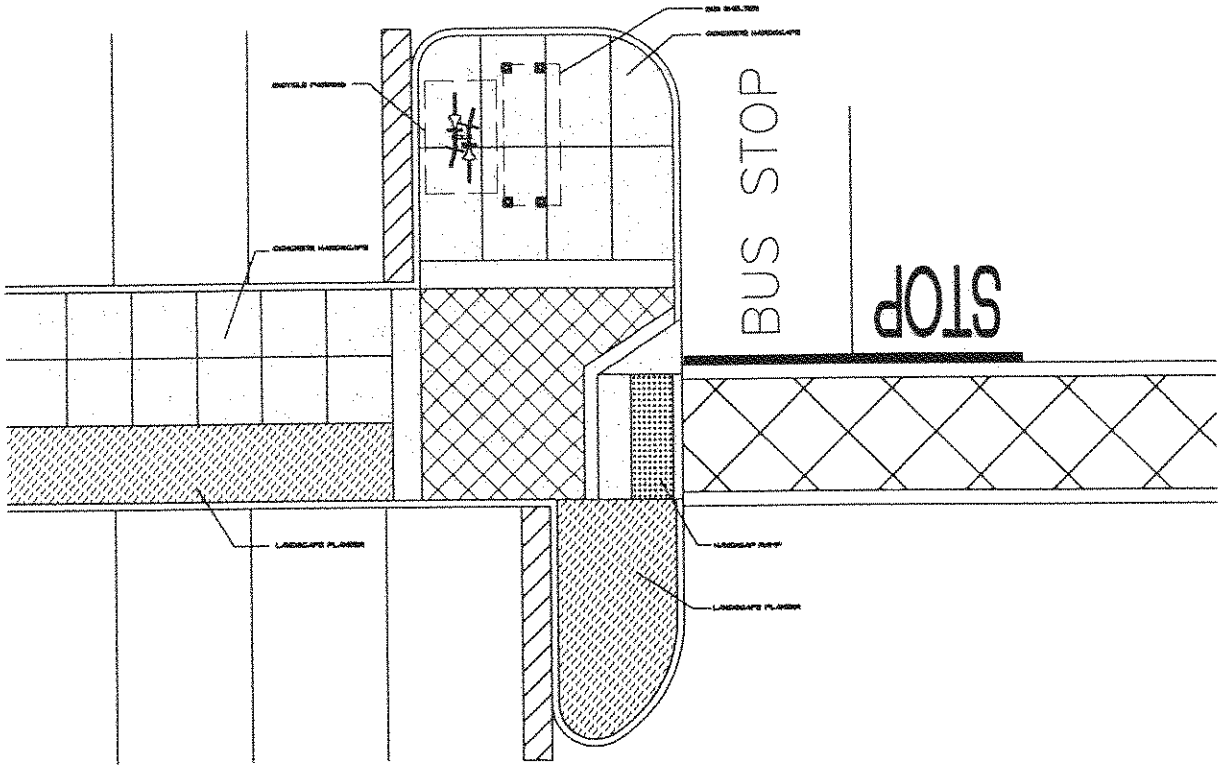
Jerold L. Dougal
ARCHITECT

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

November 11, 2004

Hardscape Plan/Elevations

B



PLAZA AT SHELLER 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.

ROLL CALL

Commissioners Present: Eddie Aguirre, Randall Heinitz, Tim Mattheis, Gina Moran, David Phillips, Dennis White, and Chairman Haugan.

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

RESOLUTION NO. 2005-26

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

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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 (EIR); 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 that 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 certified the Final Environmental Impact Report prepared for the project; and

WHEREAS, that certification has been appealed to the Lodi City Council; and

WHEREAS, the Lodi City Council has reviewed and considered the FEIR 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 CITY COUNCIL finds that full and fair public hearings had been held on the EIR and the City Council having considered all comments received thereon, and determined that said EIR is adequate and complete; and said EIR is hereby incorporated herein by reference.

3. THAT THE CITY COUNCIL determines, in connection with the recommended approval of the proposed Use Permit application for the Lodi Shopping Center, that the FEIR for those actions has been prepared in compliance with 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 FEIR represents the independent judgment of the City of Lodi as Lead Agency for the project.

4. THAT THE CITY COUNCIL finds and recognizes that the FEIR contains additions, clarifications, modifications, and other information in its responses to comments on the DEIR and also incorporates text changes to the EIR based on information obtained from the City since the DEIR was issued. The City Council finds and determines that such changes and additional information are not significant new information as that term is defined under the provisions of CEQA 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 DEIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the DEIR have been proposed that would lessen the significant environmental impacts of the project. Accordingly, the City Council finds and determines that recirculation of the FEIR for further public review and comment is not warranted.

5. THAT THE CITY COUNCIL makes the following findings with respect to the significant effects on the environment resulting from the project, as identified in the hereinbefore mentioned FEIR, with the stipulation that (i) all information in these findings is intended as a summary of the full administrative record supporting the FEIR, 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 DEIR and were not adopted as part of the FEIR are hereby expressly rejected for the reasons stated in the responses to comments set forth in the FEIR 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 DEIR and FEIR, 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 City Council finds 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 has determined 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 was certified by the Lodi Planning Commission pursuant to the California Environmental Quality Act by adoption of their Resolution No. 04-64 on December 8, 2004.. All feasible mitigation measures for the project identified in the Environmental Impact Report and accompanying studies are hereby incorporated into this resolution.

Dated: February 3, 2005

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I hereby certify that Resolution No. 2005-26 was passed and adopted by the City Council of the City of Lodi in a special meeting held February 3, 2005, by the following vote:

AYES:	COUNCIL MEMBERS – Hansen, Johnson, and Mounce
NOES:	COUNCIL MEMBERS – Hitchcock
ABSENT:	COUNCIL MEMBERS – Mayor Beckman
ABSTAIN:	COUNCIL MEMBERS – None

SUSAN J. BLACKSTON
City Clerk

B-1b

DRAFT

RESOLUTION NO. 2005-____

A RESOLUTION OF THE LODI CITY COUNCIL 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

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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 Lodi City Council has reviewed and considered the approval of 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, 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 City Council 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.

February 3, 2005

==========

I hereby certify that Resolution No. 2005-____ was passed and adopted by the City Council of the City of Lodi in a special meeting held February 3, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

2005-____

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 21, 2005

MAILED CERTIFIED MAIL
AND REGULAR U.S. POSTAL DELIVERY

Herum Crabtree Brown
Natalie M. Weber / Steven Herum
2291 W. March Lane, Ste. B100
Stockton, CA 95207

NOTICE OF CITY COUNCIL PUBLIC HEARING – February 3, 2005

This letter is to notify you that a public hearing will be held by the City Council on **Thursday, February 3, 2005**, at **6:00 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

CITY HALL, 221 WEST PINE STREET
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cityclrk@lodi.gov

JANET S. KEETER
Interim City Manager

SUSAN J. BLACKSTON
City Clerk

D. STEPHEN SCHWABAUER
City Attorney

January 21, 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

NOTICE OF CITY COUNCIL PUBLIC HEARING – February 3, 2005

This letter is to notify you that a public hearing will be held by the City Council on **Thursday, February 3, 2005**, at **6:00 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

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 24th

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 24th 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, February 3, 2005

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Thursday, February 3, 2005,** at the hour of 6:00 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 20, 2005
Approved as to form:
Stephenn Schwabauer
City Attorney
Jan. 24, 2005 — 7470

7470

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 FEBRUARY 3, 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: **MONDAY, JANUARY 24, 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 20, 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 4:20 pm (time) on 1/20/05 (date) 2 (pages)
LNS _____ Phoned to confirm receipt of all pages at _____(time) ____Jac ___ KJC ___Jen (initials)

N:\Administration\CLERK\FORMS\Advins1.doc

DECLARATION OF POSTING

SET PUBLIC HEARING FOR FEBRUARY 3, 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 21, 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 21, 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 FEBRUARY 3, 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 21, 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 February 3, 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 21, 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

Forms/decmail.doc

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: February 3, 2005

Time: 6:00 p.m.

For information regarding this notice please contact:
Susan J. Blackston
City Clerk
Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Thursday, February 3, 2005,** at the hour of 6:00 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 20, 2005

Approved as to form:

D. Stephen Schwabauer
City Attorney

SET PUBLIC HEARING FOR FEBRUARY 3, 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

EXHIBIT B

APN;OWNER;ADDRESS;CITY;STATE;ZIP;SITUSNUM;SITUSDIR;SITUSSTNAME;SITUSTYPE

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

SET PUBLIC HEARING FOR FEBRUARY 3, 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.

Camille Green
405 E. Pine Street
Lodi, CA 95240

Dawn Squires
508 Hilborn
Lodi, CA 95240

Carol Theuriet
1621 W. Tokay St.
Lodi, CA 95242

Treacy Elliott
1712 W. Lockeford St.
Lodi, CA 95242

Sherry Parks
337 ½ E. Walnut Street
Lodi, CA 95240

Joyce Frances
2250 Scarborough Dr. #47
Lodi, CA 95240

Pastor David Butt
551 N. Loma Drive
Lodi, CA 95242

Lee Butt
551 N. Loma Drive
Lodi, CA 95242

Diana Will
846 Daisy Avenue
Lodi, CA 95240

Arthur Will
846 Daisy Avenue
Lodi, CA 95240

Linda Nelson
1929 Ayers Avenue
Lodi, CA 95242

John Duna
3663 E. Bannon Rd.
Acampo, CA 95220

Patriss Bates
412 S. Washington Street
Lodi, CA 95240

Marian Sink
2680 Douglas Fir Drive
Lodi, CA 95242

Carol Cash
2373 Cabrillo Circle
Lodi, CA 95242

Mary Lavieri
412 S. Washington
Lodi, CA 95240

Bobbie Witham
832 Bel Air Court
Lodi, CA 95240

Leslie Kreis
1951 Scarborough
Lodi, CA 95240

Jenta Houston
14900 W. Highway 12, #65
Lodi, CA 95242

Russell & Marjorie Young
303 Cork Oak Way
Lodi, CA 95242

Marilyn Majernik
1416 Iris Drive
Lodi, CA 95242

Virginia Lahr
311 E. Elm Street
Lodi, CA 95240

Cheryl Nitschke
532 Louie Avenue
Lodi, CA 95240

Bob Coons
14900 W. Highway 12
Lodi, CA 95242

Robert Andrade
1720 S. Hutchins, #17
Lodi, CA 95240

Terry Schimke
15930 Linn Road
Lodi, CA 95240

Edward Mamaril
975 Lake Park Avenue
Galt, CA 95632

Richard Stanford
914 S. Church Street
Lodi, CA 95240

Pat & William & Alicia Travis
8 W. Vine Street
Lodi, CA 95240

Karen Stephenson
Jeri Proctor
1311 W. Century Blvd. #6
Lodi, CA 95242

SET PUBLIC HEARING FOR FEBRUARY 3, 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.

Dennis Norton
615 N. Sacramento Street
Lodi, CA 95240

Kathy King
5298 E. Harney Lane
Lodi, CA 95240

Raymond Harper
2110 Scarborough Dr. #20
Lodi, CA 95240

Ardith Philo
14900 W. Highway 12
Lodi, CA 95242

Sara Heberle
132 S. Sunset
Lodi, CA 95240

Barbara Kringel
915 W. Locust Street
Lodi, CA 95240

Wade King
5298 E. Harney Lane
Lodi, CA 95240

Steve Gaines
3502 Schooner Drive
Stockton, CA 95219

Mel Young
2150 W. Alpine Avenue
Stockton, CA 95204

Christopher Vigil
1042 Yokuts Court
Lodi, CA 95240

Lester Hixson
173 San Marcos Drive
Lodi, CA 95240

James Dodd
P.O. Box 1355
Woodbridge, CA 95258

Kenneth Lopes
P.O. Box 301
Acampo, CA 95220

Marguerite Jones
7 S. School Street
Lodi, CA 95240

Ben & Delores Geringer
1449 Arlington Drive
Lodi, CA 95242

Michael Folkner, Manager
2350 W. Kettleman Lane
Lodi, CA 95242

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Timothy Cremin
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San Francisco, CA 94111-3719

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San Francisco, CA 94111-3719

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NOTICE OF CONTINUED PUBLIC HEARING

CITY COUNCIL

CITY OF LODI

NOTICE IS HEREBY GIVEN that the February 3, 2005, public hearing of the City Council of the City of Lodi to consider appeal filed on 12/13/04 by Timothy Cremin of the firm Steefel, Levitt & Weiss to 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 has been continued to **February 16, 2005 at the hour of 7:00 p.m.** in the Council Chamber, Carnegie Forum, 305 W. Pine Street, Lodi, California.

Posted February 4, 2005

Jennifer M. Perrin

SUSAN J. BLACKSTON
for CITY CLERK
Of the City of Lodi

filed 2-3-05
R. Barflan

Staff response to the January 19th presentation by Steve Herum

General Plan and Zoning Inconsistencies

Mr. Herum continues to assert that the City is not following the General Plan or Zoning Ordinance with respect to this project. As far as the General Plan, Mr. Herum suggested that the City has a better designation for this type of development. His reference was to a regional commercial designation. In fact the City has no such designation. Again, we believe that the NCC designation is appropriate and would also contend that the City's history of this interpretation must be followed as precedent.

Likewise, Mr. Herum suggests that a Wal-Mart Supercenter cannot be a Department Store because it sells broccoli. No where in the City's Zoning Ordinance will you find such a prohibition. In fact as I've mentioned time and again, the designation allows for grocery sales, so in fact the sales of broccoli are specifically permitted. The fact that they happen to sell broccoli along with other general merchandise does not and should not discount their status as a Department Store. I'm reminded of a number of other department stores that have sold a variety of grocery and food items. Anyone remember the soda counter at Woolworth's? How many people have done their banking at Safeway or Raley's?

Conversion of Agricultural Land

In the letter presented to the City Council on January 19th, Mr. Herum cites an un-published Third District Court of Appeals decision that suggests the use of conservation easements as appropriate mitigation. The Final EIR cites an equally significant un-published case that supports the City's position on this subject. That said, the only binding legal authority on this matter is a published Court of Appeals case that supports our conclusions.

Finally with regard to the statement in the final paragraph of this heading, Mr. Herum states that a discussion of various mitigation measures should be discussed. We would point out for the Council's benefit that pages 31 and 32 of the Draft EIR do just that.

Treatment of Agricultural/Urban Conflict

With regard to this issue, we believe that a reasoned analysis was provided in the Draft EIR, as elaborated upon in the FEIR.

Additionally, in the nine years that I have been with the City, I would note that we have not received one complaint regarding agricultural activities, including spraying. Further, as the Council is aware, the City and County's Right-to-Farm Ordinance provides protection to farming activities that occur adjacent to urban type development.

Two additional points we would offer concerning this issue. The American Farmland Trust has endorsed buffers that are less than what is proposed with this project. Second, the Council should be aware that the adjacent agricultural property has been sold to a local development company so it is our opinion that the entire argument is moot.

Treatment of Urban Decay

First, let's be clear as to what the City's EIR concludes. The Economic expert analysis finds that there is no likelihood of any store closure as a result of this project. Therefore, one cannot make the argument of urban decay, deterioration or blight from the physical effects of store closure. As such, it makes no difference if you call it urban decay or blight or physical deterioration because there is no evidence that any of it will occur, regardless of how it is defined.

Mr. Herum wants the Council to conclude that because we used the term blight along with the term physical deterioration that the analysis is somehow flawed. (Pages 23 and 24 DEIR)(Page 21 FEIR). We would concur with Mr. Herum's comment if that were true, but it is not.

Evidence of Urban Decay

Mr. Herum's point is well taken as it relates to the Bakersfield decision. I will acknowledge that studies conducted elsewhere have value in the absence of no study at all as was the situation in Bakersfield. And even in that case, the out-of-town studies submitted were not taken as evidence regarding the impacts of the projects under consideration; instead they merely provided justification that project-specific economic studies were warranted. However, the City of Lodi did conduct such a project-specific study, indeed two separate studies with respect to the potential of this project causing reasonably foreseeable significant environmental impacts. Those studies found that no evidence existed to suggest that would occur.

Included in the packet submitted by Mr. Herum on January 19th is a study he commissioned regarding this project. We asked our Economic consultant to review this document and his opinion is submitted for the Council's review.

Air Quality

With respect to air quality, Mr. Herum is again suggesting that what occurred in Bakersfield is identical to what is occurring in Lodi. This is not true. In the Bakersfield decision, the court ruled the air quality analysis was insufficient because there was no acknowledgement or analysis of the well-known connection between the reduction in air quality and increase in specific respiratory conditions or illness.

The adverse health effects were analyzed in both the Draft (Pages 114-116) and Final (Page 28) EIR, based on technical analysis provided by well-known air quality expert Donald Ballanti.

Cumulative Impacts

Once again, the facts regarding the Bakersfield decision and Lodi's project are being blurred. In Bakersfield, the City did not take into consideration the cumulative impact of two Wal-Mart Supercenter projects being processed simultaneously within the City of Bakersfield. We concur with the courts view that the Bakersfield EIR was suspect as a result. With our project, no such situation has occurred. First, CEQA does not require projects that are located in communities once removed from the jurisdiction be evaluated. Keep in mind that in Bakersfield the projects were in the same City and only a couple of miles from each other. That is why our consultant discussed potential projects within the areas of the County surrounding the City of Lodi and not the City of Stockton. Nonetheless, With respect to other Supercenters being proposed or developed in nearby cities, they had not been proposed at the time of the Notice of Preparation and therefore are not required to be studied pursuant to CEQA.

Traffic Impacts

We think that Mr. Herum made a mistake in his letter dated January 19th. The heading suggests an issue with the traffic analysis, but the commentary is related to energy impacts. Additionally, in the packet submitted a peer review of the traffic analysis is provided. We've asked the City's traffic consultant to respond and you have been given that report.

Appendix F

This issue is covered in your staff report. We do not believe any further explanation is necessary. To summarize, there is nothing in the CEQA Statutes or Guidelines which requires analysis of energy impacts unless the impacts are potentially significant (which is consistent with how CEQA treats impacts in all other categories.) The Guidelines themselves refer to Appendix F for examples of how to prepare an energy impact discussion, if one is needed. Although the language in Appendix F states that "CEQA requires that EIRs include discussion of potential energy impacts of proposed projects," there is no such requirement in the Statute or the Guidelines, and Appendix F has no regulatory effect, but is provided only as an example. Therefore the use of the word "requires" has no force or effect in this context. Our belief has been corroborated by the Governor's Office of Planning and Research, which firmly indicates that Appendix F is to be taken as example only, and that there is no CEQA requirement to address energy impacts for projects where this impact is not potentially significant. Consequently, few EIRs include impact discussions on energy.

Effect to Public Services

Staff simply disagrees with Mr. Herum's contention that the response given in the Final EIR is not a good faith effort. Once again the requirement of CEQA is to identify

significant physical effects that the project would have on the subject. In this case, Mr. Herum is suggesting that because of Wal-Mart's benefit program, there will be potential physical effects to the County hospital.

The claim has been responded to adequately in the Final EIR (Pages 30 and 31). However, even if we look at an extreme example and assume that all of the additional employees at the Supercenter are not covered by health insurance and they all would use the County facility, those 250 people would not raise the level of physical impact to the County hospital to significance. In other words, the County would not have to add additional space to the hospital in order to satisfy the increased demand. To expand on this, it is worthwhile noting that the San Joaquin County Hospital handles over 200,000 outpatient visits per year. Even if it is assumed that all of the 250 new Wal-Mart employees would need to be treated at the hospital once per year, they would still represent about 1/10 of one percent of the total hospital visits. Even under these extreme assumptions, this small increment of demand upon the hospital would not be sufficient to necessitate physical expansion. As such, there would be no physical impact to public health services from the project under CEQA.

FEHR & PEERS
TRANSPORTATION CONSULTANTS

January 28, 2004

Mr. Rad Bartlam
City of Lodi
305 W Pine Street
Lodi, CA 95241

Re: Response to comments dated January 18, 2005 for the Proposed Lodi Shopping Center EIR Traffic Impact Study

1045-660

Dear Mr. Bartlam:

Fehr & Peers has completed the following responses to comments contained in the January 28, 2005, letter from VRPA Technologies, Inc. VRPA was hired by Mr. Brett S. Jolley, HCB Attorneys at Law, to peer review the Traffic Impact Study (TIS) completed by Fehr & Peers Associates for the Lodi Shopping Center EIR.

The nine page letter contained a series of comments regarding the TIS. The eight (8) comments contained in the nine page letter are addressed in detail in the following sections.

1) Study Area / Street and Road Network -
    a. Comment - The intersection analysis for the TIS does not appear to be extensive enough, especially given the trip distribution developed by the consultant for the Project TIS.
    b. Response – Both the City of Lodi General Plan and the San Joaquin County General Plan evaluated the potential impacts of development of the project site and the full buildout of the City of Lodi on the regional roadway system. The General Plan analysis included both local intersections in the City of Lodi and unincorporated San Joaquin County. In addition, Caltrans intersections on State Route 12 (W. Kettleman Lane) and SR 99 were also evaluated as part of the General Plan. As required by Caltrans "Guide for the Preparation of Traffic Impact Studies", the boundaries of the Traffic Impact Study were reviewed and accepted by the local agency (City of Lodi) and Caltrans as part of the scoping process and Notice of Preparation (NOP).

2) Traffic Counts / Projections –

a. Comment -The Draft EIR does indicate that the traffic counts were taken on March 10, 2004. It should be noted however, that Caltrans TIS Guidelines require that the counts be adjusted to reflect seasonal and weekend variation in traffic. The TIS does not indicate that such adjustments were made to the existing counts.

b. Response – Consistent with Caltrans Guidelines, the traffic counts were conducted on Wednesday. March 10, 2004, during morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak hours. In addition, the traffic counts were conducted during favorable weather conditions and when local (elementary, middle, and high) schools, regional community colleges and universities are in session. The Caltrans Guidelines states that seasonal and weekend variations in traffic should be considered where appropriate. Based on the existing traffic conditions within the project study area, both Caltrans and the lead agency (City of Lodi) did not require a seasonal variation. Based on the traffic counts conducted for the TIS, existing PM peak hour conditions are 28 % higher than morning (a.m.) peak hour conditions due to the large percentage of commute traffic on both Lower Sacramento Road and SR 12 (W. Kettleman Lane). Based on count data provided by Caltrans during the scoping process, weekend traffic conditions are significantly lower than the critical weekday evening (p.m.) peak hour and marginally lower than morning (a.m.) peak hour conditions. Therefore, both Caltrans and the lead agency did not require weekend analysis as part of the Traffic Impact Study.

3) Trip Generation – Project

a. Comment - In most recent traffic impact studies conducted for Wal-Mart Supercenters, the ITE Trip Generation Handbook per 1,000 square feet for a free-standing discount store (FSDS) is applied or that of a shopping center is applied to the entire development. As seen in Table 1 (of January 18, 2005 comment letter), the use of the VRPA Technologies' free standing discount superstore rate of 5.80 results in 1,678 PM peak hour trips compared to the TIS generated trips of 1,493, or 185 additional PM Peak Hour trips.

b. Response – The VRPA Technologies' study considered freestanding Wal-Mart superstores in the states of Oklahoma and Texas. The proposed Wal-Mart (226,900 square feet) in Lodi, CA is part of a 340,000 square foot shopping center. As defined in the Caltrans TIS guidelines, the amount of traffic generated by the proposed project should be estimated using appropriate trip generation rates from *Trip Generation* (Institute of Transportation Engineers, 7th Edition, 2003).

Table A presents the trip generation analysis if the ITE shopping center rate (Land Use 820) is used for the entire 340,000 square feet of development (as identified in VRPA's comment). By doing so, the proposed shopping center would generate 298 morning (a.m.) peak hour trips and 1,084 evening (p.m.) peak hour trips.

Table A
Trip Generation using Shopping Center Trip Rate

Land Use	Amount	Trip Rates[1]			Trips		
		Daily	AM Peak Hour	PM Peak Hour	Daily	AM Peak Hour	PM Peak Hour
Shopping Center	340 ksf	42.94	1.03	3.75	14,600	350	1,275
				Pass-By Trips:[2]	- 2,190	- 52	- 191
				New Trips:	12,410	298	1,084

Notes: [1] Trip rates based on data published in *Trip Generation* (ITE, 2003) using Shopping Center land use category (land use code 820).
[2] A 15 % pass-by trip reduction was applied. It should be noted that an average pass-by trips rate of 34 percent is documented in the *Trip Generation Handbook* (ITE, 2001), for Land Use 820 Shopping Center Average Pass-By Trip Percentage

ksf – thousand square feet

For the purpose of the TIS, a conservative approach was used in which the ITE Trip Generation rates for the individual parcel uses, including "Free Standing Discount Store (FSDS) = 226,900 sq. ft.", "Shopping Center = 76,000 sq. ft." for other retail space, "Fast Food Restaurant with Drive Through = 9.700 sq. ft.", "High Turnover Sit Down Restaurant = 7,500 sq. ft.", "Pharmacy with Drive Through = 14,800 sq. ft.", and "Walk In Bank = 5,100 sq. ft" land uses were applied to the size of the appropriate parcels. The overall result was an analysis that was 228 percent higher (698 versus 298 net new vehicle trips) for morning (a.m.) peak hour conditions and 38 percent higher (1,494 versus 1,084 net new vehicle trips) for evening (p.m.) peak hour trips than using the ITE Trip Generation rate for 340,000 square foot shopping center development.

4) Trip Generation – Cumulative Projects
   a. Comment – The consultant considered trip impacts from nineteen (19) approved but not build projects. As a result of the above, the most critical cumulative projects were assessed to address near-term impacts.
   b. Response – The nineteen (19) approved developments referred to by VRPA were used to evaluate near-term conditions. Near term conditions represent traffic conditions that would exist prior to completion of the proposed project (i.e. opening day). Project-generated traffic was added to determine potential impacts and mitigation measures that would be required under near-term conditions.

      For Cumulative Conditions, the San Joaquin Council of Governments (SJCOG) Year 2020 travel demand model was used to develop cumulative traffic forecasts. The SJCOG model is an approved regional model that includes all future projects (i.e. General Plan Buildout) of the City of Lodi, City of Stockton, and the rest of San Joaquin County, and includes numerous projects in addition to the nineteen (19) projected considered under near-term conditions.

5) Level of Service Results – Intersections
   a. Comment – Even through HCM was applied appropriately, the analysis conducted by the consultant may not be sufficient to address the LOS deficiencies at each of the intersections studied given the additional trip generation that should have been applied. Further, additional intersections should be studied given the amounts of peak hour traffic that will be attracted to the site from further away than the intersections contained in the TIS.
   b. Response –Please refer to responses to Comments #1 and #3

6) Level of Service Results – Segment Analysis
   a. Comment – Based upon the information provided in the TIS, segment analysis was not conducted. To determine whether additional lanes would be required, the TIS consultant <u>can</u> apply the HCM-Based Arterial Level of Service Tables (Florida Tables), which have been widely accepted and applied throughout San Joaquin County using Valley default valued.

   b. Response – In order to address roadway design along SR 12 and Lower Sacramento Road, the combined use of Synchro/ SimTraffic was used. Synchro is a Caltrans approved traffic analysis tool that includes system-wide micros-simulation as part of the operations analysis. Synchro evaluates signalized and

unsignalized (driveway) intersections as a complete system, with results comparable to the HCM-Based Arterial Level of Service analysis.

7) Street and Signal Improvements
   a. Comment –The street improvements will likely change once the appropriate signalized intersection analysis considering increased trips are conducted by the consultant.
   b. Response – Please refer to responses to Comment #3

8) Left Turn Pocket Length Analysis
   a. Comment –When Saturday trips are considered, the problem will become even more significant resulting in significant queuing along SR 12 and Lower Sacramento Road
   b. Response – Based on count data provided by Caltrans during the scoping process, weekend traffic conditions are significantly lower than the critical weekday evening (p.m.) peak hour. Therefore, the queuing analysis for weekday evening (p.m.) peak hour conditions would determine the required pocket lengths to serve project generated traffic.

Please call if you have any questions or need additional information.

Sincerely,

FEHR & PEERS ASSOCIATES, INC.

Fred Choa, P.E.
Principal

Attachment: - January 18, 2004 letter from VRPA Technologies, Inc.

APPLIED
DEVELOPMENT
ECONOMICS

RECEIVED
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COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

February 1, 2005

Konradt Bartlam
Community Development Director
City of Lodi
221 West Pine Street
Lodi, Ca. 95241-1910

Dear Mr. Bartlam,

I want to thank you for the opportunity to comment on the January 18, 2005 report titled "Economic Analysis of a Proposed Wal-Mart Supercenter in Lodi, California, which was prepared by Dr. Philip King, Chair of the Economics Department at San Francisco State University, and Dr. Sharmila King, with the Economics Department at the University of Pacific. In this regard, I strongly advise you to look very carefully at pages 5 through 7, and Tables 1 and 2. Dr. King's analysis of project impacts is based on two key pieces of data that are both falsified, and pulled out of the air with no documentation about sources. The two major defects to Dr. King's report are summarized below.

The Report Presents Incorrect and Fabricated Data as Fact

See Page 6, the last paragraph of Dr. Kings report. Dr. King cites an October 2003, Progressive Grocer article as his key source of data that he uses to calculate the impacts that the proposed Wal-Mart Supercenter will have on Lodi's established supermarkets. However, the Progressive Grocer article which is attached as Appendix A, makes no mention of grocery sales earned by Wal-Mart Supercenters. Please read it carefully. There simply is no source of data to back up Dr. King's assertion that Wal-Mart Supercenters earn $44.5 million of grocery sales, and these extremely high sales estimates are inconsistent with the national data about Wal-Mart stores. It is particularly shocking to find that Dr. King presents fabricated numbers as fact.

To provide you with a sense of magnitude about Dr. Kings error you should have your staff download the 10K report that Wal-Mart files each year with the Security Exchange Commission. This 10K report is essentially Wal-Mart's statement to the world on their corporate performance, and is filled with factually accurate data, that has been verified by the S.E.C. The most recent data shows that the average Wal-Mart store throughout the U.S.

2029 University Avenue, Berkeley, California 94704 Tel: 510.548.5912 Fax: 510.548.6123 URL: www.adeusa.com
1029 J Street, Suite 310, Sacramento, California 95814 Tel: 916.441.0323 Fax: 916.441.4961 URL: www.adeusa.com

earns $42.2 million. Yet, Dr. King cites an article with no data as his source of information, and claims that Wal-Mart Supercenters earn $44.5 million in grocery sales alone.

Accordingly, I recommend that you require Dr. King to present the original research behind his claims about Supercenter grocery sales. The City should not acknowledge any credibility to a report that is based on non-existent data sources.

Report Fails to Document Other Critical Data Sources

Dr. King's analysis also depends on the accuracy of data presented on page 6, Table 1, Column 2, which quantifies the sales/S.F. earned by each supermarket in Lodi. Accordingly, Dr. King fails to document any data source, and we know that the corporate headquarters of the Lodi supermarkets considers their sales data to be confidential. So, we are perplexed at how Dr. King obtained data that neither ADE or the City can obtain.

In contrast to Dr. King's data, which appears to be made up, ADE's methodology worked around the problems of the individual store data confidentiality by utilizing the City's sales tax data for the combined total of all supermarkets, and adjusting the taxable sales data to account for the sale of non-taxable food items. Accordingly, we estimate that the total sales earned by all supermarkets amounts to $134.6 million. Using the actual square foot data provided by the City, we were able to reasonably estimate that Lodi's existing supermarkets earn $369/S.F. of sales.

As you know, during the month of October, 2004 the City requested ADE to work around the confidentiality issue and attempt to collect the total sales data from each supermarket in Lodi. If this data was provided by the various supermarket chain stores, then we could calculate the sales/S.F. earned by each Lodi supermarket. The attached Appendix B, is a letter that was sent to the corporate headquarters of every supermarket in Lodi, with a copy of the letter sent to the local store managers. Food 4 Less and Raley's provided us with their confidential data, but Albertson's, Apple Market, Grocery Outlet, Safeway, and Save-Mart all indicated that it was their corporate policy to withhold sales per store information. Each corporate CEO that was contacted understood that we were asking for this information in the context of analyzing the impacts that a proposed Wal-Mart Supercenter would have on their specific business, and they still refused to provide this information.[1] Without this data for all stores we were unable to estimate the impacts that the proposed Wal-Mart Supercenter would have on each individual supermarket.

---

[1] We kept records of each CEO office that was contacted, the individuals that received the survey, and their stated reasons for refusing to provide the information.

for all stores we were unable to estimate the impacts that the proposed Wal-Mart Supercenter would have on each individual supermarket.

Accordingly, I recommend that you require Dr. King provide you with the sources of data that is presented in his report on sales/S.F. earned by each individual supermarket in Lodi. Dr. King should also provide the specific names of individuals that provided this data. In addition, you should have your staff check with each individual store manager or corporate headquarters contact to verify that the sales/S.F. data was actually given to Dr. King and his associates. In the absence of such specificity, I would assume that the sales/S.F. data incorporated into Dr. King's report is also fabricated. Therefore, the analysis has no credibility.

Finally, the majority of the report is dedicated toward critiquing ADE's analysis. We believe there is no need to respond to each individual point that is made because Dr. King and his colleague has presented a report that is factually incorrect, which is based on fabricated data presented as fact. The City should not consider this work to be either credible or factual.

Sincerely,

Stephen Wahlstrom

Stephen Wahlstrom
Managing Principal

ATTACHMENT A

October 15, 2003 article in progressive grocer cited by Dr. King as source data that states that Wal-Mart Supercenters earn $44.5 million of grocery sales each year.

HighBeam RESEARCH More than Search ... it's Research

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Wal-Mart vs. the world: still busily blanketing the U.S. with stores, the largest retailer is also becoming a major presence in countries around the globe. So far, its prospects are bigger than its problems.

Magazines Progressive Grocer; 10/15/2003; McTaggart, Jenny

Search for more information on HighBeam Research for Wal-Mart vs the World, Progressive Grocer.

When you're the world's biggest retailer, your size alone guarantees that virtually everyone has an opinion about you. For Wal-Mart, those opinions range from awe and admiration to fear and loathing, especially among its competitors, which now include nearly every retailer in the United States and a growing number of companies overseas. Perhaps more telling, Wal-Mart shoppers have an opinion that's hard to ignore: They like a good deal.

Based on its low-price, customer-focused strategy, Bentonville, Ark.-based Wal-Mart Stores, Inc. has made a phenomenal trek in four decades from a small-town variety store in the rural South to a retail behemoth that today boasts $244.5 billion in annual sales, thousands of stores that span the globe, a powerful worldwide supplier and distribution network, some 1.3 million employees, and a leading position in retailing for food, toys, and jewelry, among other categories.

Wal-Mart, known for its enthusiasm--the company even has its own cheer--isn't content to stop there. Among its goals for the next few years: continued expansion of the supercenter format and further development of Neighborhood Markets, renewed focus on Sam's Club warehouse stores, increased growth in foreign markets, and a push in global branding. Those are merely the goals the company has shared publicly. Other avenues it may pursue, according to industry observers, include dollar stores (it's already testing formats in some of its stores), and free-standing drug stores.

All told, Wal-Mart could become the world's first trillion-dollar corporation in 10 years if it keeps up its compound growth rate and finds new streams of revenue, according co one analyst.

"This is a very different company than Wal-Mart of 1980 or 1985. They can be big and small, upscale and mass market at the same time. These are things they couldn't do 15 years ago," says Richard D. Hastings, v.p. and chief retail analyst at New York-based Bernard Sands. "In 1980, I don't think anybody there would have said, 'We're going to be a $250 billion company in 2002.'"

How does a company that big continue to grow? John Menzer, president and c.e.o. of Wal-Mart's international division, recently addressed that question at Goldman Sachs' 10th Annual Global Retailing Conference in New York. "We continue to focus on one store at a time, one customer at a time, and one employee at a time." he told analysts.

No doubt, the company's focus is on low prices for its customers and cost savings for itself. "We want to be the shopping choice always for our customers. We will always aggressively price our products and compete in the markets we are in," says Wal-Mart spokesman Tom Williams. "We seem to do best when we are constantly looking over our shoulder."

The strategy seems to have worked so far, but as Wal-Mart continues to pursue such phenomenal growth, it will encounter several challenges that could create obstacles along the way. Finding good labor--a hard task for any retail company nowadays--will be particularly important for Wal-Mart, since it will increasingly need to rely on store-level management to keep in touch with local merchandising and employee relations. And because it plans to remain nonunion, the job will only get tougher as animosity among labor groups swells.

Community opposition

Another notable challenge will be finding sites suitable for its large stores, as well as communities that are receptive to growth. Already in California and other densely populated areas, Wal-Mart is facing some opposition from residents who don't want megastores or have a negative opinion of Wal-Mart and its effect on local businesses. Globally, the company may also find more resistance from home-based retailers that have established themselves in foreign markets and resent its growing power with suppliers.

In addition, although Wal-Mart is the leading competitor in many retail categories, its massive strength will force sortie of its competitors to consolidate. That will create a tougher retail environment.

For now, the focus of Wal-Mart's U.S. strategy--supercenters--is proving to be invaluable. The nearly 1,400 supercenters now deliver almost two-thirds of the sales of Wal-Mart Stores' operating segment, which includes domestic department stores, supercenters, and Neighborhood Markets. The format has proved resilient during the rough economy, when many retailers haw suffered, often at Wal-Mart's expense. In the second fiscal quarter, which ended in July, Wal-Mart posted a $2.44 billion profit on $62.6 billion in sales, and it reported that grocery sales at supercenters grew 23 percent.

A brilliant components of the supercenter format is its full grocery line, which drives customer traffic and shopping frequency; and ideally gets shoppers to visit the higher priced nonfood aisles as well. The format, which averages around 190,000 square feet and includes pharmacies and other specialty departments, has been wreaking havoc in the supermarket industry as Wal-Mart enters competitive markets offering unbeatable prices. In a short time, it has gained the leading position in markets such as Dallas and Oklahoma City, and it can arguably do the same from coast to coast. According to estimates from Retail Forward, a consulting and market research firm in Columbus, Ohio, Wal-Mart is the equivalent of a 19 percent player in the supermarket industry. It also took the No. 1 slot in PROGRESSIVE GROCER's Super 50 list of the nation's largest supermarket operators this year.

By 2007, Wal-Mart's supercenter count could very well reach 2,000 if the company keeps tip its current plan of opening around 200 stores per year. That growth could give Wal-Mart control of 35 percent of food store industry sales, according to Retail Forward.

Looking at where Wal-Mart will go, there are huge opportunities west of the Mississippi--particularly in states like California, Washington, Oregon, Alaska, Arizona, and Colorado. In many cases, Wal-Mart is replacing its namesake discount stores with supercenters instead of building new units. "Wal-Mart's strategy is that two-thirds of the supercenters will be conversions of the existing discount stores they operate. That shows terrific insight," says Sandy Skrovan, v.p. of Retail Forward.

Still, us Wal-Mart continues this aggressive expansion away from some of its mainstay markets, some areas are showing signs of opposition. A flew neighborhoods in California, where Wal-Mart plans to open at least 40 supercenters during the next four years, have passed ordinances against big-box stoles to keep out super centers, which they say contribute to noise and traffic.

California is also a hotbed of union opposition to Wal-Mart. Negotiations this month with United Food and Commercial Workers Local 770 in southern California, which represents employees at Stater Bros., Albertsons, and Safeway, will bring some of those issues to the table. "That's going to be a key contract, because Wal-Mart and Costco are nonunion," notes Burt Flickinger III, managing director at New York-based Strategic Resource Group. The labor differential between the unionized chains and Wal-Mart, including all benefit costs, tends to be anywhere from $2 to $4 higher per hour per part-time employee, and as much as $10 an hour for a fulltime employee, he says.

Nonetheless, Wal-Mart has successfully gone into such heavily unionized areas as Philadelphia; Rochester, N.Y.; and Milwaukee, Flickinger notes. "Urban and metropolitan areas are largely fertile ground for Wal-Mart unless there's very strong cooperation between chains and independents working closely with labor leadership on a local and regional level," he says.

To get into urban markets, Wal-Mart has been working on tax-incentive financing, which gives it more political clout, Flickinger says. "I worked a lot on the case involving Wal-Mart's proposal to build in the historic Garden District in New Orleans. Wal-Mart was strategically small hi lilting the former governor Of Louisiana, the former mayor of New Orleans, and a former U.S. senator. It helped them get federal funding, state funding, and local funding where the sales tax dollars from the supercenter pay for the cost of construction of the supercenter and shopping center, as well as the maintenance of the shopping center. The government puts up housing next to the shopping center, so they get guaranteed new customers. And Wal-Mart gets the property for flee after 20 years."

Beyond supercenters, Wal-Mart is still testing the Neighborhood Market, a supermarket format the company says is meant far fill-in trips by supercenter customers and therefore is typically located nearby. Although the introduction has been conservative so far, observers expect a much more aggressive rollout, which means more competition for established food retailers.

"Wal-Mart is looking to go national with Neighborhood Markets in 2005," Flickinger says. "At that point, all their distribution centers will be built to support a national rollout."

Wal-Mart's distribution network is one of its greatest strengths. The company currently operates 21 food distribution centers and seven fresh/frozen DCs, and even with that number, it could serve more stores than its current base, observers agree. Overseeing the development of its national distribution network is Darwin Jones, a supermarket industry veteran who formerly held positions at Ahold, Kroger, and Ralphs.

The company's third food-related format is Sam's Club, a warehouse club for shoppers who want to stock up monthly. While the format in the last few years has seen declining same-store sales and intense competition from its rival, Costco, it seems to be in the midst of a turnaround, thanks in part to a newly installed management team. The new brass is refocusing efforts on small-business customers to set Sam's Clubs apart. Menzer has said the company's strategic goal is to get 60 percent of revenue from business members.

Wal-Mart may also be considering several smaller, alternative retail formats for its U.S. operations, according to Retail Forward's Skrovan. "We see them beginning to explore in more depth smaller formats. There's a strong likelihood that they'll explore rolling out their own drug chain and/or dollar store chain, and will get more into the convenience/fueling station business." Those formats would raise fewer red flags with local opposition in urban areas, she notes. The industries don't have as much of a union presence either, which would be another benefit. Wal-Mart could also get into foodservice ,as an expansion of convenience retailing, Skrovan adds, although that would likely be further down the road. Its experience with former subsidiary McLane Co., a wholesale distributor whose business includes foodservice, could come in handy if that were the case. Earlier this year, Wal-Mart sold the subsidiary to Berkshire Hathaway.

Global growth

Outside of its U.S. operations, Wal-Mart is steadily and cautiously staking its claim in a number of international markets to help ensure long-term growth. So far, he results have been phenomenal. It now operates more than 1,000 units in nine countries, and sales approached $41 billon dais year. "If Wal-Mart International were a separate company, it would be No. 33 on the Fortune 500," Menzer told Goldran Sachs analysts. "Our challenge is to rake up one-third of the company's sales," e added, noting that part of the strategy is to "take our global scale to the local level."

"Wal-Mart has shown overall a good capability to grow internationally, but it hasn't been a uniform success by any means," observes global retail specialist Frank Badillo of Retail Forward. Some of its most successful ventures include its acquisition of Asda in the United Kingdom, which recently progressed to the No. 2 spot among U.K. retailers, and Mexico, where it entered through a joint venture with Cifra and is now the top-ranked retailer, he notes.

Germany has been the most difficult market for Wal-Mart to break into, because of more stringent retail regulations and plenty of low-price competitors.

Still, Wal-Mart seems committed to keep trying. Menzer says the company is making good progress and can make money based on its current operations.

Wal-Mart's international ventures have created exceptional opportunities for knowledge sharing. The company has picked up tips on merchandising as well as ideas for stole formats. Just one example is a new hi-level store operated in a shopping mall in Manhasset, N.Y. that was modeled after international operations, primarily those in South Korea.

This global vision creates opportunities for Wal-Mart employees, according to Menzer. "People drive the global business," he told analysts at the Goldman Sachs conference. "We're developing our associates to become leaders by giving them national and global opportunities." In Japan, for example, the venture with No. 6 retailer Seiyu uses 52 ex-pats from other countries.

In foreign countries, where adapting to local cultures is crucial, Wal-Mart does a good job working with employees at the local level, according to Badillo. "I think its success has to do with developing good local management that can make decisions on the ground, instead of having them all made flora Bentonville," he says,

Influence on suppliers

A key part of Wal-Mart's global strategy is procurement and sourcing. Last year the company ended its contract with worldwide import agent Pacific Resources Export Ltd. of Hong Kong and announced it would rake global procurement in-house. Then early this year Wal-Mart announced the formation of an export business office, intended to make it easier to get U.S.-manufactured products into its stores overseas.

Oddly enough, one of its best deals so far has been in bananas. The company negotiated a deal with a

single supplier, which lowered its costs on bananas everywhere from Asda to the United States.

For global sourcing, Wad-Mart has enlisted its top 50 global suppliers to work on reducing the cost of the supply chain and to share best practices. Among its top suppliers are Procter & Gamble and Gillette.

In some cases, Wal-Mart's efforts to secure the lowest prices for consumers have backfired in foreign markers because of resistance from established retailers. Mexican retailers are trying to get the government to intervene because they see Wal-Mart's price advantage as a monopoly. Three of Mexico's largest domestic retailers have announced a joint buying and operational alliance to compete with Wal-Mart.

In countries where Wal-Mart is not No. 1, the leading retailers are encouraging suppliers to support them on a fairshare basis, notes Flickinger. "It's particularly tough for sales managers in countries where Wal-Mart is weak. They're asking, why should we oversupport. [Wal-Mart] stores that have low to no market share?"

Private label is also gaining importance in Wal-Mart's global strategy, according to Menzer. Wal-Mart strives for quality equal or superior to national brands with its own-label products, he says.

While the company has a series of private label food items and will likely continue to grow that segment, it's concentrating heavily on higher-priced nonfood brands, too. Some of its most successful brands so far include Kid Connection, featuring toys made in China, and George, a clothing brand started in the Asda stores and being introduced in other countries. Wal-Mart recently opened two freestanding George stores in the U.K. and has said it will consider other markets where the concept may perform well.

The company could see even higher gains in nonfood private label sales if it increased marketing for its brands, Flickinger says. "Wal-Mart has to move to more of an individual brand focus. One of the company's fundamental flaws is that they look at marketing as an expense, when they should look at it as an investment."

As Wal-Mart continues to expand its operations globally, observers are watching to see how the company is received and if consumers' opinions will move past their priority for low prices. Some observers have noted that environmentalists, advocates for organized labor, and others could serve as a stumbling block for Wal-Mart's growth.

Never one to be a step behind, the company has been investing in what's known as "reputation research" to discover how Americans view it. So far, some of the news has been unsettling: Many people see Wal-Mart as a place of dead-end jobs, and they don't necessarily think of the company as a good corporate citizen.

To counter that, Wal-Mart has launched television ads that portray it as a great place to work and focus on the charitable work it does in communities where it operates.

"We have a good opportunity to tell our story better," admitted Menzer at the Goldman Sachs conference.

1962: First Wal-Mart opens in Rogers, Ark.

1968: Wal-Mart moves outside Arkansas with stores in Sikeston, Mo. and Claremore, Okla.

1969: Company incorporated as Wal-Mart Stores, Inc.

1977: Wal-Mart makes first acquisition, 16 Mohr-Value stores in Michigan and Illinois.

1981: Wal-Mart makes second acquisition, 92 Kuhn's Big K stores.

1983: First Sam's Club opens in Midwest City, Okla.; U.S. Woolco stores acquired.

1985: Grand Central Stores acquired.

1988: David Glass named c.e.o. of Wal-Mart Stores, Inc.; first supercenter opens in Washington, Mo.; Supersaver units acquired.

1990: Wal-Mart becomes nation's No. 1 retailer; McLane Co. of Temple, Texas acquired.

1991: Western Merchandisers, Inc. of Amarillo, Texas acquired; "Sam's American Choice" brand products introduced; Wal-Mart enters first international market with the opening of a unit in Mexico City.

1992: Sam Walton dies; S. Robson Walton named chairman of the board; Wal-Mart enters Puerto Rico.

1993: Wal-Mart International division formed with Bobby Martin as president; 91 Pace Warehouse clubs acquired.

1994: 122 Woolco stores in Canada acquired; 3 value clubs open in Hong Kong.

1995: Wal-Mart enters its 50th state--Vermont; enters Argentina and Brazil.

1996: Wal-Mart enters China through a joint-venture agreement.

1997: Wal-Mart has first $100 billion year, with sales totaling $105 billion.

1998: Wal-Mart introduces Neighborhood Market concept in Arkansas; acquires 21 Wertkauf units in Germany; enters Korea.

1999: Wal-Mart acquires 74 Interspar units in Germany and the ASDA Group plc in the United Kingdom.

2000: H. Lee Scott named president and c.e.o.; PROGRESSIVE GROCER names Wal-Mart its Retailer of the Year.

2002: Wal-Mart purchases a 34 percent interest in Japanese retailer Seiyu, Ltd., with options to purchase up to 66.7 percent of the company.

2003: Wal-Mart sells McLane Co. subsidiary to Berkshire Hathaway, Inc. Fortune magazine names Wal-Mart most admired company.

Wal-Mart Supercenters/ Neighborhood Markets Division of Wal-Mart Stores, Inc.

Headquarters 702 S.W. Eighth St. Bentonville, AR 72716 (479) 273-4000 (479) 273-8751 fax

* S. Robson Walton Chairman of the board

* David D. Glass Chairman, executive committee

* H. Lee Scott President and c.e.o.

* Thomas M. Coughlin Vice chairman (U.S.A.)

Financial summary *:

Year ended	Sales (billions)
January 2003	$244.3
January 2002	217.8
January 2001	191.3

*All Wal-Mart Stores, Inc.

Public company: Yes

Stock symbol: WMT

Traded on: NYSE and PSE

Web sites: www.walmart.com (retail) www.walmartstores.com (corporate)

	No. stores	Estimated ACV (000)
Supercenters	1,386	$61,727,900
Neighbhd Mkts	56	1,054,300
Wholesale clubs	532	30,752,800
Liquor stores	45	38,000
Drug stores	2	2,100
Mass merch.	1,495	63,607,700

Supercenters/Neighborhood Markets by state

	No. stores	Estimated ACV (000)	Sq. ft. (000)	Ft equivalent employees
Alabama	59	$2,407,600	3,600	17,735
Arizona	20	$1,102,400	1,354	7,915
Arkansas	52	$2,082,600	2,874	13,620
Colorado	31	$1,358,500	1,986	11,425
Connecticut	2	$80,600	118	1,176
Delaware	4	$179,400	227	1,257
Florida	95	$4,726,800	6,222	32,759
Georgia	65	$2,847,000	4,157	21,913
Idaho	13	$496,600	802	4,022
Illinois	36	$1,504,100	2,116	10,789
Indiana	45	$2,096,900	2,889	14,063
Iowa	27	$1,075,100	1,709	8,495
Kansas	27	$1,045,200	1,651	8,845
Kentucky	44	$1,985,100	2,612	12,815
Louisiana	49	$2,384,200	3,236	17,362
Maine	10	$356,200	590	3,209
Maryland	5	$219,700	300	1,492
Massachusetts	1	$45,500	55	196
Michigan	16	$621,400	1,045	4,481
Minnesota	13	$448,500	777	4,161
Mississippi	45	$1,894,100	2,680	13,757
Missouri	61	$2,395,900	3,446	18,776
Montana	6	$300,300	404	1,904
Nebraska	12	$522,600	719	3,838
Nevada	9	$486,200	613	3,910
New Hampshire	6	$295,100	377	2,308
New Mexico	22	$1,019,200	1,368	7,365
New York	23	$1,068,600	1,469	6,734
North Carolina	56	$2,431,000	3,592	19,823
Ohio	34	$1,396,200	2,123	9,677
Oklahoma	56	$2,281,500	3,213	15,300
Oregon	6	$221,000	366	1,231
Pennsylvania	46	$2,165,800	2,886	15,334
South Carolina	41	$1,738,100	2,626	12,583
South Dakota	4	$180,700	277	1,402
Tennessee	65	$2,835,300	4,026	19,928
Texas	198	$8,986,900	12,525	67,891
Utah	20	$712,400	1,197	5,122
Virginia	54	$2,421,900	3,343	17,299
Washington	11	$334,100	702	1,975
West Virginia	20	$855,400	1,095	6,089
Wisconsin	26	$900,900	1,532	7,995
Wyoming	7	$275,600	404	1,835
U.S.total	1,446	62,782,200	89,303	459,806

	Checkouts
Alabama	1,612
Arizona	601
Arkansas	1,290
Colorado	882
Connecticut	53
Delaware	115
Florida	2,837
Georgia	1,937
Idaho	348
Illinois	940
Indiana	1,259
Iowa	734
Kansas	733
Kentucky	1,179
Louisiana	1,444
Maine	221
Maryland	131
Massachusetts	26
Michigan	353
Minnesota	347
Mississippi	1,303
Missouri	1,542
Montana	176
Nebraska	363
Nevada	299
New Hampshire	188
New Mexico	611
New York	681
North Carolina	1,719
Ohio	897
Oklahoma	1,410
Oregon	142
Pennsylvania	1,335
South Carolina	1,212
South Dakota	90
Tennessee	1,876
Texas	5,642
Utah	423
Virginia	1,531
Washington	220
West Virginia	473
Wisconsin	654
Wyoming	170
U.S.total	39,999

RFID: Pushing the technology

In the retail industry, Wal-Mart has become known as a leader in implementing new technology to create more efficiencies in the supply chain. Its latest initiative, RFID (radio frequency identification) technology, is getting a lot of attention from manufacturers, retailers, and consumers alike. Wal-Mart in June asked its top 100 suppliers to begin using RFID tags in their cases and pallets by 2005. Moreover, the company wants a its suppliers to be RFID-compliant by 2006. That has some sup pliers biting their nails, since the technology is so new and has not yet been shown to work in distribution centers.

Wal-Mart has said it will help them get ready, however. "We'll be meeting with our suppliers in November to discuss RFID," say spokesman Tom Williams. "We see significant gains here in efficiency while tracking goods through our supply chain."

Originally Wal-Mart was experimenting with the technology at the retail level, via a smart-shelf test with Gillette products. However, it abruptly ended the test because executives wanted to focus on installing RFID systems in warehouses and distribution centers instead, according to Williams. The news pleased consumer privacy groups that strongly oppose using the technology in stores. They argue that RFID chips

could be used to track customers at home.

Labor pains

AS THE WORLD'S LARGEST employer, Wal-Mart is bound to have its share of unhappy workers. In recent years, it's been getting a lot of attention from former and current employees who claim the company forced them to work off the clock or allowed sex discrimination.

In the biggest case, 1.5 million current and former female employees have accused the company of discriminating against them in pay, promotions and training. At press time, the company was awaiting a court decision on whether the lawsuit will be certified as a class action. If it is, Wal-Mart could be forced to pay hundreds of millions of dollars if it ultimately loses the suit.

Wal-Mart denies the allegations, and it argues that the suit shouldn't be certified as a class action because the class would be too large. At the company's annual meeting this year, president and c.e.o. Lee Scott encouraged all 1.4 million Wal-Mart employees to use the company's open-door policy if they witness any improper behavior. "We believe the strength in the Wal-Mart organization is in our open-door policy," spokesman Tom Williams says.

Board of directors

* David D. Glass Chairman, executive committee

* Stanley C. Gault Retired c.e.o. and chairman, Goodyear Tire & Rubber Co.

* S. Robson Walton, Chairman

* Roland Hernandez Retired president, c.e.o., and chairman, Telemundo Group, Inc.

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* Jose Villarreal Partner, Akin, Gump, Strauss, Hauer & Feld, L.L.P.

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* J. Paul Reason President and c.e.o., Metro Machine Corp.

* H. Lee Scott Jr. President and c.e.o., Wal-Mart Stores, Inc.

* Dawn G. Lepore Vice chairman of technology, operations and administration, Charles Schwab Corp.

* Thomas M. Coughlin E.v.p., president, and c.e.o., Wal-Mart Stores Division and Sam's Club USA

Wal-Mart's hits and misses

ONE OF WAL-MART'S GREATEST STRENGTHS is size, which allows it to test new ideas without worrying too much about short-term failures. Here's a look at a few of the latest hits and misses from the powerhouse retailer:

HIT: Online DVD rental. Wal-Mart has received strong customer reaction from the new service, now available in certain markets through its consumer Web site, walmart.com. Customers pay $15.54 a month for an unlimited amount of DVDs, with more than 13,000 titles to choose from.

MISS: Used cars. Looks like cars aren't exactly an impulse buy at Wal-Mart. Last year the company began loaning space to Asbury Automotive Group, Inc., the nation's fifth-largest dealership group, at four of its Houston stores to help Asbury sell used cars. Asbury spent $7.5 million, but ended up losing almost $6 million on the experiment, according to a report in Automotive News. The company's c.e.o., Ken Gilman, told reporters customer traffic was lighter than expected.

HIT: Upscale jewelry. Although Wal-Mart caters primarily to price-sensitive shoppers, the company isn't afraid of offering more upscale merchandise, according to John Menzer, c.e.o. of the international division. Keepsake Fine Jewelry, now offered in more than 2,700 Wal-Mart stores, has been particularly well received, Menzer says.

Associate editor Jenny Mc Taggart can be reached at jmctaggart@progressivegrocer.com.

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The above preview is from Progressive Grocer, October 15, 2003.

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ATTACHMENT B

Letter sent to Lodi Supermarkets Requesting Confidential Data

APPLIED
DEVELOPMENT
ECONOMICS

October 19, 2004

CONTACT PERSON
POSITION
SUPERMARKET
CORPORATE ADDRESS
CITY, STATE ZIP
FAX NUMBER

The City of Lodi (California) has hired our firm to analyze the economic impacts of a proposed Super Wal-Mart, including impacts on existing grocery stores and supermarkets. Accordingly, in order to analyze the full range of impacts of the Supercenter on existing retailers, we are requesting your most recent annual sales data for your Lodi store, and let us know what time period the data covers.

Given the speed with which the Super Wal-Mart project is moving, we ask to receive this data by Friday (October 29), and we will follow-up this transmittal with a phone call on Wednesday (October 20) and/or Thursday (October 21). Please feel free to call me at 510-548-5912 if you have any questions about this request.

Tony Daysog
Associate, Applied Development Economics

cc: Rad Barton, Community Development Director, City of Lodi, California
Store Manager, GROCERY STORE, Lodi, California

2029 University Avenue, Berkeley, California 94704 Tel: 510.548.5912 Fax: 510.548.6123 URL: www.adeusa.com
1029 J Street, Suite 310, Sacramento, California 95814 Tel: 916.441.0323 Fax: 916.441.4961 URL: www.adeusa.com

Tab 1

filed 2-3-05
S. Herem

1. **Marlon Boarnet & Randall Crane, The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Finances (Sept. 1999) (prepared for the Orange County Business Council**).

The professors state the purpose of this report is to examine the impacts of expansion by big box retail chains like Wal-Mart into the grocery business. *Id.* at 1. The executive summary lists key findings from the final report, and they are as follows:

> "The aggressive entry of supercenters such as those operated by Wal-Mart into the Southern California grocery business is expected to depress industry wages and benefits at an estimated impact ranging from a low of $500 million to a high of almost $1.4 billion per year, potentially affecting 250,000 grocery industry employees." *Id.*

Professors Boarnet and Crane add: "any discount retailer, if it enters the food sector in southern California and then pays its grocery employees a wage that is comparable to what it pays its discount retail employees, will, in effect, be converting high wage jobs into low-wage jobs." *Id.* at 37. The authors specifically survey the wages paid to Wal-Mart employees and compare this amount to those working in traditional grocery stores. For instance, the authors state that Wal-Mart supercenter employees seem to be paid wages that are similar to wages earned by their retail employees, with their hourly wages starting in the range of $6.00 to $7.00 per hour. *Id.* at 38. Whereas, according to 1999 statistics, food clerks at the major grocery chains

earned a starting wage of $9.78 per hour, and beginning meat cutters earned $11.43 per hour.

2. Rea & Parker Research, <u>The Potential Economic and Fiscal Impact of Supercenters In San Diego: A Critical Analysis</u>, (2000) (prepared for the San Diego County Taxpayers Association).

The purpose of this report was to evaluate the accuracy and applicability to San Diego of the report by Boarnet and Crane, summarized above. *Id.* at i. Rea & Parker applied the methodology of the Boarnet and Crane report to San Diego in preparation for the entry of big box retail stores into the San Diego area. *Id.* The report affirms and builds upon the findings made by Boarnet and Crane. *Id.* The key findings by Rea & Parker are:

(1) "<u>Wages and benefits can be expected to decline in San Diego County by $105 million to $221 million annually</u>." *Id.*

(2) "Application of the regional multiplier could expand this negative impact on wages to $440 million per year." *Id.*

(3) "The wage gap between grocery workers and supercenter employees is expected to be approximately $.60 per hour more in San Diego County than in the Los Angeles and Orange County study area utilized by Boarnet and Crane. This causes the wage impact to be proportionately more detrimental in San Diego than Boarnet and Crane indicated for Southern California, as a whole." *Id.*

(4) "Lost pension and retirement benefits will impact the region negatively by an additional $80 million-$170 million per year." *Id.*

> "The full economic impact of those lost wages and benefits throughout Southern California could approach $2.8 billion per year." *Id.*

3. Kenneth E. Stone, Impact of Wal-Mart Stores on Iowa Communities: 1983-93, Economic Development Review, Vol. 13, Issue 2, spring 1995.

Professor Stone summarizes his ten year study of Wal-Mart's and concludes that for each Wal-Mart low paying job without benefits a community loses two higher paying jobs with benefits.

Tab 2

2

Comment F-5:

II. THE EIR MISEVALUATES THE URBAN DECAY IMPACT

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

A. The "Blight" Standard is Incorrectly Employed

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

Response F-5:

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

Comment F-6:

B. Substantial Evidence Indicates Store Closures Will Occur

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

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

Tab 3

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.)

Tab 4

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

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

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

Response F-6:

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

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

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

Tab 5

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.

Tab 6

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

Tab 7

7

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

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

Comment F-12:

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

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

Relevant Projects Adjacent to Lodi Shopping Center Project Site

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

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

Relevant Projects Outside City Limits

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

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

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

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

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

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

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

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

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

Response F-12:

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

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

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

Tab 8

8

Phillippi Engineering, *Drainage Study for Lodi Center, Southwest Corner of Kettleman at Lower Sacramento*, May 2004.

San Joaquin County, *San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)*, November 2000.

Twining Laboratories, *Geology and Geotechnical Feasibility Study, Proposed Lodi Shopping Center, Lodi, California*, May 2004.

Twining Laboratories, *Phase I Environmental Site Assessment, Southwest Corner of the Intersection of Highway 12 & Lower Sacramento Road, Lodi, California*, December 2003.

U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), *Soil Survey of San Joaquin County, California*, 1992.

Persons Contacted

Bartlam, Konradt, Community Development Director, City of Lodi, various dates in 2004.

Carroll, Michael, Senior Engineer, San Joaquin County Public Works Department, Solid Waste Division, May 28, 2004.

Clabaugh, James Ferguson, Landscape Architect, May 28, 2004.

Kerlin, Del, Assistant Wastewater Treatment Superintendent, City of Lodi Department of Public Works, May 27, 2004.

Main, David, Captain, Lodi Police Department, June 3, 2004.

Parish, William, Architect, WPIIDC, various dates in 2004.

Phillips, Trueman, Senior Civil Engineer, San Joaquin County Department of Public Works, Public Services Division, May 28, 2004.

Pretz, Michael, Chief, Lodi Fire Department, June 1, 2004.

Sandelin, Wally, City Engineer, City of Lodi, various dates in 2004.

Van Buren, James, Senior Planner, San Joaquin County Community Development Department, May 28, 2004.

Weid, Christine M., Municipal Market Coordinator, Central Valley Waste Services, May 28, 2004.

Tab 9

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

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.

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Study bashes Wal-Mart plan

Loss of businesses would spur urban decay

By Jeff Hood
Lodi Bureau Chief

LODI — A shopping center anchored by a Wal-Mart Supercenter would drive three Lodi grocery stores and a major pharmacy out of business and create a glut of retail space that would take more than a decade to fill.

That's the gloomy scenario predicted in an economic study presented to the Lodi City Council on Wednesday by an attorney representing Lodi First, a group of anonymous Lodi residents opposing the Supercenter.

The City Council will consider issuing a use permit for the Supercenter at a special meeting scheduled at 6 p.m. Feb. 3. Last week's meeting was halted after Mayor John Beckman disqualified himself from debate because of comments he made previously favoring Wal-Mart.

The latest report, on behalf of Lodi First by California Economic Research Associates, states a previous economic analysis didn't go far enough in predicting the amount of urban decay created by a Wal-Mart Supercenter. The earlier report, by Applied Development Economics, didn't take into the account the Vintner's Plaza shopping center to the north, where Lowe's opened in November, or competition in north Stockton, according to California Economic Research Associates.

It predicts Safeway, Albertson's, the Grocery Outlet and the Lodi Avenue Longs Drugs would close if a Supercenter is built.

"While Lodi is currently healthy, the store closings stemming from the Lodi shopping plaza, which significantly increases retail space in the City will lead to urban decay and physical deterioration," the new report concludes.

A Wal Mart spokesman could not be reached for comment.

Lodi City Councilman Bob Johnson said he's not inclined to believe the gloomy outlook.

"Will there be impacts on business? There's no doubt in my mind," he said. "I'm not ready to concede that three supermarkets are going to go out of business. We don't have anything in the state of California to compare to."

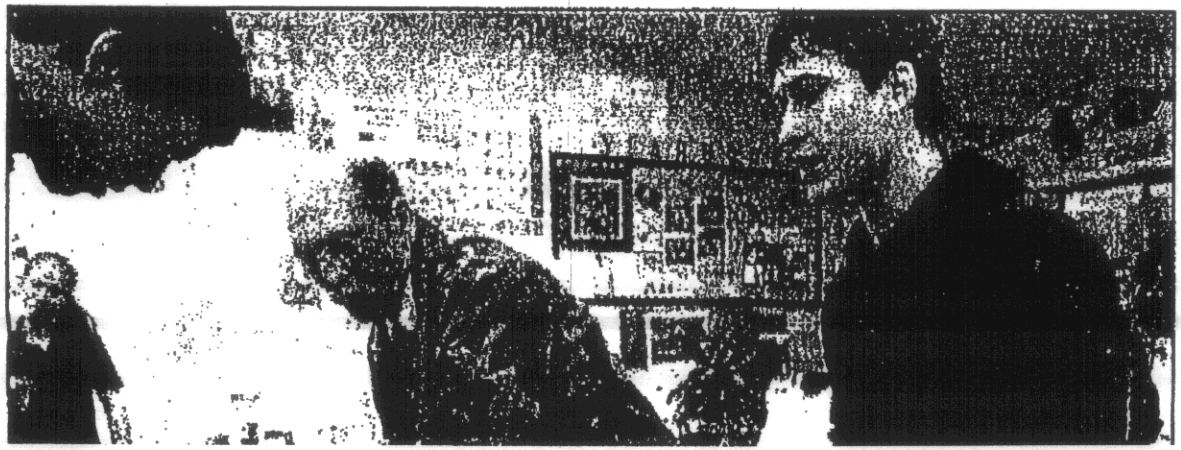
The co-authors, economics professors Philip G. King of San Francisco State and Sharmila King of University of the Pacific, made several ominous predictions about other shopping centers in Lodi.

The combination of a Supercenter and Lowe's could devastate Cherokee Lane retailers Kmart, Orchard Supply Hardware and the Rancho San Miguel market and harm the Longs Drugs and Ace Hardware on Kettleman Lane.

Please see WAL-MART, LL3

"I just like to get kids on a university campus and have them go, 'Whoa!'"

— Tom Bray, teacher, Jim Elliot Christian High School



Seniors' meals in jeopardy

Nonprofit group wants Agency on Aging change

By Francis P. Garland

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-8433.

umpling Frog Seniors b: Meets the first Friday of h month for business and ıdays and has a potluck the third Friday of each ıth. Membership is $5 a .r. Friendship Hall of the ıgregational Church in ıels Camp. Bus trips each nth. Information: Jetty, 9) 736-2757.

Calaveras Seniors Club: ets the second Friday of ch month for bag lunch and thdays. Meets the fourth day of the month for a lluck. Membership: $5 per ar, age 50 and older. ısonic Hall, 284 Church St., ırphys. Information: Carlene nes, chairman (209) 728-26.

AARP Chapter 1568 meet- : Meets at noon, third ıesday of each month. ınior Center, 956 Mountain ınch Road, San Andreas.

Energizers: 9 a.m., Mon- ıys and Wednesdays. Senior ness program. Public wel- ome. Nominal fee. First Unit- d Methodist Church, 200 W. ak St., Lodi. Information: 09) 369-0667.

Adult Day Services Cen- Weekdays, 8 a.m. to 4 Provided by Lodi Memor- ıospital. Fees include ınch, exercise, music, crafts nd more. Hutchins Street ıquare, 125 S. Hutchins St. nformation: (209) 369-4443.

Meals on Wheels: A limit- ıd number of in-home meals ffered for shut-ins. Call Loel Center for details. Information: 209) 369-1591 or (209) 369-920.

SENIOR LUNCHES

■ **Angels Camp:** Monday to Friday, (209) 736-4427.

■ **Arnold:** Tuesday, (209)

Don't say no to this Vice

Vice was a little shy when he first came to the Animal Friends Connection's cat sanctuary but now he is feeling a lot better about himself and humans. He is a laid-back couch potato who was born in February 2002. He would be very comfortable plied up with you watching sports or soap operas. Currently, his favorite bed is a large basket with a pillow in it. Vice would like to have only a few feline companions or to be the only cat in the house. He needs a sensitive, caring person to adopt him. He has been neutered, and his vaccinations and rabies shots are current. Vice combo-tested negative for leukemia and FIV. He has been wormed and treated with Advantage for fleas.

To adopt Vice, or if you can provide a safe, loving, temporary home for other animals, visit Animal Friends Connections' adoption center at 933 S. Cherokee Lane in Lodi between 11 a.m. and 3 p.m. Saturday and Sunday; weekdays from noon to 7 p.m. Or call Animal Friends Connection at **(209) 365-0535** or **(209) 368-1761.** Or visit their Web site: **www.animalfriendsconnect.org.** Animal Friends Connection is a Lodi-based, nonprofit organization, dedicated to educating the public to reduce the unwanted pet population and to finding new and foster homes for unwanted animals.

YOUTH ACTIVITIES

LODI PUBLIC LIBRARY

201 W. Locust St. Hours: 10 a.m. to 9 p.m., Tuesday through Thursday; 10 a.m. to 6 p.m. Friday and Saturday; 1 to 5 p.m.

sites: Beckman, Lakewood, Nichols, Reese, Vinewood and Borchardt. Lodi Unified School District minimum days and common planning days are included. Register at: Lodi Parks and Recreation, 125 N. Stockton St. Information: **(209) 333-6742.**

■ **Camp Hutchins:** Meets needs of children ages 5 to 12 and their working parents. Five full days or five half days (five

4674; Needham, **(209) 810-8276.**

■ **Middle School After-School Hang Out Club:** 3 to 6 p.m., weekdays. Lodi Middle School and Millswood. Modified traditional track, seventh- and eighth-grade students. This program is designed to assist students with homework and socialization skills. It includes escorted field trips to places like the movies,

WAL-MART

Continued from LL1

"As traffic moves away from downtown more businesses will close, leading to a tipping point where the downtown starts to decay," the new report states. "The City of Lodi has spent a great deal of effort to keep the downtown vital. We believe this project will lead to the destruction of a vital downtown."

Applied Development Economics' Steve Wahlstrom, who headed the previous Supercenter study paid for by developer Darryl Browman, acknowledged elements of his study are outdated. He said he reached his conclusions before a new shopping center at Eight Mile Road and Interstate 5 opened and before the Lodi Lowe's center opened.

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YOUTH ACTIVITIES

Lodi Public Library

201 W. Locust St. Hours: 10 a.m. to 9 p.m., Tuesday through Thursday; 10 a.m. to 6 p.m. Friday and Saturday; 1 to 5 p.m. Sunday. Information: **(209) 333-5566** or Web site: **www.lodi.gov/library.**

Children's programs

■ **Wednesday:** Preschool story time, 10:15 a.m.; Spanish story time, 7 p.m.

■ **Thursday:** Preschool story time, 10:15 a.m.; School age crafts, 3:30 p.m. Painting.

Lodi Community Center

415 S. Sacramento St., Lodi. Information: **(209) 331-7516.**

■ **Computer lab:** 3 to 5 p.m., Monday through Friday. Ages: seventh grade and up.

■ **After-school recreation:** 3:30 to 5 p.m., Monday through Friday. Ages 7 and up. Inside and outside activities and help with homework.

Ongoing

■ **After-school playground program:** 2:45 to 6 p.m., Monday through Friday. All year-round and modified traditional tracks. Program designed to meet the needs of children in grades K-6 and their working parents. Annual registration fee: $20 per child. Program fee: $85 per month, per child. School sites: Beckman, Lakewood, Nichols, Reese, Vinowood and Borchardt. Lodi Unified School District minimum days and common planning days are included. Register at: Lodi Parks and Recreation, 125 N. Stockton St. Information: **(209) 333-6742.**

■ **Camp Hutchins:** Meets needs of children ages 5 to 12 and their working parents. Five full days or five half days (five hours or less). This program is licensed by Lodi Memorial Hospital. The camp meets from 6:30 a.m. to 6 p.m., Mondays through Fridays, at Hutchins Street Square, 125 S. Hutchins St., Lodi. Information: **(209) 334-2267.**

■ **Lodi Boys & Girls Club:** The Sunrise Club for youngsters ages 6 to 12 meets at 7 a.m., Monday through Friday, at 275 E. Poplar St. The club costs $50 for the first child, $40 for the second child, and $20 for each additional child per week. A program for children 6 to 18 meets from noon to 6 p.m., Monday through Friday, and costs $10 per year. Call for membership fee. Information: **(209) 334-2697.**

■ **Lodi's Outstanding Outreach to Kids:** Lodi LOOK, 2:15 to 6 p.m. (check with your school site). Kindergarten to 6th grade. Schools: Lawrence; Heritage; Needham; Washington. All enrollments are done at the school sites. This program is designed to help the children reach academic goals through educational tutoring with recreational enhancements. Free only to children attending the participating school sites. Information: Lodi LOOK Lawrence, **(209) 333-2384**; Heritage, **(209) 649-4674**; Needham, **(209) 810-8276.**

■ **Middle School After-School Hang Out Club:** 3 to 6 p.m., weekdays. Lodi Middle School and Millswood. Modified traditional track, seventh- and eighth-grade students. This program is designed to assist students with homework and socialization skills. It includes escorted field trips to places like the movies, ice skating and horseback riding. Fees: $20 registration; $85 monthly. There may be additional monthly field trip costs of $5 to $10. Enrollment forms available at Lodi Parks and Recreation, 125 N. Stockton St., Lodi. Information call: **(209) 333-6742.**

Send items for Youth Calendar to 101 W. Locust St., Suite 4, Lodi, CA 95240 or call **(209) 367-7429** or fax to **(209) 367-7432.**

thought his conclusions — which showed a slight gain in sales tax revenue for Lodi — was "a bunch of junk."

"I guess it doesn't paint as positive a picture of Wal-Mart as they'd like to be painted," he said.

But he disagreed with the new assessment of store closures, saying there was no way to know how businesses might respond to competition.

New report author Philip King said he based his conclusions on studies outside California because Supercenters are a new California phenomena. But he said they cause a "chain reaction" that harm downtowns.

"The downtown looks healthy, but you've got a few fairly marginal businesses," he said. "I hope I'm wrong, but I am worried."

■ To reach Lodi Bureau Chief Jeff Hood, phone **(209) 367-7427** or e-mail **jhood@recordnet.com**

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Lodi, Ca. 95242
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filed 2-3-05
S. Horen

Memo February 2, 2005

To: Mr. Brett Jolley
From: Philip King, Ph.D. Philip C. King
Re: Proposed Wal-Mart Superstore in Lodi

I would like to briefly supplement my January 18, 2005 report to you with the following additional comments based on recent developments:

***Stockton Record* Article**

I offer the following comments on the article "Study Bashes Wal-Mart Plan" in the Lodi/Lode section of the *Stockton Record*, published on January 23rd (Copy Attached).

In particular, the article discusses the analysis of Applied Development Economics (ADE) and quotes its Managing Principle, Steve Wahlstrom, who prepared the Wal-Mart economic reports for developer Browman. In the article, Mr. Wahlstrom noted that his company's report did not anticipate the rapid development of retail in Lodi and the larger market area, including Stockton—this was the primary market area ADE defined for their study as relevant to the build-out of the Lodi Shopping Center including the Wal-Mart Supercenter. While it is easy to sympathize with the difficulty in conducting such a study, CEQA requires a *complete* analysis of the impact of the new center including all cumulative impacts and ADE's omission of key data distorts its conclusion to such a degree that its analysis is no longer reliable. Such an omission also calls into question ADE's objectivity as well, particularly since the omission was noted by you earlier and also since ADE made a very similar omission in Selma, which we also pointed out. Further, my own study, conducted with far fewer resources than was available to ADE was able to analyze this impact using a methodology consistent with ADE's. Without a complete analysis of all new retail, ADE's study is insufficient to warrant any conclusion. Although I am not a lawyer, I do know that this was a key point in *Bakersfield Citizens for Local Control v. City of Bakersfield.*

Indeed, if they apply standard economic tools objectively, I am confident that ADE will reach the conclusion that the build-out of the Lodi Shopping Center will indeed have a significant (negative) impact on the City, in particular, businesses will close leading to urban decay and physical deterioration. Based on Mr. Wahlstrom's quote in the *Record*, ADE appears to concede that their report is stale:

> "When we first started this, Lodi was catching all of that traffic and the Wal-Mart was going to be well-positioned…Now you have Eight Mile Road and every other week there's a new retail center. It's all mind boggling frankly."

The article also paraphrases Mr. Wahlstrom's comment on the future of Lodi's businesses by stating, "there was no way to know how businesses might respond to competition." While it is certainly true that no one can precisely predict the future, one

can make reasoned inferences using well accepted techniques.[1] Indeed, ADE did use such an analysis in Selma when it provided an analysis of store closings following the opening of a Supercenter there (and remember, in Selma, ADE concluded that up to three supermarkets would likely close as a result of the Supercenter). I used the same type of analysis in Lodi that ADE used in Selma—I looked at the proximity of the grocery stores and their sales relative to industry standard sales per square feet. My analysis indicates that a number of grocery stores in Lodi are already weak and that lost sales due to the Wal-Mart Supercenter would put several grocers out of business. For example, if the Wal-Mart Supercenter sells $44.5 million in groceries, which is the national average for such stores (and the Supercenters in Nevada average $54 million), it is reasonable to infer that these grocery sales will displace grocery sales at other stores. To be fair, my report nets out current grocery-type sales at the existing Wal-Mart. Nevertheless, a very conservative estimate shows that approximately $34 million in grocery sales will be displaced. Further, if a number of these stores are already experiencing a poor business climate and are located near the new Supercenter, it is also reasonable to assume that at some point lost sales will lead the store to close. Put another way, $34 million in grocery sales is approximately equivalent the combined (2004) sales of the four weakest (in terms of sales per square ft.) stores in Lodi: Grocery Outlet, Albertson's, Apple, and Ranch San Miguel.[2]

ADE also failed to examine the potential cumulative impact that other nearby proposed or competing retailers with substantially overlapping market areas would cause; in particular, the October 2004 opening of the Wal-Mart Supercenter at Holman Rd. and Hammer Land in northeast Stockton, as well as the recently approved Wal-Mart Supercenter and Sam's Club at Eight Mile Road and I-5 in northwest Stockton. The continued omission of these projects from the analysis, particularly after you called them out in your EIR comment letter, is disconcerting.

However, it is important to keep in mind the larger issues here. My concern is not just about Wal-Mart and not just about groceries. The central concern I raise in this report is the build out of retail in Lodi and the market area, as defined by ADE. (Specifically: (1) this project includes not only 226,868 sq ft of Supercenter development, but also adds 113,098 sq ft of other new retail uses to Lodi and the shopping center's market area, (2) ADE's analysis fails to account for the new Lowe's and build-out of Vintner's square, (3) ADE's analysis fails to account for several *large* recent retail projects in Stockton.) None of these items were analyzed by ADE, despite the fact that such an analysis is *required* by CEQA. Frankly, I also have concerns about the objectivity of a report which is commissioned by and paid for by the developer rather than the City.

ADE has performed a number of these analyses for Wal-Mart related projects and I find the following comment, as quoted in the article, by Mr. Wahlstrom disturbing:

> "I guess it [ADE's report] doesn't paint as positive a picture as [Wal-Mart would] like to be painted."

---

[1] By way of analogy, ADE's reasoning seems equivalent to a traffic engineer saying there is no reliable way to estimate level of service impacts at intersections because it is impossible to predict where people will drive.

[2] I am not stating that these 4 stores will close. I believe Safeway, a slightly stronger store, but one closer to the proposed project, will close along with at least two other stores as outlined in detail in my report.

ADE's job is to create an objective analysis for the City of Lodi, not one that favors the party paying ADE's bills. I know some may state that I have been retained by those with opposite views. I would only add that most of my income is generated as a Professor and Chair at San Francisco State and most of my consulting is for State and local government. Likewise, my wife (who is co-author of the study) is a faculty member in the economics department at the University of the Pacific. We value our professional reputations far more than the relatively small fees we earn on these types of projects each year. We took on this case because we believe consulting firms working on an EIR for the City have a responsibility to be objective, even if (as Mr. Wahlstrom concedes) the conclusion does not make Wal-Mart happy.

In short, ADE's analysis needs to incorporate all recent development as well as recent sales data from the grocers in an objective fashion, not one that favors any particular party, but one that serves the needs of the citizens of Lodi.

***Lodi News Sentinel* Article**

Interestingly, in a January 29, 2005 article in the *Lodi News Sentinel* entitled "Reports paint conflicting picture of Supercenter impact on Lodi," Mr. Wahlstrom takes a decidedly more hostile approach to my analysis and is quoted as accusing me of falsifying the numbers in my report. Specifically, in that article Mr. Wahlstrom claims that my assumption that an average Supercenter has $44.5 million in sales annually from its grocery component is not contained in the cited article from *Progressive Grocer* called "Wal-Mart vs. the World" from Oct. 15, 2003. Because I anticipate Wal-Mart through ADE will raise this challenge during the public hearing this week, I wish to offer the following response to clarify:

> I derived the $44.5 million estimate quite simply and someone with Mr. Wahlstrom's background should have been able to make the same estimate just as easily. Page 21 of the *Progressive Grocer* article lists "estimated ACV" for all Wal-Mart superstores. ACV is short for "All Commodity Volume" and represents items sold in grocery stores -- essentially the sales that compete directly with grocers. The total listed is $61.7 billion. Divide that by the total number of Supercenters (1386) and you get $44.5 million. Of further note, I actually believe Nevada represents a better comparison, but used the national average to be more conservative. Using the same *Progressive Grocer* article, same page, and same methodology, the sales in Nevada are approximately $54 million in ACV per Supercenter ($486.2 million ACV divided by 9 Supercenters). So, my work is far from the worst-case scenario.

Finally, even omitting all analysis of groceries, the EIR contains other serious errors and omissions:

- the erroneous evaluation of "redevelopment blight" rather than "urban decay",
- the failure to fully consider or mitigate the impact of the vacated Wal-Mart discount store, and
- the omission of several relevant and similar retail projects within the Supercenter's primary market area which bias their analysis.

The major issue is that ADE's report is incomplete and inadequate and certainly does not account for cumulative impacts of this project. I honestly do not believe that ADE's report is truthful or accurate. In my professional opinion, the ADE report is very poor and does a disservice to the City of Lodi. It does not serve as a basis to conclude that the EIR is adequate for certification.

Enclosure

Lodi/Lode

Seniors
Property of
Lodi Public Library

Study bashes Wal-Mart plan

Loss of businesses would spur urban decay

By Jeff Hood
Lodi Bureau Chief

LODI — A shopping center anchored by a Wal-Mart Supercenter would drive three Lodi grocery stores and a major pharmacy out of business and create a glut of retail space that would take more than a decade to fill.

That's the gloomy scenario predicted in an economic study presented to the Lodi City Council on Wednesday by an attorney representing Lodi First, a group of anonymous Lodi residents opposing the Supercenter.

The City Council will consider issuing a use permit for the Supercenter at a special meeting scheduled at 6 p.m. Feb. 3. Last week's meeting was halted after Mayor John Beckman disqualified himself from debate because of comments he made previously favoring Wal-Mart.

The latest report, on behalf of Lodi First by California Economic Research Associates, states a previous economic analysis didn't go far enough in predicting the amount of urban decay created by a Wal-Mart Supercenter. The earlier report, by Applied Development Economics, didn't take into the account the Vintner's Plaza shopping center to the north, where Lowe's opened in November, or competition in north Stockton, according to California Economic Research Associates.

It predicts Safeway, Albertson's, the Grocery Outlet and the Lodi Avenue Longs Drugs would close if a Supercenter is built.

"While Lodi is currently healthy, the store closings stemming from the Lodi shopping plaza, which significantly increases retail space in the City will lead to urban decay and physical deterioration," the new report concludes.

A Wal Mart spokesman could not be reached for comment.

Lodi City Councilman Bob Johnson said he's not inclined to believe the gloomy outlook.

"Will there be impacts on business? There's no doubt in my mind," he said. "I'm not ready to concede that three supermarkets are going to go out of business. We don't have anything in the state of California to compare to."

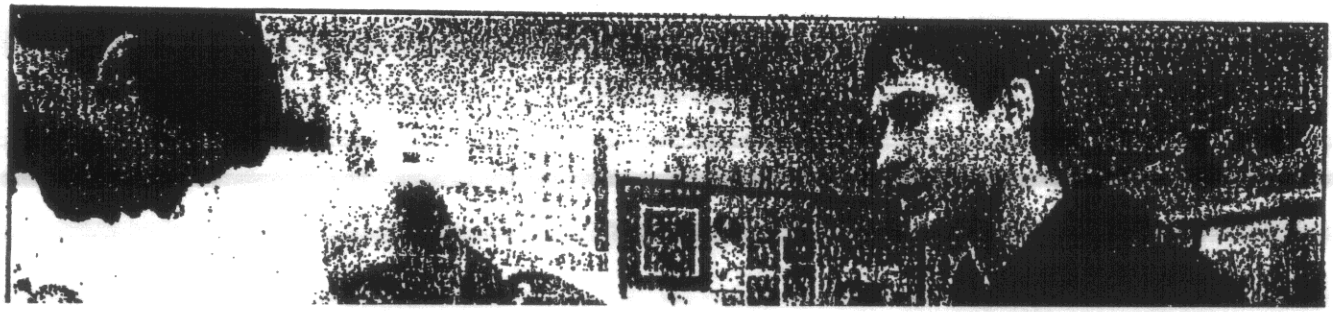
The co-authors, economics professors Philip G. King of San Francisco State and Sharmila King of University of the Pacific, made several ominous predictions about other shopping centers in Lodi.

The combination of a Supercenter and Lowe's could devastate Cherokee Lane retailers Kmart, Orchard Supply Hardware and the Rancho San Miguel market and harm the Longs Drugs and Ace Hardware on Kettleman Lane.

Please see WAL-MART, LL3

"I just like to get kids on a university campus and have them go, 'Whoa!'"

— Tom Bray, teacher, Jim Elliot Christian High School



Seniors' meals in jeopardy

WAL-MART

Continued from LL1

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has asked a federal bankruptcy judge to award his firm a $25 million "success fee" for stabilizing the fallen Houston energy giant.

Stephen Cooper, a turnaround expert who has been Enron's leader since a month "well within the range of reasonableness," according to court papers filed late Thursday with U.S. Bankruptcy Judge Arthur Gonzalez.

Cooper and some three dozen associates with ties to the ing Enron's far-flung operations. His company already has reaped $63.4 million in fees from Enron as of June 30.

All told, the staggering fees that Enron has paid to an array of lawyers and accountants are sionals are eating up mone that instead should go back creditors.

Under a reorganization pla approved in July, most Enron's creditors eventual will receive between 17 and

STOCKTON RECORD filed 2-3-05 Gain

Record photo by DOUGLAS RIDER

COLD CASE: Geri Bentz straightens up the new energy-efficient deli case at the Hammer Ranch S-Mart in Stockton.

S-Mart cuts back on juice

Grocery chain's energy-efficiency effort earns praise

By Joe Goldeen
Record Staff Writer

STOCKTON — In the highly competitive grocery business, every penny counts.

For S-Mart Foods energy czar Ray Agah, those pennies come in the form of kilowatt-hours, and for Modesto-based parent company Save Mart Supermarkets, he's saving the company a lot more than pennies.

Save Mart, which operates 119 stores in Northern California — including eight S-Mart Foods in Stockton and Lodi, 71 Save Mart Supermarkets, including several in Manteca and Tracy, and 40 Food Maxx stores — has spent $3 million in the past three years upgrading its facilities with energy-efficient lighting and refrigeration.

That effort has earned the family-owned company EnergySmart Grocer status from the California Public Utilities Commission, which is helping independent grocers lower their utility bills.

In 1996, the state Legislature adopted Assembly Bill 1890, which, among other things, established a public-goods charge on electricity purchases. The fund resulting from this charge supports many of California's energy-efficiency programs, including the Energy-Smart Grocer program.

Program manager Diane Levin said the program operates on a $6.9 million budget over two years, including its rebate incentive program, and supports five energy experts around the state who consult with grocers and audit their energy use.

Rebates amount to an average of 20 percent of the cost of a smaller grocer's expenses of installing energy-efficient fixtures.

In the case of Save Mart, with Agah on board, they didn't take the full rebate. Instead, they

Please see S-MART, Back page

7.44	-.11	-.54	
Best 36.03	+.80	+.76	
ArmHld 64.37	+.06	-.10	
Arotech 1.40	-.02	-.02	
4.55 ArrayBio 7.12	+.01	+.46	
3.73 Arris 4.78	+.10	+.25	
.94 .70 ArtTech1 .96	-.01	-.06	
12.30 7.01 Artesyn 8.13	-.15	-.42	
15.70 10.80 CaselaWd11.16	-.12	-.29	
18.95 13.38 Caseys 17.70	+.05	+.77	
10.79 5.35 CasualMal5.98	-.01	-.02	
9.75 4.30 CatlSemi 5.15	-.10	-.42	
25.26 10.70 CbtlCm 22.90	+.16	-.27	
73.21 44.21 CathayGenu73.79	+.58	+4.44	
60.60 36.52 Celgene 56.75	-1.06	-.48	
16.24 6.48 CellGens 8.66	+.02	+.61	
13.60 3.10 decoSelect0.92	-.33	+.22	
37.18 31.14 Dellinc 35.25	-.26	+.05	
27.78 22.02 DelING d26.29	+.00	-.25	
15.93 4.75 DltaPtr 11.48	-.06	+.19	
16.72 6.14 Dndreon 10.13	-.38	-.31	
19.77 12.26 Dendrite 13.36	+.05	+.82	
52.84 41.75 Denlsply 51.45	-.49	+1.41	
8.97 3.71 Depomed 4.98	+.07	+.17	
33.75 8.39 Foundry 9.30	-.04	-.25	
20.70 14.33 FrnkBTX n16.19	+.29	+.43	
41.76 27.67 FrankEl su40.97	-.23	+2.97	
38.73 13.72 Fredslnc 15.12	+.30	+.66	
19.40 7.30 FrntrAir 8.90	-.05	-.14	
20.30 7.16 FuelCell 10.05	-.06	+1.25	
21.69 18.81 FultonFn 21.34	+.09	+.01	
21.26 9.62 HmbDV 02.49	-.56	-1.74	
19.87 7.20 ISSI 7.46	-.31	-.94	
34.60 20.86 Intel d20.05	-1.58	-1.97	
10.56 1.56 Intellgr II 2.00	..	+.33	
7.71 1.57 Intellsync 2.10	-.04	-.35	
33.36 8.96 IntlParfu 11.91	-.44	-.14	
34.50 18.74 InterTel 20.53	-.75	-.59	
17.91 8.20 InterCeptu17.48	+.01	+.25	
29.21 13.51 MTS 22.42	-.31	+.69	
14.80 1.50 MacroSec rs2.85	+.05	-.08	
30.00 16.70 Macrmdia18.56	-.96	-1.40	
26.93 16.58 Macrvsn 22.35	-.57	-1.48	
38.43 6.43 Magal 15.69	+1.29	+1.49	
36.51 23.10 MagelnHl mu36.90	+.45	+2.83	
28.88 14.81 Magma 16.43	-.35	-.78	
7.07 3.94 MagnaEnt 6.00	+.01	+.01	
43.78 24.37 Noreson 35.00	-.19	+.99	
51.35 38.40 NorTrst 42.71	-.17	-.29	
19.76 4.98 NthfldLb 12.98	-.05	-.25	
15.21 7.50 NwstAirl 9.35	-.25	+.08	
28.60 4.90 NvtlWrls 20.61	-.29	-.99	
8.62 3.02 Novavax 3.37	-.08	-.12	
14.24 5.01 Novell 5.79	-.28	-.37	
45.50 23.39 Novlus d23.39	-1.50	-1.79	
12.20 7.02 Pi			
56.93 39.34 Pr			
39.72 16.12 pd			
13.38 1.47 Pr			
26.80 18.85 Pr			
30.00 16.14 Pr			
24.75 17.82 Pr			

BUSINESS HIGHLIGHTS

Russia raises tax on oil giant

MOSCOW — Russia's Tax Ministry raised its tax bill for 2001 against the floundering Yukos oil giant by $700 million, bringing total back tax claims against the nation's biggest oil producer to $7.4 billion, the company said Friday.

Yukos already faces a $3.4 billion bill for 2000, of which the company has paid $2 billion. The Ministry had also begun pursuing the company for allegedly unpaid taxes in 2001.

According to the revised claims for 2001, Yukos dodged taxes through illegal onshore tax havens to the tune of $4 billion, Interfax reported the Tax Ministry's claim as saying. Earlier the Tax Ministry had said Yukos owed $3.3 billion for 2001, the company said.

3Com sees drop

MARLBOROUGH, Mass. — 3Com Corp. said Friday its quarterly revenue will come in around 10 percent below its previous expectation, an announcement that sent shares of the communications network supplier down 10 percent.

The company expects revenue in the range of $160 million to $164 million for its first fiscal quarter, which ended Aug. 27. Results will be reported Sept. 16. In June, 3Com forecast first-quarter revenue would be about the same or slightly above the $183 million in revenue posted in the fourth quarter.

S-MART

Continued from D1

used the program as an incentive "and just ran with it," Levin said.

"With the hottest days of summer approaching, traditionally bringing the peak demand on California's electricity transmission system, Save Mart wanted to do its part to avoid brownouts in the community," said Agah, Save Mart's director of engineering and construction.

Longtime customer Velma Dangerfield of Stockton was shopping this week in the frozen-food aisle inside the 10-month-old S-Mart Foods at Hammer Ranch. She took note of the store's 35 skylights and recognized they were part of its effort "to save energy. I like this store very much," she said.

Agah said the skylights, being installed in all of the chain's new stores, allow enough natural light in on sunny days that only 50 percent of the fluorescent lighting needs to be used.

In fact, from the minute customers enter an S-Mart or Save Mart store, they have entered a controlled environment.

"Air curtains at the doors eliminate infiltration of outside air," Agah said, noting that on particularly hot days over 100 degrees he is prepared to "shed power loads" and bring a store's overall temperature up from 72 degrees to 76 degrees.

He is also willing and able to reduce power consumption for refrigeration on high-peak days. Because the system is fully automated, he can alter temperatures from one central office location.

"This is my passion, and it has been very successful for us. Energy costs are becoming almost as much as your rent," he said.

At the company's newer stores, hot air generated from compressors is used to heat hot water and, in the winter, keep store temperatures comfortable for customers and employees.

"We don't use any gas heaters during the winter," Agah said.

Around Stockton, six smaller stores participated in the EnergySmart Grocer program, receiving $23,000 in combined rebates. They are expected to generate $35,000 in combined cost savings per year, Levin said.

One of those stores is the Marina Marketplace, 3201 W. Benjamin Holt, which spent about $7,500 on insulated night covers that are pulled down like shades over open refrigerated cases when the store is closed. The EnergySmart Grocer program provided the store with a rebate for about half its costs, owner Randy Toy said.

According to a promotional piece on the night covers, they should reduce nighttime refrigeration costs by 40 percent and pay for themselves in about eight months.

"I have to do a little more analysis over the next six months or so to gauge my energy savings," Toy said.

At S-Mart and Save Mart, while the biggest effort to earn the EnergySmart Grocer designation may have gone into changing light bulbs and refrigeration methods, Agah pointed out that one other element is vital to achieving peak energy efficiency — employee awareness.

"For instance, in our bakeries it was traditional to come in early and turn on the ovens so they'd be warm when you needed them. With modern ovens, it's not necessary. So don't turn on the oven until you need it. We're seeing hundred of dollars in savings," he said.

Those pennies add up.

■ To reach reporter Joe Goldeen, phone **(209) 546-8278** or e-mail **jgoldeen@recordnet.com**

To learn more

For more information on the EnergySmart Grocer program, phone **(800) 230-9420** or visit **www.energysmartgrocer.org**

ROSEN

Continued from D1

time in our household, and I'm certain it hasn't always translated into better test scores and grades.

I bet your daily life is rife with similar material.

Take cars, for example. Have you ever plowed a bundle of money into the old family four-door to boost its driving performance for your teenager, only to discover another expensive engine problem?

That's the point where you do the arithmetic and decide whether to spend the extra money for potentially a better-performing vehicle.

You see, the law of diminishing returns also delves into what you pay for something vs. the amount of value you expect in return.

There are many opportunities to apply the law of diminishing returns, and you don't have to have a master's degree

Choose CALIFORNIA SHADE

"The Central Valley's Largest Patio Cover Experts."
"Beat The Heat With Our Cool Summer Savings."
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• Financing Available
90 Day Deferred Financing O.A.C.
BBB

Refinance or Purchase
Full Interest Only Payment
3.495% APR
This is Not a Teaser!
30 Year Loan • No Negative Amortization
No Balloon Payment • Adjustable Monthly
Examples: $400,000 @ 3.375% = $1,125/mo.
$300,000 @ 3.375% = $844/mo.
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S-MART foods

SAVE MART SUPERMARKETS

P.O. Box 4278, Modesto, Ca 95352-4278
Steve Gaines, Director Retail Efficiencies
209-574-6244

FOODMAXX

February 3, 2005

Mayor and City Council Members
City of Lodi

Attached are two studies, prepared by Dr. David Rogers of DSR Marketing Systems, outlining Wal-Mart Supercenters impact on Victoria, Texas, and Carson City, Nevada. Dr. Rogers has been studying Wal-Mart's development of the Supercenter concept for more than 10 years and has published numerous articles and studies on the subject.

Victoria, Texas – This analysis covers the impact on existing supermarket operators following the opening of a Supercenter in March 1994. The comparisons between the cities of Lodi and Victoria are strikingly similar.

	Lodi	Victoria
2004 Population	61,950	62,002
Population growth 1990-2000	8.4%	9.6%
Average hsld size-persons/hsld	2.7	2.7
Median hsld Income	$42,447	$40,095

The Rogers study shows that in the 10 years since the Supercenter opened in Victoria, the number of supermarkets has declined 55%, from 9 to 4. The resulting vacant retail square footage in Victoria from these closures is 254,000 sq.ft.

Lodi is currently served by 10 supermarkets, half of which operate at sales per square foot figures below national levels. In this scenario, Lodi could easily experience the same fate as Victoria, Texas. This would not only lead to the potential for urban decay, but also reduce consumer choice and leave several parts of town without the convenience of a nearby grocery store.

Carson City, Nevada – This study was based on telephone interviews with nearly 500 Carson City households. The survey showed that Supercenter shopper's traveled twice as far as customers of other grocery stores. Moreover, the Supercenter customers shop with almost the same frequency as customers of other grocery stores, so that total driving miles increased dramatically with the opening of the Wal-Mart Supercenter. This added driving time increases pollution, traffic jams, and wear and tear on city roads. This is not consistent with Goal and Guidelines of the General Plan Circulation Element "To encourage a reduction in regional vehicle miles traveled."

We believe these two studies paint a very alarming picture of a Wal-Mart Supercenter. The negative impacts of store closures, traffic, and increased air pollution, are facts requiring further study and environmental mitigation.

Sincerely,

Steve Gaines
Director of Retail Efficiencies
Save Mart Supermarkets

filed 2-3-05
Gain

CHANGING SUPERMARKET PROVISION
IN VICTORIA, TEXAS: 1994 VS. 2004

DSR Marketing Systems, Inc. conducted field and consumer research in this market in 1994 - shortly after the Walmart Supercenter opened in March 1994 - and again in late 2004.

The key findings of our research in Victoria are as follows: -

1. Victoria is a city with a population of approximately 62,200 people in 2004. It grew by 8% from 57,500 people in 1994.

2. In 1994, Victoria was served by nine (9) supermarkets and supercenters, including the new Walmart. These stores were run by six (6) different operators and had a combined gross area of 343,000 sq. ft. Please refer to Figure 1 and the accompanying map.

3. By December 2004, and despite Victoria's population growth, the number of competitors had been reduced from nine (9) to four (4), and the combined gross area of supermarket space had declined to 229,000 sq. ft.

4. Three (3) of the five (5) supermarkets and supercenters that closed between 1994 and 2004 remain vacant for a total of 254,000 sq. ft. of empty retail space in Victoria (see Figure 2). Further, the number of operators has been reduced from six (6) to three (3).

   This creates both urban decay and a significant diminution of consumer choice.

5. Finally, our consumer research indicates that the sole remaining Dick's supermarket is vulnerable....leaving HEB and Walmart to essentially share the Victoria market. The presence of only two (2) major competitors potentially sets the stage for the future reduction of price competition in this market.

Figure 1

SUPERMARKET/SUPERCENTER COMPETITORS IN VICTORIA, TEXAS: 1994 vs. 2004

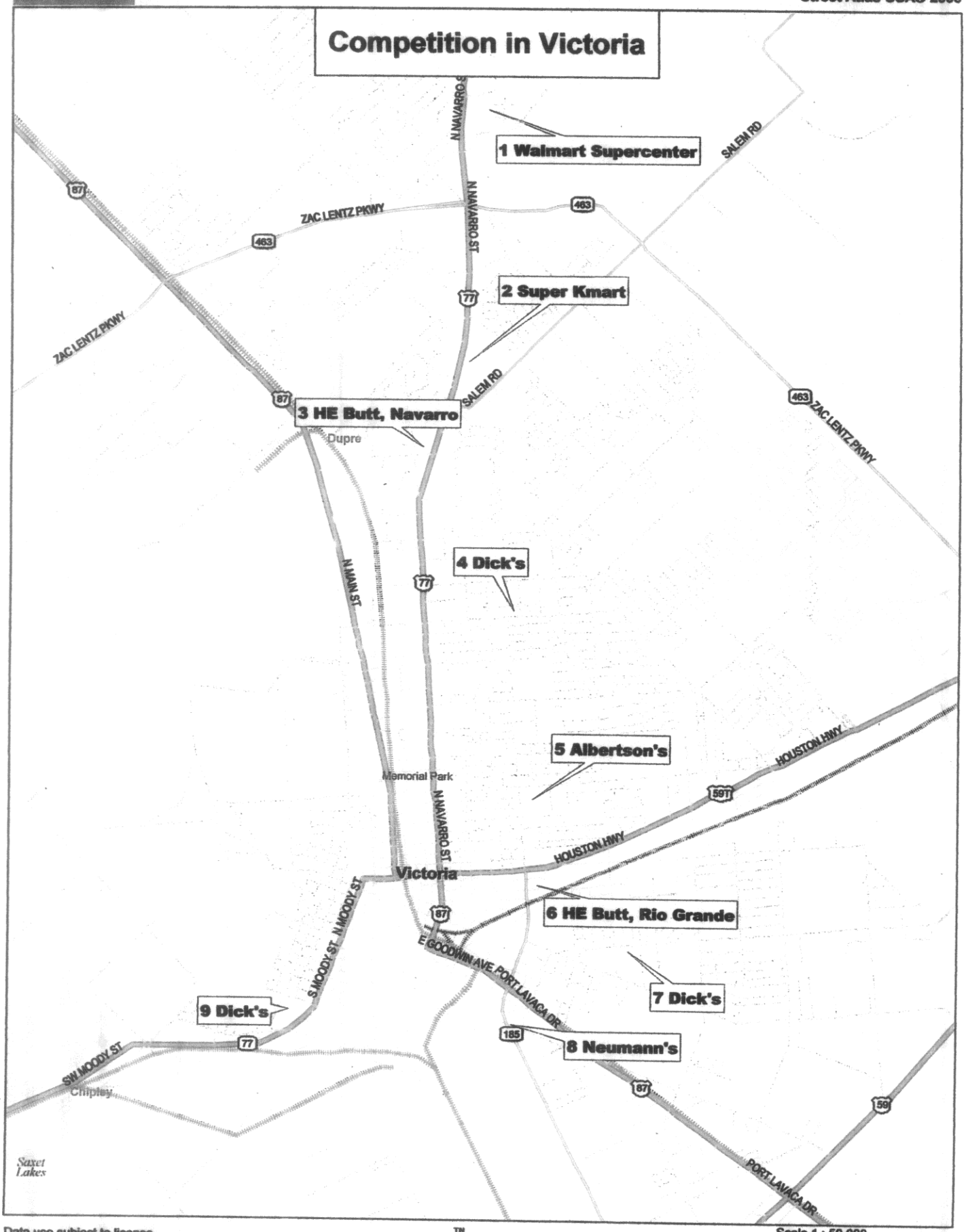
Map Key	Name	Format	Location	(Approximate Gross Area (sq. ft.) 1994	2004
1	Walmart	Supercenter	Navarro/Larkspur	65,000	65,000
2	Super Kmart	Supercenter	Navarro/Whispering Creek	65,000	CLOSED
3	HE Butt	Food-drug combo.	Navarro/Sam Houston	69,000	69,000
4	Dick's	Conventional	Laurent/Crestwood	15,000	15,000
5	Albertson's	Food-drug combo.	Laurent/Red River	52,000	CLOSED
6	HE Butt	Food-drug combo.	Rio Grande/Laurent	44,000	80,000
7	Dick's	Conventional	Ben Jordan/Lone Tree	13,000	CLOSED
8	Neumann's	Conventional	Juan Linn/Laurent	10,000	CLOSED
9	Dick's	Conventional	W. Moody/River	10,000	CLOSED
	TOTAL			343,000	229,000

Figure 2

VACANT STORE SPACE IN VICTORIA: 2004

Map Key	Store	Gross Area (sq. ft.)
2	Super Kmart (inc. non-food)	192,000
5	Albertson's	52,000
8	Neumann's	10,000
		254,000

Competition in Victoria



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TN
MN (8.0°E)

Scale 1 : 50,000
1" = 4,166.7 ft
Data Zoom 12-0

filed 2-3-05
Gain

WAL-MART SUPERCENTER'S IMPACT ON GROCERY SHOPPING PATTERNS IN CARSON CITY, NEVADA

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August 25, 2004

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Appendix 1: THE SURVEY QUESTIONNAIRE

Appendix 2: THE CARSON CITY / GARDNERVILLE / MINDEN MARKET AREA

Appendix 3: ABOUT DSR MARKETING SYSTEMS INC.

SUMMARY

Purpose and Research Method

In April - May, 2004, 498 interviews were completed with a cross-section of households living within the city limits of Carson City, Nevada. The purpose of the telephone survey was two-fold. First, to identify the grocery shopping patterns of these households and compare the shopping characteristics of Wal-Mart Supercenter customers with those of its traditional supermarket competitors. Secondly, to estimate the impact the Supercenter has had on the supermarkets in Carson City.

The detailed results of the research are contained in the Survey Findings section presented below.

Where Carson City Shops For Groceries

- 36% of the grocery shoppers interviewed now buy at least some of their groceries at the Wal-Mart Supercenter....and 19% make it their primary store for food shopping.

- The Supercenter ranks as Carson City's leading grocery store, with a 19% market share.

- It is estimated that more than half of the store's business comes from beyond Carson City itself. Based on field observations, it is estimated that the Supercenter is achieving weekly sales volumes of $1.1 million in supermarket-type-merchandise - more than twice the volume of the leading traditional grocery competitor in Carson City (Raley's, $475,000).

Supercenter Shopping Characteristics

- Supercenter shoppers drive substantially further to buy groceries than do shoppers of the major traditional supermarkets in Carson City. The average Wal-Mart shopper - in Carson City only - lives 5.5 miles from the Supercenter versus only a 2.0 mile average for customers of the traditional supermarkets. And this is an under-estimate because the Supercenter draws more sales from areas beyond Carson City.

SUMMARY (Continued)

- The average shopper visits the Supercenter 5.5 times per month, less than the 6.9 times per month that shoppers visit the traditional supermarkets.

- Therefore, on a monthly basis, customers of the Wal-Mart Supercenter travel more than twice as far for their grocery shopping than do those of the traditional supermarkets (60 miles per month versus 28 miles).

- A 92% proportion of the Supercenter shoppers reported that a competing supermarket is closer to their home than is the Supercenter. On average, these customers report traveling 8.6 miles (round trip) further to shop the Supercenter than they would travel if they shopped at the closest competing supermarket.

- Supercenter shoppers visit an average of 2.4 different grocery stores per month, which is only marginally less than the 2.6 different grocery stores visited by all those interviewed. Therefore, Supercenter shoppers visit an average of 1.4 other grocery stores on a regular basis, indicating that they are not using the Supercenter as a total one stop grocery store.

- Supercenter shoppers spend an average of 52% of their total food budget at the Supercenter with the remainder (48%) being spent at other Carson City supermarkets. The competing supermarkets in Carson City have a similar "loyalty" reading which ranges between 46% and 53% of all their shoppers' spending. This finding indicates that customers of the Supercenter are no more loyal than those of the traditional grocery stores.

Supercenter Shopper Demographics

- Supercenter shoppers tend to be drawn from households with somewhat lower incomes ($40,000/year) and younger heads of households. As would be expected, the Supercenter also draws more heavily from larger households (i.e. 3 persons or more).

SUMMARY (Continued)

The Supercenter's Competitive Impact

- Reflecting its wide geographical draw, the Wal-Mart Supercenter's impact on pre-existing supermarkets has been fairly evenly dispersed. As expected, there appears to have been a slightly higher impact on stores located closer to the Supercenter and those featuring low prices as their primary drawing card (such as the former Super Kmart and Smith's).

- On average, the sales declines at the pre-existing supermarkets ranged between 10% to 20% per store, but were presumably even higher at stores that were drawing customers from beyond Carson City, such as the Albertson's in south Carson City.

- The heaviest "contributors" to Walmart's sales were the three (3) Albertson's stores (a combined 26%), Raley's (19%), Smith's (13%), and Scolari's (13%).

- We estimate that several of the existing supermarkets now have average weekly sales below $300,000, which is the current (approximate) threshold for maintaining store profitability. With Wal-Mart's plans to open a second Supercenter in north Carson City in mid-2005, we estimate that at least three or four supermarkets will close before the market returns to equilibrium. This will reduce consumer choice from the current eight (8) competing supermarkets (excluding Costco) to four (4) or five (5). We are planning a follow-up gravity model analysis to refine this estimate.

THE SURVEY AND ITS FINDINGS

Objective

The purpose of the telephone survey was to interview a representative cross-section of Carson City grocery shoppers to determine where they currently shop for groceries, their frequency of shopping these stores, the approximate distance of these stores from their homes, and their demographic characteristics such as household size and income. We also asked those individuals who currently shop for groceries at the Wal-Mart Supercenter where they shopped before the Supercenter opened. A copy of the survey questionnaire is presented as Appendix 1.

The survey was intended to quantify any differences between supermarket shoppers in Carson City and those of the Wal-Mart Supercenter on such factors as travel distance, shopping frequency and demographic characteristics. In addition, the survey provides a benchmark analysis of the market shares held by the competing supermarkets as of May 2004, and of the sales impacts resulting from the opening of the Wal-Mart Supercenter in September 2001.

Methodology

Between April 13 and May 5, 2004, a total of 498 telephone interviews were conducted in the Carson City area. Interviewers were instructed to contact only those households with telephone prefixes which indicated that they lived within the city limits of Carson City (only 12 interviews were completed with households on the perimeter of Carson City). The interviewers were instructed to make one call back in the event the respondent was not at home and then to proceed to the next listed number. No interviewing was to commence before 4:00 pm (except on weekends) in order that a sufficient number of households with working heads of households could be obtained. Interviewers were requested to talk with the person most responsible for the household's grocery shopping. Surveys were validated using standard verification techniques.

Carson City

Carson City is the capitol of the State of Nevada, and with a 2003 population of 55,300, Carson City ranks as the fourth largest city in the State after Las Vegas, Reno, and Sparks. Employment is centered around government, the casinos, tourism, and agriculture. Additionally, many retirees from California and elsewhere have settled in Carson City because of the lower cost of living and lower tax rates. By the standard of other Nevada cities,

the Carson City population growth rate has been moderate, having increased by 37% between 1990 and 2003.

Carson City households are presently served by eight (8) traditional supermarkets, a Costco Warehouse Club, and a Wal-Mart Supercenter. Please refer to the accompanying Map 1.

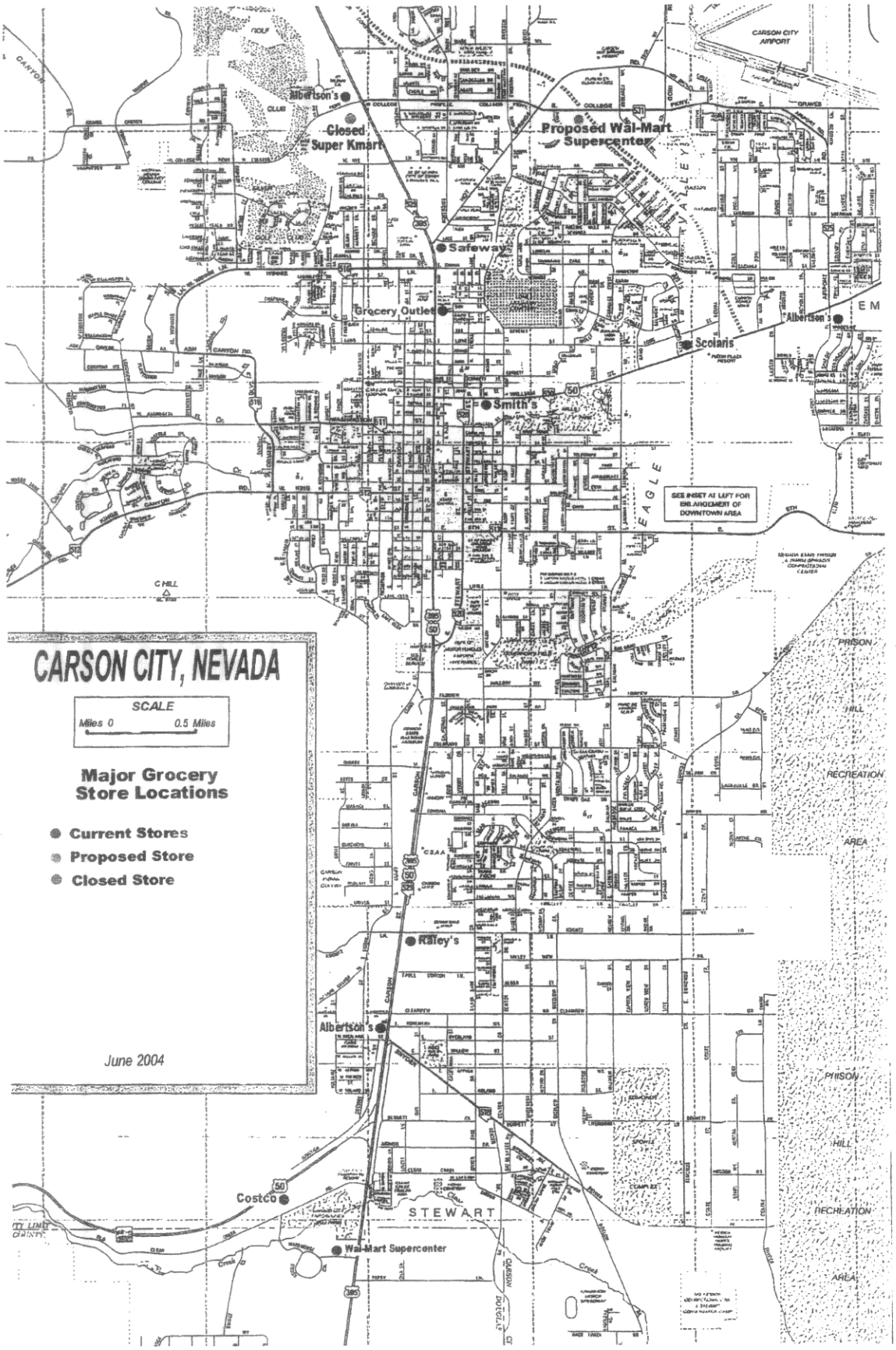
Carson City draws a significant proportion of grocery shoppers from areas outside the city limits - primarily to the south and east. This "outside" draw is particularly true of the Costco Warehouse Club and the Wal-Mart Supercenter which are both located near the Carson Valley Power Center just to the south of Carson City in Douglas County. The most significant secondary trade area for Carson City is the Minden/Gardnerville area about 15 miles south of Carson City. This area has a population of about 30,000 and is served by three (3) major grocery stores (Raley's, Smith's, and Scolari's). Wal-Mart is rumored to be considering building another Supercenter in this market.

Based upon discussions with local supermarket operators, we estimate that the eight (8) supermarkets in Carson City and the three (3) stores in the Gardnerville/Minden area serve an expanded trade area population of about 96,000 (please refer to the map and data presented in Appendix 2). On a rule of thumb guideline of one store per 10,000 people, this suggests that the trade area population and store count are currently in approximate equilibrium. However, it is estimated the Wal-Mart Supercenter is achieving weekly sales of over $1.1 million in supermarket-type-merchandise - which is more than twice the volume of a typical supermarket. As a result, we estimate the market is presently over-stored by one (1) store.

The competitive climate will obviously intensify when a second Wal-Mart Supercenter opens in north Carson City in 2005. When this store opens, it will draw sales from most of the existing Carson City supermarkets and produce further store closures - besides that of the Super Kmart.

The following Table 1 summarizes the demographic characteristics of Carson City versus those of the State of Nevada and the United States as a whole in 2003: -

MAP 1


CARSON CITY, NEVADA
SCALE
Miles 0
0.5 Miles
Major Grocery Store Locations
Current Stores
Proposed Store
Closed Store
June 2004
Albertson's
Closed Super Kmart
Proposed Wal-Mart Supercenter
Safeway
Grocery Outlet
Albertson's
Scolaris
Smith's
SEE INSET AT LEFT FOR ENLARGEMENT OF DOWNTOWN AREA
Raley's
Albertson's
Costco
Wal-Mart Supercenter
CARSON CITY AIRPORT
STEWART
PRISON HILL RECREATION AREA

MAP

THE SURVEY AND ITS FINDINGS (Continued)

Table 1

CARSON CITY DEMOGRAPHICS

	Carson City	Nevada	U.S.
Median Household Income	$45,078	$48,328	$45,859
Average Household Size	2.46	2.64	2.58
Median Age (years)	39.9	36.2	36.1
% of Population Over 50 Yrs	32.2	26.9	27.3

Grocery Spending

Based on the demographic characteristics of the population living in Carson City, they are estimated to spend an average of $43.50 per person per week on supermarket-type-merchandise (S-T-M). This estimate translates to total spending of $2.26 million per week....given a total non-institutional population of 51,909 in 2003.

Grocery Retailers

The accompany Map 1 identifies the locations of the major existing, proposed, and recently closed supermarkets serving the Carson City market. Of the ten (10) existing stores, nine (9) are located within the city limits and consist of three (3) Albertson's, a Raley's, Smith's, Safeway, Scolari's, Costco, and Grocery Outlet. Most are about 50,000 square feet (gross area) in size (or larger), except for the Safeway (45,000 square feet), Scolari's (40,000 square feet) and the Grocery Outlet (25,000 square feet).

The Wal-Mart Supercenter has an estimated supermarket area of 60,000 sq. ft. (gross) and opened in September 2001 just south of the Carson City limits. The Super Kmart in north Carson City closed shortly thereafter.

Grocery Market Shares

The respondents interviewed were asked where they shop for groceries and how much they spend at each store.

THE SURVEY AND ITS FINDINGS (Continued)

With three stores in the market, Albertson's captures almost 23% of the available food and grocery spending in Carson City. However, on an individual store basis, Wal-Mart and Raley's rank #1 and #2 respectively, with each achieving a market share of 19% each. The remaining supermarkets average between 10% and 13% each. Please refer to the following Table 2.

Table 2

THE COMPETING GROCERY RETAILERS

	Approximate Store Size (gross area sq. ft.)	Carson City Market Share (%)	Est. Weekly Grocery Sales ($)
Albertson's - E (Hwy 50 & Airport)	55,000	13.7	375,000
Albertson's - S (Hwy 395 & Roventini)	45,000	7.1	250,000
Albertson's - N (Hwy 395 & College)	60,000	1.8	275,000
Sub-Total		*22.6*	
Wal-Mart Supercenter	**60,000+**	**18.7**	**1,100,000**
Raley's	55,000	18.5	475,000
Smith's	60,000	13.0	325,000
Safeway	50,000	10.7	275,000
Scolari's	40,000	10.0	200,000
Costco	110,000	3.8	N/A*
Grocery Outlet	25,000	1.2	70,000
All Others		1.5	N/A*
Total		100.0	3,275,000

Since the Costco, Wal-Mart, and two of the Albertson's are located on the perimeter of Carson City, we estimate these stores actually achieve much higher store sales than is suggested from their share of food and grocery spending within Carson City itself.

\+ Grocery area only.

* Not available.

How Far is the Store Shopped From Their Home?

Respondents were asked how many miles the stores they shop are from their homes. The responses in Table 3 below indicate Wal-Mart grocery shoppers travel an average of 5.5 miles to the Supercenter, whereas customers of the major supermarkets average 2.0 miles. Even the Raley's and Albertson's in south Carson City, both located near the Wal-Mart, draw from a radius less than half the size of that of the Supercenter: -

Table 3

DISTANCE TRAVELED

	Average Distance From Home (miles)
Wal-Mart Supercenter	**5.5**
Albertson's - E (Hwy 50 & Airport)	2.0
Albertson's - S (Hwy 395 & Roventini)	1.6
Albertson's - N (Hwy 395 & College)	2.1
Average (Albertson's)	*1.8*
Raley's	2.4
Smith's	1.8
Safeway	2.2
Scolari's	2.0
Costco	4.2
Grocery Outlet	2.0
All Others*	25.1
AVERAGE	3.1

How Often Do They Shop?

The respondents were also asked how many times per month they visit the stores where they buy their groceries. The Wal-Mart Supercenter is not shopped quite as frequently as the average traditional supermarket, 5.5 versus 6.9 trips per month, respectively. Nevertheless, as identified in Table 4, the Wal-Mart visitation rate is still well over once a week (1.4 times) versus 1.7 for the traditional supermarkets: -

* Including WinCo in Reno.

Table 4

MONTHLY VISITATION RATE

	Average Times Shopped Per Month
Wal-Mart Supercenter	**5.5**
Albertson's - E (Hwy 50 & Airport)	7.0
Albertson's - S (Hwy 395 & Roventini)	7.2
Albertson's - N (Hwy 395 & College)	7.6
Average (Albertson's)	*7.1*
Raley's	6.6
Smith's	7.3
Safeway	6.5
Scolari's	6.6
Costco	4.9
Grocery Outlet	5.5
All Others	2.4
AVERAGE	6.4

The Monthly Travel Burden

From the previous tables, it can be determined how far the typical customer of each store travels per month. The following Table 5 indicates that the average Wal-Mart grocery shopper travels more than twice as far each month than a traditional supermarket shopper, 60 miles round-trip versus 28 miles: -

Table 5

MONTHLY TRAVEL

	Average Distance Traveled (miles)	Monthly Trips	Average Travel Distance Per Month (miles) One Way	Round Trip
Wal-Mart Supercenter	**5.5**	**5.5**	**30**	**60**
Albertson's - E (Hwy 50 & Airport)	2.0	7.0	14	28
Albertson's - S (Hwy 395 & Roventini)	1.6	7.7	12	24
Albertson's - N (Hwy 395 & College)	2.1	7.6	16	32
Average (Albertson's)			*13*	*26*
Raley's	2.4	6.6	16	32
Smith's	1.8	7.3	21	42
Safeway	2.2	6.5	14	28
Scolari's	2.0	6.6	13	26
Costco	4.2	4.9	21	42
Grocery Outlet	2.0	5.5	11	22
All Others+	25.1	2.4	60	120

The Supercenter's Impacts

Table 6 below identifies where respondents shopped before and after the Wal-Mart Supercenter opened in Carson City. A 36% proportion of those interviewed (177 shoppers) now do at least some of their grocery shopping at the Supercenter.

The data indicates that about 10% - 20% of the customers of the pre-existing supermarkets switched to the Supercenter for at least some of their grocery shopping - and that the Super Kmart appears to have been a casualty of the Wal-Mart Supercenter opening: -

+ Many of these responses were for Winco in Reno.

Table 6

IMPACTS OF THE WALMART SUPERCENTER

	Stores Shopped For Groceries		
	Before Supercenter	After Supercenter	% of Store Customers Who Switched to Supercenter (%)
Wal-Mart Supercenter	**10+**	**177**	**N/A**
Albertson's - E (Hwy 50 & Airport)	157	128	18
Albertson's - S (Hwy 395 & Roventini)	84	73	13
Albertson's - N (Hwy 395 & College)	21	19	10
Sub-Total / Average	*262*	*220*	*16*
Raley's	210	173	18
Smith's	144	123	15
Safeway	125	109	13
Scolari's	121	108	11
Costco	50	46	8
Super Kmart	35	0	100
Grocery Outlet	15	12	20
All Others	18	17	6

In dollar terms, the Supercenter's sales have been drawn as indicated in Table 7: -

+ These responses relate to the former Walmart discount department store in Carson City.

Table 7

SUPERCENTER SALES SOURCES

	% of Supercenter's Sales
Raley's	18.6%
Albertson's, Hwy 50/Airport	16.6
Smith's	13.4
Scolari's	12.8
Safeway	10.2
Super Kmart	8.5
Albertson's, Carson/Roventini	7.4
Costco	5.3
Albertson's, Carson/Hwy 395	1.6
Grocery Outlet	1.6
Walmart Discount Store	1.4
All Others	2.6

When combined, the three (3) Albertson's "contributed" 26% of the Supercenter's grocery sales.

Do Supercenter Customers By-Pass Closer Supermarkets?

Those respondents who shop the Wal-Mart Supercenter were asked if they travel further to Wal-Mart than to a nearby supermarket grocery store. Nine out of ten (92%) responded that they do by-pass closer grocery stores in order to shop at the Wal-Mart. On average, these respondents travel 8.6 "extra" miles round-trip to purchase their groceries at the Supercenter.

Percent of Grocery Budget Spent at Each Store

Respondents were then asked how much of their total grocery budget they spend at the stores they shop on a regular basis. The following Table 8 breaks out their expenditures at these stores in 25% increments: -

Table 8

GROCERY BUDGET ALLOCATION

% Of Grocery Budget	Combined Store Totals	Wal-Mart Supercenter	Albertson's (All 3 Stores)	Raley's	Smith's	Safeway	Scolari's	Costco	Grocery Outlet	All Others
0 - 25%	29%	25%	25%	26%	33%	35%	35%	33%	33%	29%
26% - 50%	34	30	41	35	24	28	37	41	33	29
51% - 75%	15	21	13	13	15	14	9	17	33	29
76% - 100%	22	23	22	26	28	23	19	9	0	12
Totals:	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**
Average %	**50**	**52**	**51**	**53**	**52**	**49**	**46**	**41**	**49**	**44**

Customers of the Wal-Mart Supercenter reported spending 52% of their total grocery budget at the Supercenter, with the remainder being spent at other grocery stores. This is only slightly higher than the 50% average for all the grocery retailers in Carson City and suggests that Wal-Mart customers - while marginally more loyal than the customers of other stores - nevertheless do a considerable amount of their grocery shopping at other supermarkets. The most important of these are Raley's (8% of all grocery spending by shoppers of the Wal-mart Supercenter), Scolari's (8%), Albertson's East* (7%), and Smith's (7%).

Grocery Stores Shopped Per Month

The following Table 9 indicates the number of different grocery stores shopped each month by shoppers of the various grocery retailers, including Costco and Wal-Mart. On average, Wal-Mart Supercenter shoppers visit 2.4 different grocery stores each month...consisting of their trips to the Supercenter plus those to 1.4 other stores. This reading is only slightly below the "All Store Average" of 2.6 store visits per month and suggest that Supercenter shoppers are just as prone to cross-shop other grocery stores as are shoppers of the traditional supermarkets: -

* On Highway 50 at Airport.

Table 9

CROSS-SHOPPING PROPENSITIES

	# Shoppers	Other Stores Shopped	Total # Of Different Stores Shopped	Avg # Of Different Stores Shopped
Wal-Mart Supercenter	**177**	**242**	**419**	**2.4**
Albertson's - N (Hwy 395 & College)	19	26	45	2.4
Albertson's - E (Hwy 50 & Airport)	128	179	307	2.4
Albertson's - S (Hwy 395 & Roventini)	73	117	190	2.6
Costco	46	92	138	3.0
Grocery Outlet	12	21	33	2.8
Raley's	176	256	432	2.5
Safeway	109	193	302	2.8
Scolari's	108	198	306	2.8
Smith's	123	193	316	2.6
All Others	17	33	50	2.9
All STORES/TOTAL	**811**	**1,308**	**2,119**	**2.6**

Where Wal-Mart Supercenter Customers Also Shop For Groceries

Table 10 below lists the other stores that the 177 Supercenter shoppers also cross-shop for at least some of their food and grocery needs. In our opinion, the extensiveness of this cross-shopping activity reflects weak-points at the Supercenter that prevent it from functioning as a true one-stop shopping destination. For example, inadequacies in product quality and variety, the distance from home, and in-store and parking lot congestion.

Table 10

OTHER STORES CROSS-SHOPPED

	# of Walmart Grocery Shoppers
Albertson's - N (Hwy 395 & College)	6
Albertson's - E (Hwy 50 & Airport)	34
Albertson's - S (Hwy 395 & Roventini)	24
Sub-Total	*64*
Costco	20
Grocery Outlet	4
Raley's	40
Safeway	30
Scolari's	41
Smith's	34
All Others	9
TOTAL	**242**

Demographic Profiles

Finally, Table 11 below identifies the demographic profiles of all the shoppers of the various grocery retailers in Carson City, including Costco and the Wal-Mart Supercenter.

The Wal-Mart Supercenter has a stronger appeal than the other stores to lower income households and to younger and larger families. At the other end of the spectrum, Costco and Raley's draw more heavily from upper income and older shoppers. Scolari's appears to appeal to older households; Smith's to lower income households; while Safeway and the three Albertson's stores have a relatively uniform appeal across most segments of the community.

Table 11

DEMOGRAPHIC PROFILES

Demographic	**All Shoppers**	Wal-Mart Supercenter	Albertson's	Raley's	Smith's	Safeway	Scolari's	Costco	Grocery Outlet	All Others
INCOME										
Under $40,000	**46%**	50%	42%	43%	53%	43%	53%	32%	70%	31%
$40,000 - $60,000	**36%**	36%	39%	38%	34%	37%	31%	39%	10%	31%
$60 - $75,000	**13%**	13%	14%	12%	9%	15%	11%	25%	0%	38%
$75,000 - $100,000	**3%**	2%	4%	3%	4%	4%	4%	0%	10%	0%
Over $100,000	**2%**	0%	2%	4%	0%	1%	1%	4%	10%	0%
TOTALS:	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
Median ($)	43,977	40,000	44,103	43,684	40,000	43,784	40,000	49,231	40,000	52,258
AGE										
Under 35	**10%**	15%	10%	9%	9%	5%	12%	9%	8%	12%
35 – 49	**20%**	21%	24%	18%	20%	22%	13%	14%	33%	29%
50 – 65	**48%**	50%	48%	48%	43%	48%	44%	64%	33%	47%
Over 65	**22%**	14%	18%	25%	27%	24%	32%	14%	25%	12%
TOTALS:	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
Median (years)	55.6	54.2	55.0	57.2	57.3	57.2	58.5	56.3	54.1	52.9
HOUSEHOLD SIZE										
1	**19%**	18%	18%	20%	21%	14%	21%	13%	25%	24%
2	**51%**	45%	48%	55%	53%	56%	56%	57%	42%	35%
3	**14%**	16%	16%	17%	8%	15%	9%	13%	8%	18%
4	**9%**	12%	9%	4%	11%	10%	10%	7%	17%	24%
5	**5%**	6%	7%	3%	4%	5%	2%	11%	8%	0%
6 or More	**2%**	3%	2%	1%	3%	1%	1%	0%	0%	0%
TOTALS:	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
AVERAGE	**2.37**	**2.55**	**2.45**	**2.20**	**2.33**	**2.40**	**2.18**	**2.46**	**2.42**	**2.41**

Appendix 1:

THE SURVEY QUESTIONNAIRE

SHOPPING HABITS SURVEY
CARSON CITY, NEVADA

Good afternoon/evening. We're conducting a survey about people's grocery shopping habits, and would like to speak to the person in your household who does most of the grocery shopping.

1. What stores do you – or others in your household – typically shop for groceries, meat, and produce? WRITE IN BOX BELOW.

2. Where are these stores located? (**Street and Cross Street**). ENTER IN BOX BELOW.

3. Out of every $100 you spend at food stores, about how much would you guess you spend at _____? (***Read names of stores mentioned in Question 1***). ENTER IN BOX BELOW.

4. Approximately how far in miles from your home are the stores you shop for groceries? (***Read names of stores mentioned in Question 1***). ENTER IN BOX BELOW.

5. About how often do you shop these stores each month? (***Read list of stores mentioned in Question 1***). ENTER IN BOX BELOW.

Question 1 Stores Shopped	Question 2 Street & Cross Street	Question 3 Share of Budget	Question 4 Distance from Home	Question 5 Shopping Frequency

IF WAL-MART SUPERCENTER MENTIONED IN QUESTION 1, SKIP TO QUESTION 8.

6. Have you shopped at the Carson City Wal-Mart Supercenter for food and groceries in the last three (3) months?

   If **YES** – Continue to **Question 7**. If **NO** – Skip to **Question 16**.

7. If not mentioned in Questions 1-5: How far in miles is the Carson City Wal-Mart Supercenter from your home? WRITE IN _____ miles

8. Before the Carson City Wal-Mart Supercenter opened, which store(s) did you shop regularly for food? (**FILL BOX IN BELOW**)

9. Where are these stores located? (***street and cross street***). ENTER IN BOX BELOW.

10. For every $100 you now spend on groceries at Wal-Mart, how much do you think you formerly spent at _____? (***Read names of stores mentioned in Question 8***). ENTER BELOW.

11. Approximately how far in miles from your home is _____? (***Read names of stores mentioned in Question 8***). ENTER BELOW.

Question 8 Stores Shopped Before	Question 9 Street & Cross Street	Question 10 Share of Budget	Question 11 Distance From Home

12. Do you travel farther to get to Wal-Mart than you would to a nearby, full line grocery store? CHECK ONE
___ Yes ___ No

(*If Yes, ask*) How much farther do you travel? _____ Miles

13. Including yourself, how many people currently live in your household? _____

14. Approximately how old are you? _____ years old (Use N/A if respondent declines to answer)

15. In which city or area do you live? _____

16. On what street do you live? _____

17. What is the closest cross street to your home? _____

18. What is your residential zip code? _____

19. Which of the following categories best describes your household's total annual income?

- ○ Less than $40,000
- ○ $40,000 - $60,000
- ○ $60,000 - $75,000
- ○ $75,000 - $100,000
- ○ Over $100,000
- ○ Preferred not to Respond

THANK THE RESPONDENT AND COMPLETE THE FOLLOWING

Telephone #: _____Date:_____ Time interview ended: _____

Appendix 2:

THE CARSON CITY / GARDNERVILLE / MINDEN MARKET AREA

Area Map

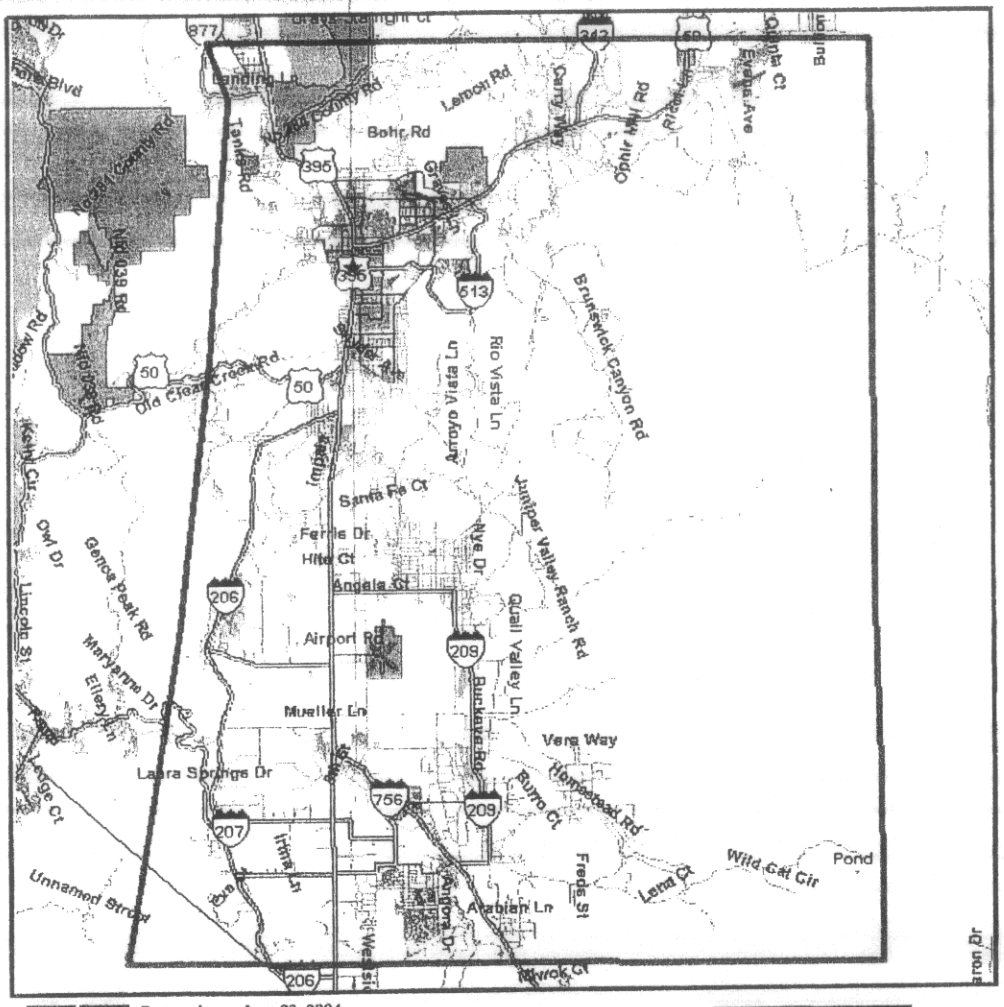
Prepared For: Carson City / Minden / Dayton #2
Project Code: Carson City / Minden / Dayton

Order #: 963003990
Site: 01

S CARSON ST AT 5TH ST
CARSON CITY, NV 89701

Polygon

Coord: 39.161300 -119.767000



Point
Polygon
Interstate Highways
US Highways
State Highways
Major Highways
Major Roads
Roads
Railroads
Landmarks
Parks
Hydrography
Airports
States
Ocean

Prepared on: June 23, 2004

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N W E S

SITEREPORTS

Pop Facts: Census Demographic Overview

Prepared For: Carson City / Minden / Dayton #2 **Order #: 963003990**

Project Code: Carson City / Minden / Dayton **Site: 01**

Column 1: Polygon (see appendix), Total

Description	Column 1	Pct.
Population		
2009 Projection	105,236	
2004 Estimate	96,250	
2000 Census	88,881	
1990 Census	62,572	
Growth 1990-2000	42.05%	
2000 Population by Single Race Classification	88,881	
White Alone	78,269	88.06
Black or African American Alone	1,050	1.18
American Indian and Alaska Native Alone	1,920	2.16
Asian Alone	1,279	1.44
Native Hawaiian and Other Pacific Islander Alone	114	0.13
Some Other Race Alone	4,315	4.85
Two or More Races	1,933	2.17
2000 Population Hispanic or Latino by Origin	88,881	
Not Hispanic or Latino	78,639	88.48
Hispanic or Latino:	10,241	11.52
Mexican	7,464	72.88
Puerto Rican	178	1.74
Cuban	100	0.98
All Other Hispanic or Latino	2,499	24.40
2000 Hispanic or Latino by Single Race Class.	10,241	
White Alone	5,049	49.30
Black or African American Alone	49	0.48
American Indian and Alaska Native Alone	204	1.99
Asian Alone	54	0.53
Native Hawaiian and Other Pacific Islander Alone	23	0.22
Some Other Race Alone	4,227	41.28
Two or More Races	634	6.19
2000 Population by Sex	88,881	
Male	45,258	50.92
Female	43,622	49.08
Male/Female Ratio	1.04	

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SITEREPORTS

Appendix 3:

ABOUT DSR MARKETING SYSTEMS INC.

ABOUT DSR MARKETING SYSTEMS. . .

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

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

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

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

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

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

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

filed 2-3-05

Gains

WAL-MART SURPLUS PROPERTIES
March 10, 2004

State	Total Locations	Total Square Footage
Alabama	15	1,074,406
Arizona	3	347,431
Arkansas	14	1,061,564
California	11	1,241,538
Colorado	4	298,182
Florida	10	705,958
Georgia	27	2,228,576
Idaho	1	121,411
Illinois	13	832,719
Indiana	13	967,136
Iowa	8	535,965
Kansas	6	390,966
Kentucky	15	1,072,298
Louisiana	13	1,040,077
Michigan	9	765,530
Minnestoa	5	432,368
Mississippi	12	758,698
Missouri	10	463,668
Nebraska	3	215,805
New Jersey	1	128,230
New Mexico	5	403,292
North Carolina	15	904,384
Ohio	10	882,471
Oklahoma	11	865,160
Oregon	1	94,696
Pennsylvania	5	518,110
South Carolina	12	1,167,251
Tennessee	26	1,811,887
Texas	42	2,937,983
Utah	1	122,667
Virginia	6	443,405
West Virginia	2	198,627
Wisconsin	9	664,815
Wyoming	2	116,979
TOTALS:	**340**	**25,814,253**

WalMart.Com

RETAIL STRATEGIES
286 Grizzly Peak Blvd
Kengsington, CA 94708
(510) 525-2659

2-3-05
Watt

January 12, 2005

Steve Gaines
Save Mart Supermarkets
P.O. Box 4278
Modesto, CA 95352-4278

Dear Steve,

You asked me to analyze the accuracy of the economic analysis prepared by Applied Development Economics (ADE) and contained in the Environmental Impact Report for the Lodi Shopping Center. You also asked me to assess the potential impact this project will have on the Lodi retail community and existing supermarkets—particularly S-Mart. In preparing this analysis I went to the City and visited all of the supermarkets and personally spoke with most of the supermarket store operators, or contacted them with follow up telephone calls in order to obtained accurate information on their store size and 2004 sales volume. The following summarizes my conclusions concerning the impact of the opening of the Lodi Shopping Center and these conclusions are supported in more detail in the pages that follow.

SUMMARY

In my professional opinion, the following consequences will result from the opening of the proposed 340,000 SF Lodi Shopping Center (anchored by a 226,868 SF Wal-Mart Supercenter) in tandem with the recent opening of the 217,000 SF Vintner's Square Center (anchored by a 166,500 SF Lowe's Home Center).

- *From $24-31 million in supermarket type merchandise will be captured by the new Wal-Mart Supercenter. Ninety percent of these sales will come from existing Lodi supermarkets, however assuming Wal-Mart's prices will be 10% below the average Lodi grocery store, the impact will still be $24-31 million. Price impact stores (such as Food 4 Less and Grocery Outlet), and conventional stores closest to Wal-Mart are likely to take the brunt of the impact. It appears S-Mart will be one of the survivors, albeit sales will likely decline by 10%,*

- *Based on sales data gathered from existing Lodi supermarkets, and my knowledge of Supercenter impacts in other communities, it appears that while Food 4 Less will have the highest dollar sales decline there are several other existing supermarkets which will be forced out of business.*

  These are the two most likely scenarios:

  Scenario 1 - Safeway, Albertson's, Rancho San Miguel, and Grocery Outlet will be forced to close. This would put over $40 million back into circulation and help to recoup some sales losses at other supermarkets.

  Scenario 2 - Food-4-Less closes and at least 80% of this stores $42 million sales volume goes to Wal-Mart with the residual helping existing stores. The closing of the Food-4-Less would be of great benefit to Wal-Mart, as it would pick up the bulk of the Food-4-Less business and eliminate its most direct competitor.

- *Based upon S-Mart's experience in Stockton, following the opening of the Wal-Mart Supercenter on Hammer Lane, the Lodi S-Mart will probably loose 10-12% of sales until other stores close as cited above.*

- *Among other retailers, at least one pharmacy will close (probable either the Longs or Rite Aid on Lodi Avenue), and due to the combined impacts of the expanded Wal-Mart Supercenter and the new Lowe's both the Big K-Mart and Orchard Supply Hardware are likely to close.*

- *We believe the impact of the new Lodi Shopping Center will create major store vacancies totaling 439,000 SF—consisting of 164,000 SF in scenario (1) above; a 25,000 SF pharmacy; approximately 130,000 SF from the combined closing of Big K-Mart and Orchard Supply Hardware on Cherokee Lane; and the existing 120,000 SF Wal-Mart. Based on ADE's own numbers there will be almost no unmet demand to fill these empty spaces for many years to come, creating physical deterioration and urban decay.*

- *The closure of large retailers will have a domino effect on smaller stores in the vicinity of these anchor tenants. This will create a ripple effect on small retailers, resulting in more closures and urban decay.*

- *The economic analysis prepared by ADE suggests the only vacancy will be the existing 120,000 SF Wal-Mart. ADE has made a number of significant errors and omissions in their analysis which has led to this faulty conclusion. For the reasons spelled out in the following Detailed Analysis, the ADE Socio-Economic Analysis cannot be relied upon and should be rejected by the City Council.*

DETAILED ANALYSIS

These are some of the more important errors and omissions in the ADE economic analysis:

1. ***Lack of Impartiality*** - The EIR is supposed to be an impartial, unbiased document prepared for the City and interested parties. There are two ADE studies. The first one is dated June 2004 and prepared for Browman Development Company (the developer of the proposed Wal-Mart Supercenter and owner of the existing Wal-Mart). Moreover, in Appendix B, Browman Development Company and ADE are listed as the co- preparers of the report. **This is a gross conflict of interest.**

   The ADE's June study was followed in July by a Socio-Economic Impact Analysis for use by the EIR consultant and the City of Lodi. Not surprisingly, many of the same tables and conclusions that were in the June report were also in the July report – except that no specific analysis of the projects impact on the downtown business district was included in the July report. ADE's developer bias in the July report, was patently obvious by the following statement on page 22 of the report in connection with releasing the existing 120,000 SF Wal-Mart: "It is reasonable to assume that the project sponsor will succeed at attracting national brand name chain store tenants based on his experience and proven track record". It's is not reasonable to substitute "faith" for objective analysis – especially when even the ADE analysis suggests there is insufficient unmet retail demand to fill this large, single purpose building.

2. ***Faulty Computation of Grocery Store demand within City of Lodi*** – Table 4 of the July report shows that more than half of the sales done by grocery stores originate outside the City of Lodi - $65.3 million within Lodi vs. $72.1 million beyond Lodi. As mentioned later, while we do not totally disagree with ADE's estimate of $137.4 million in total grocery sales, we do not agree that 54% of all grocery store sales originate outside Lodi. It is common practice in the supermarket industry to assume that on average weekly per capita grocery expenditures are about $35 or about $1,800 per year. Based on Lodi's population of about 59,000 in 2002, this would place Lodi grocery demand at about $106 million and the outside capture at $31 million – a much more realistic estimate since a review of S-Mart checks show about 25% of all customers live outside the city.

   This error raises two questions. First, how accurate are the estimates shown for other product categories in Table 4? Second, on pages 20 & 21, ADE states that "future population and housing growth in Lodi should allow the established supermarkets to regain their sales lost" to the Wal-Mart Supercenter. Since Lodi has a growth cap of 2% per year, this means population will increase at about 1,200 per year, and grocery store sales by about $2.2 million per year. **If this Wal-Mart Supercenter takes $24-31 million away from Lodi supermarkets (as described later), it will take 10-14 years for existing Lodi supermarkets to regain their lost sales.**

3. ***Improper Description of both Existing and Future Competition within the Defined Regional Market Area*** – Page 6 of the July analysis indicates that: "The economic success of the proposed Lodi Shopping Center will depend upon its ability to attract customers from a very large geography that extends south to Hammer Lane in Stockton… and to the Sierra Foothill communities of Ione and Jackson". The report then goes on to state on page 10: "There are no large format discount stores such as…Super Wal-Mart in the market area". Clearly ADE did not do their homework, as a Super Wal-Mart opened on Hammer Lane in Stockton in the fall of 2004. In 2004 the Stockton City Council also approved a second Super Wal-Mart at I-5 and Eight Mile Road and a Sam's Club (Wal-Mart's answer to Costco) is being proposed as a co-anchor tenant well within ADE's defined Regional Market Area. **These two Super Wal-Mart's will certainly limit the ability of the proposed Lodi Shopping Center in attracting customers from the North Stockton area.**

   Page 10 of the July analysis mentions several "Big Box" Stockton retailers, but does not mention the existence of a Wal-Mart and a Big K-Mart in Jackson. The presence of these stores will reduce the Wal-Mart Supercenter draw from this eastern part of the defined Regional Market Area.

4. ***The report fails to consider the closure of at least one drug store in spite of its own evidence that Lodi may already be saturated with drug stores*** – Page 13 of the analysis status that "Another key component of the proposed project is the attraction of a national chain drug store such as Rite Aide, Walgreen's, and Longs…of 14,788 SF." Table 4 indicates there is no "leakage" of Drug and proprietary store sales, and in fact the table shows that $3 out of every $4 spent at Lodi drug stores are by families living outside the city. In other words, existing drug stores currently capture a disproportionately high level of out-of-town sales. Table 10 correctly anticipates that this new drug store will obtain 100% of its estimated $6.5 million in sales from existing drug stores. These sales represent 14% of the total drug market, yet ADE does not acknowledge that this will likely lead to the closure of one existing drug store. Since most

existing drug stores are 25,000 SF or larger, it should be assumed that a 25,000 SF building will become vacant – **and we believe either the Rite Aid or Longs on Lodi Avenue will likely close, thereby impacting downtown Lodi.**

5. ***The amount of remaining retail leakage does not equal the square foot demand in additional space planned for the Lodi Shopping Center. This will add to an oversupply of vacant retail SF*** – In addition to the proposed Supercenter and drug store, almost 68,000 SF of "other retail" is proposed as part of the proposed Lodi Shopping Center. On page 15, ADE estimates these specialty stores will need annual sales of $300 per SF in order to pay the required rents. As stated: "If the full 67,960 SF of retail space is built, then the tenants…should earn $20.4 million of sales." What ADE does not answer is where these sales will come from. Table 1 shows that Lodi has sales leakage in the following categories (excluding the category identified as Superstore which will be discussed later):

Table 1
Current Lodi Sales Leakage

Category	*Sales Leakage*
Apparel	$8,925,409
Misc. Gen. Mdse.	355,461
Gifts & Novelties	146,851
Jewelry	444,484
Furniture & Home Furnishings	7,940,609
Total Leakage	**$17,812,814**

Clearly the amount of sales leakage ($17.8 million) in less than the $20.4 million of potential sales needed to support the other tenants occupying the 67,960 SF of retail space. This means that under the best of circumstances all of the unmet demand ("leakage") will be absorbed by these other tenants and additional demand will come at the expense of existing Lodi retailers – **leading to the potential for more stores closures and urban decay.**

6. ***ADE misrepresents the Lodi Shopping Center's ability to capture sales from the retail category called "Superstore"*** – This category is correctly defined as "Warehouse Clubs and Superstores". Its purpose is to measure sales at such big box stores as Costco, Sam's Club, and BJ's. Probably some residents of the Lodi Regional Market shop at the Stockton Costco. Because of this "leakage" ADE states on page 17 of their analysis that "the proposed Wal-Mart Supercenter will capture 100% of the spending leakage's currently captured by the Costco…in Stockton." This is preposterous, as club stores (Costco/Sam's Club) and Supercenters have different marketing objectives and customer followings. The most obvious fact that proves this point is that Wal-Mart has a long standing history of building Supercenters and Sam's Clubs in the same shopping center---like their plans at I-5 and 8-Mile Road as mentioned above. If these two concepts truly cannibalized each other, they would not go side-by-side. **Therefore, it is very specious reasoning to assume that any of the $13.3 million of retail sales leakage for Superstores on Table 4 will be captured by the proposed Wal-Mart Supercenter as suggested in Table 10 of the ADE analysis.**

7. ***ADE has failed to reflect the recent opening of the Lowe's Home Improvement Store and adjacent satellite shops in calculating "Leakage"*** – Table 4 in the July report does not include, an upward adjustment by ADE's to the probable "Actual Sales" in the building and home furnishings categories resulting from the opening of the Lowe's store in November 2004. The Lowe's developer indicates this store is achieving sales above annual sales projections of $30 million. This information should be factored into Table 4. Additionally, a lease is signed with Pier 1 Import for 10,000 SF at Vintner's Square and estimated sales of $3 million, and this should also be accounted for in Table 4.

   The biggest issue with Lowe's is the potential impact it will have on other home improvement type stores. In talking with employees at the Orchard Supply Hardware on Cherokee Lane, the early indications are this store has experienced a severe sales decline following the Lowe's opening. **If $30 million is taken from the "Home Center and Hardware Stores" category in Table 4 it should be assumed that Orchard will close leaving approximately 60,000 SF of vacant space.**

8. ***ADE has used old statistical data and this information should be updated to reflect the most current conditions available*** – Although the data for the information contained in Table 4 of the July report is not given, it is assumed to be 2001 as the data is almost identical to Table 3 of the June report (which is dated 2001). Taxable sales data for 2003 is available from the State Board of Equalization and Table 4 should be updated to reflect this more current information.

In Table 12 of the July report, ADE references the 2002 Urban Land Institutes (ULI) estimated of median supermarket sales per SF as $370. The 2004 ULI publication is now available and pegs the median sales per SF at $390. Since the 2004 report is based on data collected in 2002 this means that the current median sales per SF for supermarket is probably above $410. The use of the correct number has important implications for the analysis of supermarket impacts as discussed below.

9. ***ADE has underestimated the potential sales of the Wal-Mart Supercenter*** – On page 15 of the ADE analysis, ADE estimates: "The…Supercenter store is estimated to earn at least $350 per SF of sales, and capture $79.4 million of sales…The potential sales is obviously achievable based on the fact existing discount stores earn $105 million in sales…" The $350 per SF figure is almost equivalent to ADE's estimate of $345 per SF for the 3 existing Lodi discount stores (Wal-Mart, Target and K-Mart – see page 18 of ADE's June report). The used of a $350 per SF estimate assumes Wal-Mart stores perform at SF sales levels equal to their competitors, when all available evidence suggests they do not.

For example, while the 2004 Wal-Mart annual report does not breakout Supercenters as a separate category, it does provide revealing information on the sales per SF strength of their estimated operations as shown in Table 2 below.

Table 2
2004 Wal-Mart Data by Store Type

Store Type	*# of stores*	*Avg. store size per SF*	*Total SF*	*Total Sales*
Domestic Discount stores	1,978	98,000	144,844,000 SF	
Domestic Supercenters	1,471	187,000	275,077,000 SF	
Domestic Neighborhood Markets	64	43,000	2,752,000 SF	
Total Wal-Mart SF			422,673,000 SF	
Total Sales by all 3 store types				$174,220,000,000
Average Sales per SF				**$412 per SF**

Source: Wal-Mart 2004 annual report for 12 months ending 12/31/04

Most analysts to believe Supercenters outperform discount stores and the sales per square foot average of $412 is well above the $350 estimate by ADE. **Based on the foregoing, we believe the total estimated annual sales for the Lodi Supercenter should be increased from ADE's estimate of $79.4 million to a more realistic $92.7 million. This increase of $13.3 million will place additional pressure of filling potentially vacant retail space within Lodi.**

10. ***ADE has created a very erroneous impression of the Wal-Mart Supercenter's impact on existing supermarkets by: a) aggregating all supermarket sales together; b) using the wrong sales per SF threshold to measure store profitability; c) assuming some sales will come from leakage rather than existing supermarkets, and; d) underestimating the amount of grocery sales at a Wal-Mart Supercenter*** – these are discussed in more detail below:

a) ***Aggregating Sales*** – In Tables 4 and 6 of ADE's July analysis, ADE estimates Lodi supermarket sales and store-by-store SF to arrive at an average sale per SF for all grocery stores of $369. Using the ULI 2002 estimates of $370 sales per SF as their bench mark (described in item 8 above) they infer on page 10 that all Lodi supermarkets are performing at the national average.

We spent considerable time in Lodi evaluating the market and coaxing Lodi supermarkets to provide us with an approximation of 2004 sales and their store size. This information is recapped in the following Table 3 below.

Table 3 shows that on a sales per SF basis there is a wide discrepancy by store. In fact, the Food-4-Less is performing at levels that are almost twice the national median estimate of $410 per SF, while S-Mart is 12% above the national norm, Raley's is close to the norm. All other stores are achieving sales per SF that are below the national average. While some stores can tolerate below average sales, others are at risk of having to close their stores. **In my expert opinion, based upon years of reviewing supermarket profit and loss statements, Grocery Outlet, Rancho San Miguel and Albertson's are all Lodi supermarkets operating below acceptable levels of profitability and Safeway is currently borderline. Without a Supercenter these stores will likely**

reach their desired sales levels within a few years, however, as discussed later, a Supercenter opening will necessitate that these stores close.

Table 3
Lodi
Grocery Store 2004 Sales and Total Store Size

Store	*Location*	*2004 Total Sales (Mil)*	*Total Gross SF*	*2004 Sales Per SF*
Food-4-Less	Lower Sacramento/Kettleman	$42.9	54,000	$794
Raley's	Lower Sacramento/Lodi	$23.9	64,000	$373
S-Mart	Kettleman/Hutchins	$19.8	43,000	$460
Safeway	Lower Sacramento/Kettleman	$17.1	55,000	$311
Albertson's	Lodi/Hutchins	$13.5	55,000	$245
Rancho San Miguel	Cherokee Lane/Tokay	$8.3	35,000	$237
Apple	Ham/Lockford	$8.3	29,000	$286
Grocery Outlet	Lodi/Stockton	$3.6	19,000	$189
Salisburys	Lower Sacramento/Turner	$2.8	11,000	$255
	Total All Stores	**$140.2**	**365,000**	**$384**
Estimated Median National average in 2004*				***$410**

**The 2002 average of $390/SF has been conservatively inflated to $410/SF in 2004*

b) ***Sales per SF***– As discussed under item #8 above, in 2004 the measure of acceptable performance levels should be $410 sales per SF, not $370 used by ADE.

c) ***Leakage*** – It has already been mentioned under time #6 above that there is no leakage of supermarket type sales in Lodi. ADE estimates that the Supercenter will generate $24.5 million in supermarket sales, but $9.5 million will come from the $13.3 million going to Costco type stores called "superstores" in Table 4. While it is clear that some grocery purchases occur across a broad range of categories, such as, drug stores, liquor stores, general merchandise stores and gas stations, this does not mean that ADE can claim, for example, that Wal-Mart's new grocery sales will really come at the expense of grocery sold at service stations rather than supermarkets

In short, Wal-Mart will operate a 70,000 SF conventional type grocery store as part of this Supercenter and the stores impact will be on similar conventional supermarkets. At a bare minimum this impact should be $24.5 million.

d) ***Grocery type sales at Supercenters*** – In spite of the available evidence that Supercenters achieve sales in supermarket type merchandise that are significantly above national supermarket averages, ADE estimates these grocery volumes will be $350 per SF, or 15% below the national average, and even 10% below the current average of existing Lodi supermarkets. Using this unrealistically low number gives a very distorted view of the probable impact of the Supercenter on existing Lodi supermarkets. Progressive Grocer generally acknowledged as the leading trade journal serving the supermarket industry, stated in its October 15, 2003 publication that the 1,386 nationwide Wal-Mart Supercenters are generating average annual store volumes in supermarket type merchandise of $44.5 million. This Progressive Grocer study also showed state-by-state comparisons, which ranged from average annual store volumes of $30 million to $54 million. Other studies also confirm these high volumes such as the July 2004 Shelby Report. This report analysis share of market data for many states in the South and Southwest. A sampling of these states is shown in Table 4 below and confirms the high volume of grocery type sales done by these Supercenters

Table 4
Wal-Mart Supercenter Grocery Sales
Market Share and average Supercenter Grocery Sales by State

State	*# of Supercenters*	*Total Grocery Sales (bil)*	*Wal-Mart's Share of Grocery Market*	*Wal-Mart Grocery Sales (mil)*	*Wal-Mart Average Grocery Sales per store (mil)*
Texas	192	$35.3	23.34%	$8,239	$42.9
Colorado	35	$8.8	16.92%	$1,489	$42.5
Louisiana	52	$6.9	31.82%	$2,195.6	$42.2
New Mexico	22	$2.8	32.86%	$920.1	$41.8

Source: The Shelby Report Southwest, July 2004

Based on the foregoing, Progressive Grocer's estimate of Supercenter grocery sales of $44.5 million is the most reliable available and should be used as a starting point for measuring the impact on Lodi Supermarkets.

GIVEN THE ERRORS THAT ARE REPLETE IN THE ADE ANALYSIS, WHAT IS A MORE REALISTIC ASSESSMENT OF THE SUPERCENTER IMPACTS ON EXISTING LODI SUPERMARKETS?

In order to properly assess impacts on existing Lodi supermarkets, it is important to: a) estimate the amount of new grocery type sales the Supercenter will take from Lodi supermarkets; b) allocate the source of these Supercenter grocery sales among Lodi supermarkets; c) evaluate the impact these sales declines will have on existing supermarkets, and; d) determine which, if any, supermarkets will be forced to close due to their reduced sales volumes.

a) ***Estimate of Wal-Mart Supercenter grocery type expenditures*** – Although Progressive Grocers estimates average Supercenter grocery sales of $44.5 million it must be recognized that some of these sales are already being achieved by the existing Wal-Mart discount store. In a February 10, 2004 report by Dr. David Rogers, ("Wal-Mart's impact on the American Supermarket Industry" – copy attached), Dr. Rogers estimates the 1,568 discount stores operating in 2003 sold $20.5 billion in supermarket type merchandise – or $13.1 million per store. Subtracting the $13.1 million from $44.5 million indicates the new Supercenter will pick up $31.4 million in supermarket type sales. **Therefore, the ADE analysis of supermarket impacts should assume an overall sales transfer to $31.4 million, not $15 million.**

b) ***Allocation of Supermarket sales transfer among existing supermarkets*** – The recent opening of a Supercenter in Stockton provides some clues on supermarket impacts. Discussions with these retailers indicate declines of 5-35% depending upon proximity and retail format. Discussion with retailer in other parts of the country indicates in medium sized towns like Lodi, the impact will range from 10-50%, with Wal-Mart typically capturing an initial 20-25% of total supermarket sales.

Based on these considerations, we have calculated sales declines by store as shown below in Table 5 based on sales impacts of $24.5 and $31.4 million. Using the larger $31.4 million impact we felt a larger adjustment would be borne by the two price format stores – Food-4-Less and Grocery Outlet.

Table 5
Wal-Mart Supercenter impact on existing Supermarkets

		Wal-Mart Impacts			
		@ $24.5 million		*@ $31.4 million*	
Store	*Existing 2004 Sales (Mil)*	*% Decline*	*Sales' Impact*	*% Decline*	*Sales' Impact*
Food-4-Less	$42.0	35%	$15.0	47%	$20.2
Raley's	$23.0	10%	$2.4	12%	$2.8
S-Mart	$19.8	10%	$2.0	12%	$2.4
Safeway	$17.1	15%	$2.6	17%	$2.9
Albertson's	$13.5	10%	$1.4	12%	$1.6
Rancho San Miguel	$8.3	5%	$.4	6%	$.5
Apple	$8.3	2%	$.2	3%	$.2
Grocery Outlet	$3.6	10%	$.4	15%	$.6
Salisburys	$2.8	1%	*	2%	$.1
Total All Stores	**$140.2**		**$24.4**		**$31.3**

c) ***Estimated Supercenter impacts based on average sales per SF*** – In Table 6 below, we have adjusted the total sales per store based upon the two assumed impacts presented above in Table 5. We have then calculated the new sales per square foot for each store.

Table 6
Supercenter Impacts on Supercenter Sales and Sales per SF

			Wal-Mart Supercenter Impacts			
			@ $24.5 million		*@ $31.4 million*	
Store	*Existing 2004 Sales (Mil)*	*Sales per SF*	*Adjusted Sales*	*Sales per SF*	*Adjusted Sales*	*Sales per SF*
Food-4-Less	$42.9	$794	$27.9	$517	$22.7	$420
Raley's	$23.9	$373	$21.5	$336	$21.1	$330
S-Mart	$19.8	$460	$17.8	$414	$17.4	$405
Safeway	$17.1	$311	$14.5	$264	$14.2	$258
Albertson's	$13.5	$245	$12.1	$220	$11.9	$216
Rancho San Miguel	$8.3	$237	$7.9	$226	$7.8	$223
Apple	$8.3	$286	$8.1	$279	$8.1	$279
Grocery Outlet	$3.6	$189	$3.2	$168	$3.0	$158
Salisburys	$2.8	$255	$2.8	$255	$2.7	$245
Total All Stores	**$140.2**	**$384**	**$115.8**	**$317**	**$108.9**	**$298**

d) ***Potential Supermarket closure due to the new Supercenter*** – As a rule of thumb, it is assumed that today's conventional and warehouse new supermarkets must achieve weekly sales of $350,000 and $450,000 respectively in order to break even. The reason warehouse stores are so much higher is because their gross profit margins are so much lower. Since most new conventional and warehouse stores typically total about 55,000 SF this means conventional stores must reach annual sales of $330 per SF and warehouse stores of $425 per SF. However, these averages are based on normal conditions and additional consideration needs to be given to a such factors as probable occupancy cost; labor cost (union vs. non-union); total employee count (resulting from specialty departments); and competitive pressures (which effect gross profit levels).

Based upon the store-by-store adjusted sales per SF impacts shown in Table 6, we believe one of the two scenarios outlined below will occur:

SCENARIO 1- Albertson's, Safeway, Rancho San Miguel, and Grocery Outlet will close. We believe these are the reasons for the closing:

Albertson's – This store is already under performing on a SF basis, and its below average occupancy costs are more than offset by high labor costs and a large workforce.

Safeway – Although somewhat better than Albertson's on a sales per SF basis, this newer store carries higher occupancy costs and will be pressured on gross profit margins by Wal-Mart and Food-4-Less at the same intersection. **Indeed, there is no known situation where there are 3 successful supermarkets greater than 50,000 SF and operating at the same intersection.**

Rancho San Miguel – this newly opened store has gotten off to a slow start. While sales will likely improve baring no new competition, Wal-Mart's appeal to the Hispanic shopper will limit growth. Most important, we believe the proposed Supercenter and new Lowe's will close the Big K-mart and Orchard Supply Hardware next to Rancho San Miguel. This will leave Rancho San Miguel as a stand-alone facility and reduce shopping trips to the area.

Grocery Outlet – even though this store has low overhead and labor costs, it will not be able to operate profitably at these low sales per SF levels.

SCENARIO 2 - **Food-4-Less closes** -- In the event the proposed Wal-Mart Supercenter achieves total grocery type sales of $44.5 million, we believe at least 47% of those sales will come from the Food-4-Less. This would drop sales per SF down to $420, which is below a sustainable $425 level for warehouse stores. Added to the sales loss will be the pressure Wal-Mart will put on gross profit margins. If the Food-4-Less closes quickly the other supermarkets may be able to survive because of the total volume Food-4-Less would release back into the market.

We believe the most likely outcome for Lodi supermarkets is Scenario 1 because: a) other studies have shown that every Supercenter typically closes at least two supermarkets (see attached Rogers study); and, b) warehouse stores like Food-4-Less can typically weather sales declines better than conventional stores due to labor efficiencies. **Based on the foregoing, the overall Lodi vacancy factor will rise to 439,000 SF based on the following store closures shown in Table 7 below.**

Table 7
Store closures resulting from the Proposed Project

Store Closures	*Square Feet (SF)*
Existing Wal-Mart	120,000
Safeway	55,000
Albertson's	55,000
Rancho San Miguel	35,000
Grocery Outlet	19,000
Orchard Supply Hardware	60,000
Big K-Mart	70,000
Drug Store (Longs or Rite Aid)	25,000
Total Vacancies	**439,000 SF**

The following factors suggest the vacancies created by the cumulative impact of both the proposed Lodi Shopping Center and the recently opened Vintner's Square Shopping Center will make it very difficult to re-tenant any of the projected 439,000 SF of vacant major retail space.

1. With the completion of these projects there will be no unmet demand across all retail categories for the City of Lodi. This means retailers will either be reluctant to locate in Lodi due to saturation, or, if a new retailer opens, it may cause the closure of an existing retailer – no net gain.

2. The estimate of closed retail space is only for major stores. Typically as these stores close they cause smaller, satellite shops to close as well. The shops that are at particular risk are in the centers anchored by Orchard Supply Hardware/K-Mart, Albertson's, Wal-Mart/Food-4-Less and downtown merchants. This will add to the total amount of retail vacancies.

3. Most of the stores forecasted to close occupy large buildings that are not easily converted to other uses. The tenant demand for these spaces are limited and the cost to retrofit them for another use or multiple users is typically very high.

Generally only low rent users like furniture stores will accept these buildings as is – and this could impact downtown Lodi where furniture and antique stores are an important part of the retail fabric.

4. Several of the stores projected to close are in areas of town where few large tenants would consider locating – especially as the drawing power of Lower Sacramento and Kettleman increases. Cherokee Lane, Lodi Avenue, and Downtown Lodi have all struggled over the years and it is our opinion that approval of the Lodi Shopping Center sends them into a death spiral.

5. The City of Stockton has embarked on a major quest to attract retailers to projects like the new power center at I-5 and Eight Mile Road. The developer of this Vintner's Square Shopping Center has confirmed that the proximity of I-5/Eight Mile power center is hurting leasing efforts in Lodi – primarily for mid to large size users occupying more than 10,000 SF.

AFTER A THOROUGH REVIEW OF THE ANALYSIS PREPARED BY ADE WE BELIEVE THEIR IMPACT ANALYSIS IS EXTREMELY FLAWED AND SHOULD NOT BE RELIED UPON FOR ALL THE REASONS STATED ABOVE. IT IS OUR EXPERT OPINION THAT APPROVAL OF THE PROPOSED LODI SHOPPING CENTER WILL LEAD TO IRREPARABLE HARM TO SEVERAL OF LODI'S EXISTING RETAIL NEIGHBORHOODS RESULTING IN LONG TERM URBAN BLIGHT AND PHYSICAL DETERIORATION.

UNLESS APPROPRIATE MITIGATION MEASURES CAN BE IMPLIMENTED, THIS PROJECT SHOULD BE DENIED.

Sincerely,

RETAIL STRATEGIES

Jim Watt

JIM WATT

JW/sld
Enclosures

QUALIFICATIONS

Jim Watt's firm, Retail Strategies, provides consulting services for the retail industry. He has a degree in Economics from Whitman College and an MBA from San Francisco State University. His over 40 years of business experience includes approximately 15 years in Market Research, with the remainder spent in new store development within the supermarket industry. In these capacities he has served as Manager of Consumer Research for Safeway Stores; Director of Real Estate for Fry's Food Stores; and Vice President of Real Estate at both Lucky stores and Save Mart Supermarkets. He also spent several years as a consultant to a variety of retailers. He has been both a moderator and participant on a number of panels sponsored by the International Council of Shopper Centers (ICSC) and has served on several ICSC committees. Over his career he has analyzed over 500 locations for supermarkets conducted numerous stores and opinion surveys and has appeared at many planning commissions and city council hearings. His comments concerning real estate issues have often been quoted in a number of Northern California newspapers and selected television and radio stations.

RETAIL STRATEGIES
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Kengsington, CA 94708
(510) 525-2659

2-3-05
Watt

February 2, 2005

Mayor and City Council Members
City of Lodi
221 West Pine Street
Lodi, CA 95241-1910

RE: Lodi Shopping Center's conformance with Lodi's Design Standards for Large Retail Establishments

Dear Mayor and Council Members,

On April 7, 2004 the City of Lodi adopted ordinance 1746 which amended Lodi municipal code Title 17 zoning, by adding Chapter 17.58 Design Standards for Large Retail Establishments. These Standards apply to all retail establishments of more than 25,000 square feet. An important aspect of these Design Standards is to distribute the parking around large buildings in order to reduce the visual impact of large parking surfaces and encourage pedestrian walking. Neither the placement of the Wal-Mart building nor the 35,000 square foot building identified as Pad 12 on the EIR site plan meet these design guidelines.

Attached for ease of reference is a copy of Sections 17.58.111-Intent and 17.58.112-Standard, together with a copy of the site plan contained in the EIR which I have color coded to better visualize the lots covered by the Design Standards. The Design Standards limit the amount of Front Parking Area to no more than 60% of the parking area of the lot devoted to the large retail establishments. This calculation is also to include parking space associated with the pads located within the Front Parking Area. Since the application for the Wal-Mart anchored shopping center includes a parcel map subdividing the shopping center into multiple lots these lots must be used for the purpose of measuring compliance with the Design Standards. As shown in Table I below, a review of the EIR site plan and the parking provided in the Front Parking Area indicates that neither Wal-Mart nor Pad 12 meet the 60% requirement.

Table I
Parking Ratios
Wal-Mart and Pad 12

Wal-Mart Lot	***Wal-Mart Lot***		***Wal-Mart Lot and Front Pads***	
	# of Spaces	%	# of Spaces	%
Parking in Front Parking Area	**697**	**70.0%**	**993**	**76.4%**
Parking in other areas	299	30.0%	306	23.6%
Total	996	100.0%	1,299	100.0%
Pad 12 Lot	***Pad 12 Lot***		***Pad 12 Lot and Front Pads***	
Parking in Front Parking Area	93	69.4%	276	77.7%
Parking in other areas	41	30.6%	79	22.3%
Total	134	100.0%	355	100.0%

Table I leaves no doubt that the project as set forth in the EIR does not meet the Design Standards for Large Retail Establishments. Since the Design Standards are part of the Zoning Code this means the project does not comply with the City of Lodi Zoning Ordinance and therefore cannot be approved.

In the EIR staff has commented that: *"The Standards are initially implemented through staff review of the project application and ultimately through the formal review process of the City's site Plan and Architectural Review Committee (SPARC)."*

While some of the design criteria are best left to SPARC, there is no basis for staff to submit a clearly defective site plan from a parking standpoint to the city council for its approval.

Finally, it should be pointed out that the site plan is also flawed because it does not provided for 35 foot setbacks of building facades from the proposed new property lines (Section 17.58.112) does not appear to offer a second customer access point on the east side of Pad 12 (Section 17.58.102).

Very Truly Yours,

RETAIL STRATEGIES

Jim Watt /sld

Jim Watt

Jw/sld

17.58.110 – Off-Street Parking Areas

17.58.111 – Intent:

Parking areas should provide safe, convenient, and efficient access. Parking should be distributed around large buildings in order to shorten the distances between buildings and public sidewalks, and reduce the visual impact of one large paved surface. With buildings located closer to streets, the scale of the complex is reduced, walking is encouraged, and architectural details take on added importance.

Covering the ground with asphalt has several long-term environmental impacts including excessive storm water run-off during the winter and tremendous increases in the ambient heat radiated by the asphalt. In order to provide adequate parking while practicing good stewardship of resources, the City has established a minimum and maximum range of off-street parking for large retail operations.

17.58.112 – Standard:

A. No more than sixty (60) percent of the off-street parking area for the lot, tract or area of land devoted to the large retail establishment shall be located between the front facade of the large retail establishment and the abutting streets (the "Front Parking Area. The front parking area shall be determined by drawing a line from the front corners of the building, parallel with the building sides, straight to the public street forming a 90 degree angle with the front façade.

B. Parking spaces in the Front Parking Area shall be counted to include all parking spaces within the boundaries of the Front Parking Area, including:

(i) all partial parking spaces if the part inside the Front Parking Area boundary lines constitutes more than one-half (½) of the parking space, and

(ii) all parking spaces associated with any pad sites located within the Front Parking Area boundaries.

C. The minimum number of off-street parking spaces to be provided by a large-scale retail operation shall be 2 spaces for every 1,000 square feet of building space. The maximum number of off-street parking spaces shall not exceed five (5) spaces for every 1,000 square feet of building space.

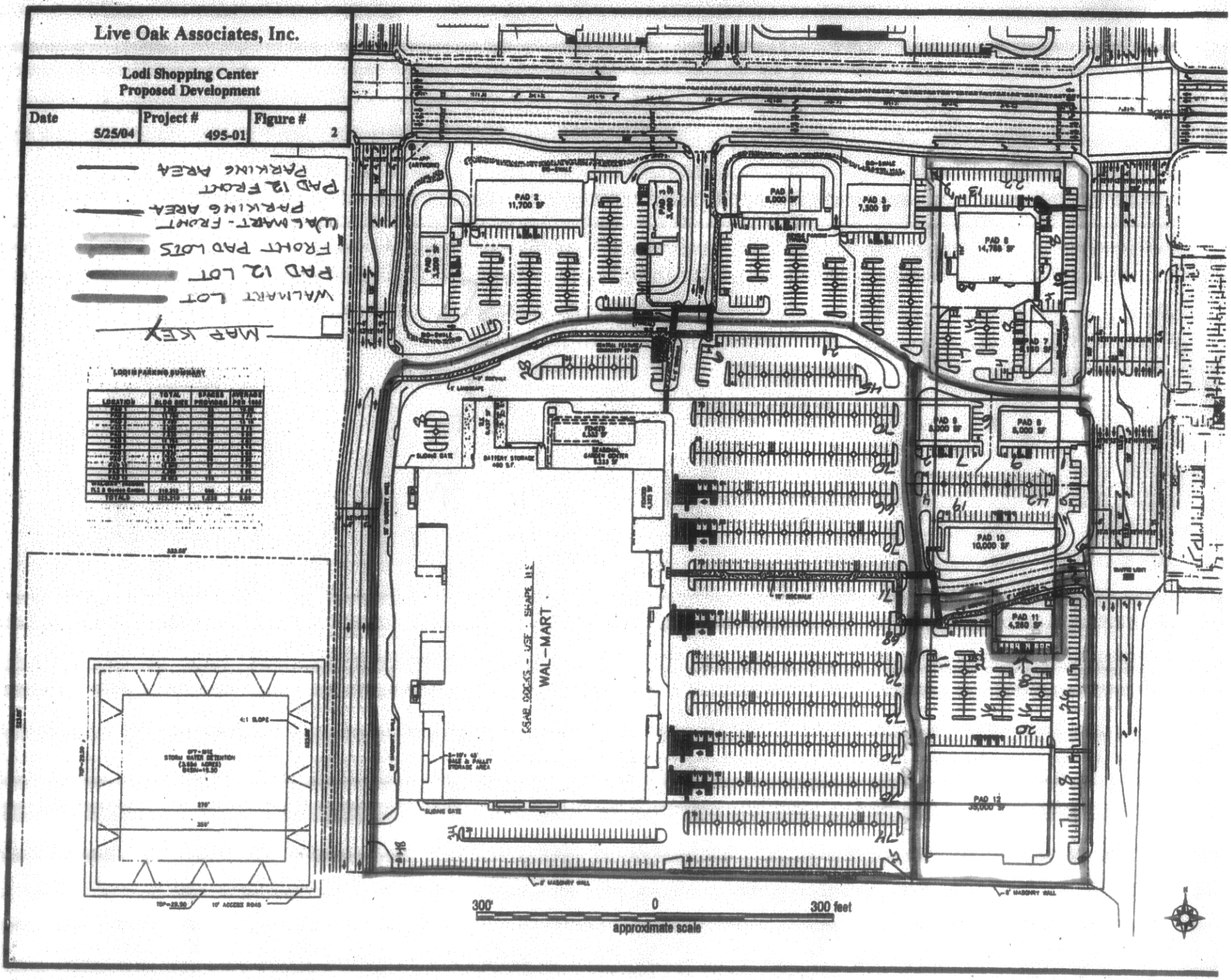
For phased developments, parking areas shall only be constructed when the adjoining building for which the parking is required is built.

Additional parking stalls, beyond the maximums provided, may be allowed when developed in a multi-level structure with Planning Commission approval.

Live Oak Associates, Inc.

Lodi Shopping Center
Proposed Development

Date	Project #	Figure #
5/25/04	495-01	2



filed 2-3-05
Browman
B-1 a)

MONTGOMERY WARDS THAT CLOSED IN NORTHERN CA & THEIR REPLACEMENT TENANTS			
Shopping Center	**City**	**State**	**Replaced Ward's**
BIRDCAGE CENTRE	CITRUS HEIGHTS	CA	Lowe's
CAPITOL SQUARE MALL	SAN JOSE	CA	Target
WESTGATE	SAN JOSE	CA	Target
WESTFIELD SHOPPINGTOWN OAKRIDGE	SAN JOSE	CA	Sears
FREMONT HUB SHOPPING CENTER	FREMONT	CA	Target
SILICON VALLEY WAVE	SUNNYVALE	CA	Target
SERRAMONTE	DALY CITY	CA	Target
BAYFAIR	SAN LEANDRO	CA	Target
SHERWOOD	STOCKTON	CA	Best Buy
HARDEN RANCH PLAZA	SALINAS	CA	Bed, Bath Beyond, Americas Tire Co
MONTGOMERY WARDS	DUBLIN	CA	Burlington Coat Factory
MONTGOMERY WARDS	EUREKA	CA	Target
MONTGOMERY WARDS	OROVILLE	CA	Vacant
BRIDGEPOINTE	SAN MATEO	CA	Property Redeveloped

KMART LOCATIONS THAT CLOSED IN NORTHERN CA & THEIR REPLACEMENT TENANTS			
Address	**City**	**State**	**Replaced Kmart**
520 Hwy. 101 North	Crescent City	CA	HOME DEPOT
1013 Riley	Folsom	CA	KOHLS
4987 East Kings Canyon	Fresno	CA	OFFICE DEPOT
4080 W. Shaw	Fresno	CA	99 CENT STORE
1050 W. Olive Ave.	Fresno	CA	VACANT
1555 40th St.	Emeryville	CA	HOME DEPOT EXPO
6100 Mack Road	Sacramento	CA	DD'S DISCOUNTS, ANNA'S LINENS, FALLAS PAREDES, SUSIES DEALS
8135 Watt Ave	Antelope	CA	VACANT
860 East Dunne Ave	Morgan Hill	CA	HOME DEPOT
4000 Alameda Ave	Oakland	CA	HOME DEPOT
3315 Northgate Blvd	Sacramento	CA	DD DISCOUNTS, BIG LOTS
777 Story Road	San Jose	CA	WALMART
350 N. Orchard Avenue	Ukiah	CA	HOME DEPOT

filed 2-3-05
Brownan
B-1 b)

Within sixty (60) days after the opening of the Wal-Mart Supercenter, the owner ("Owner") of the existing Wal-Mart building located at 2350 West Kettleman Lane ("Building") shall (1) present to the City evidence of either a signed lease(s) with tenant(s) for at least 50% of the Building or a signed purchase agreement for the Building with a bona fide retailer; or (2) commence demolition of the Building.

Prior to the issuance of a building permit for the Wal-Mart Supercenter, Wal-Mart shall present to the City a cash escrow account in a form, subject to approval by the City Attorney, in an amount equal to the costs of demolition of the Building as financial security for the performance of the obligations under this condition. The funds under said financial security shall be released to the City to be used for demolition of the Building if the Owner does not satisfy this condition within sixty (60) days after the opening of the Wal-Mart Supercenter. Owner shall present to the City evidence that any lender on the Building consents to the demolition in a form subject to the approval of the City Attorney. This condition shall be recorded on the Building property as a deed restriction which runs with the land.

filed 2-3-05
Brawman
B-1 b)

SUNWEST PLAZA RENEWALS

Leases renewed in 2004

Tenant	Size (GLA)
Strings	4,200
GNC	1,260
Sally Beauty	1,400
Dragon Palace	2,100
Total	8,960

Leases renewed in 2003

Tenant	Size (GLA)
Hot Cuts	1,100
Radio Shack	2,385
Total	3,485

TOTAL SF RENEWED IN 03/04:	**12,445**
TOTAL SF OF SHOPS:	26,195
PERCENT RENEWED:	**48%**

B-1

LAW OFFICES OF DONALD B. MOONEY

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February 2, 2005

RECEIVED
FEB - 2 2005
City Clerk
City of Lodi

VIA FACSIMILE AND FEDERAL EXPRESS

City Council
City of Lodi
221 W. Pine Street
Lodi, California 95421

Mr. Konradt Bartlam
Community Development Director
City of Lodi
221 W. Pine Street
Lodi, California 95421

X CC ___HR
X CM ___IS
X CA ___LIB
X CD ___PR
___EUD ___PD
___FIN ___PW
___FD ___COM

Re: Comments on Final Environmental Impact Report for the Lodi Shopping Center and in Support of Appeal Filed by Herum Crabtree Brown Appealing the Planning Commission's Approval of the Lodi Shopping Center

Dear Councilmembers and Mr. Bartlam:

This office represents Citizens for Open Government ("Citizens").. Through this letter, Citizens (1) adopts comments submitted to the City of Lodi ("City") on the Final Environmental Impact Report for the Lodi Shopping Center ("FEIR") and (2) provides additional specific comments on two critical FEIR issues that render the documents inadequate under the California Environmental Quality Act ("CEQA"). The issues addressed in this letter are the City's unsupportable findings in the FEIR regarding the conversion of prime agricultural land and the range of alternatives analyzed. Additionally, Citizens submit these comments in support of the appeal filed by Herum Crabtree Brown appealing the Planning Commission's approval of the Lodi Shopping Center.

The City Can And Must Mitigate The Loss Of Prime Farm Land

The proposed FEIR and associated findings now before the City set forth a disarming proposition: to ignore the significant impact of conversion of prime agricultural. The FEIR asserts that because no measure exists to mitigate this impact to a less than significant level, the loss of prime farmland is an unavoidable consequence of development. The City should think carefully about adopting such a proposition because it is both legally invalid and factually unsupported.

As an initial matter, feasible mitigation measures that reduce but do not fully mitigate adverse environmental consequences must be implemented. *See South County Citizens for Responsible Growth v. City of Elk Grove*, 2004 WL 219789 ("*Lent Ranch*"). Nothing in CEQA or its implementing guidelines permit the City to avoid adopting feasible mitigation measures to reduce a proposed project's significant adverse impacts to the human environment.

The FEIR recognizes as much but attempts to avoid this premise by stating "it is not possible to provide direct mitigation for the loss of a specific parcel of agricultural land, either in whole or in part. Unlike other natural resources, . . . prime farmland cannot be created where none previously existed." (FEIR, Response to Comments at 17.) These two succinctly sentences expose the faulty logic of the FEIR.

First, it is irrelevant whether prime farmland cannot be created where none existed. No one has suggested this proposal. The relevant question is whether prime farmland once converted to other uses can be restored in whole or in part as mitigation? The FEIR is entirely silent on this critical question. Therefore the document's conclusion that no direct mitigation is available is unsupported because the wrong question is asked.

Second, the FEIR improperly rejects the use of agricultural conservation easements as an alternative source of mitigation. The FEIR asserts that conservation easements and other similar devices that protect existing farmland from conversion do not mitigate the loss of a specific parcel of prime farmland. (Response to Comments at 17-18.) This proposition improperly narrows the inquiry of impacts associated with farmland conversion. For example, in *Lent Ranch* the Third District Court of Appeals recognized that conservation easements over existing prime farmland do mitigate some of the impacts associated with farmland conversion (e.g. reducing the pressure of additional loss of agricultural land).

Indeed, the FEIR expressly relies upon this concept of preserving existing resources as viable mitigation for the loss of sensitive species habitat. The FEIR requires as mitigation in-lieu fees to implement the San Joaquin County Multi-species Habitat Conservation and Open Space Plan ("SJMSCP"). (FEIR at 63.) The SJMSCP uses the fees to create purchase conservation easements on existing wildlife habitat. (FEIR, Vol II, Exhibit E (Biological Resources Report) at 27.) If the City desires to rely upon the SJMSCP and its conservation easement program to mitigate significant impacts to biological resources, it cannot logically conclude that same kind of impacts to agricultural resources are unmitigatable with the same type of mitigation measures.

Moreover, despite contrary assertions in the FEIR, a reasonable mechanism exists to implement the prime farmland conservation easement

mitigation approach. The City may assess a reasonable in-lieu per acre fee payable to the recently created Central Valley Farmland Trust which has as its primary purpose the preservation of farmland or open space. The Central Valley Farmland Trust administers contributions from public agencies and private persons for such purposes uses the funds to acquire fee title to, or agricultural conservation easements covering, agricultural land within San Joaquin County.

The City's Response to Comments in the FEIR relies upon *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261 to support the refusal to provide mitigation for the impacts to prime farmland. In the present situation, the City's reliance on *Defend the Bay* is misplaced. In *Defend the Bay*, the City certified a program EIR authorizing a General Plan amendment and zone change for a 7,743 acre site. Petitioner challenged the EIR's conclusion that it was not feasible to mitigate the significant unavoidable impact of developing 3,100 acres of agricultural land (out of the 7,743 acre project). The EIR considered both on-site and off-site retention of agricultural land and rejected both as infeasible. The City found that large scale agriculture would not be economically viable in the long run in Orange County because of increasing land prices and environmental regulation, higher water and labor costs, higher property taxes, competition from other parts of the state and foreign countries. In addition, reducing the development site through "on-site" mitigation would impede the City from achieving its General Plan goals of improving the job/housing imbalance. The City found off-site mitigation was infeasible for the same reasons as on-site mitigation, lack of economic viability and conflict with the General Plan.

The Court held that economic factors may be taken into account in determining what is feasible (Pub. Res. Code § 21061.1), and thus, there was nothing impermissible in the City's finding that on-site mitigation was not feasible because it would not be economically viable in the long term. The contrary is of true in the City and San Joaquin County. As is made clear repeatedly in the FEIR, a goal of the City is to reduce impacts to agriculture in order to maintain its viability. (FEIR, Vol. I at 29-30.)

In short, the FEIR improperly limits its examination of impacts to just the specific parcel rather than focusing on impacts to agricultural resource generally. When viewed in its proper context, impacts to agricultural resources can be mitigated either directly through restoration or indirectly via conservation easements. Absent such mitigation, the FEIR is inadequate.[1]

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[1] The FEIS relies upon the depublished *Friends of the Kangaroo Rat v. Cal. Dept. of Corrections* (2003) 4 Cal.Rptr.3d. 558). This case suffers from the same defect noted above, namely the improper focus on mitigating a specific resource (the agricultural land to be used to build the prison) rather than mitigating the impacts on the resource generally.

The City Failed To Analyze A Reasonable Range Of Alternatives To The Proposed Project

CEQA requires the City to analyze a reasonable range of project alternatives. As noted in the CEQA Guidelines and the FEIR, the starting point for such analysis is the project definition. The project description, however, cannot be so narrowly drawn as to preclude a meaningful alternative analysis or those undesirable to the project proponent. See e.g. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 735-737.

The Lodi Shopping Center FEIR, however, defines the objectives of the project to meet only the proposed project. Among the stated FEIR (Vol. I at 15-16) project objectives are:

"To complete development of the 'Four Corners' area by providing a large scale retail center . . . ."

"To provide a commercial center on a large, undeveloped lot in close proximity to an existing highway, and near other commercial centers . . . ."

"To provide a commercial center consisting of at least 30 net acres . . . ."

It is clear from these objectives that the only project meeting these objectives is the full build out of the project site which necessarily includes all associated adverse environmental impacts.

The FEIR also uses the project objectives to fail to consider or reject environmentally superior alternatives and, not surprising, select the proposed Wal-Mart Supercenter project as the only alternative that meets all the objectives. For example, the FEIR fails utterly to mention the possibility of redeveloping the existing Wal-Mart site to accommodate the Supercenter. The document also fails to assess any other redevelopment sites available in the City. These redevelopment alternatives could meet most of the public project objectives without the adverse environmental consequences of conversion of prime farmland and wildlife habitat.

Further, the FEIR rejects an offsite alternative (23 acres) because it does not meet the 30-acre requirement. (See FEIR, Vol. 1 at 147.) Yet one of the options analyzed is a reduced onsite project that covers 24 acres. The FEIR therefore cannot logically accept as a reasonable alternative an onsite project that does not appear to substantially different in size than a potential offsite location.

The central error of the FEIR in this regard is its insistence (although not expressly stated in the project objectives) that the project must meet the requirements for a Wal-Mart Supercenter and other retail stores, i.e. the

minimum 30 net developable acres. The FEIR provides no analysis of this minimum acreage demand or whether a smaller sized tenant could still provide "regional benefits" while reducing adverse environmental consequences.

Lastly, an EIR's alternatives discussion must focus on alternatives that avoid or substantially lessen any significant effects of the project. (Guidelines, § 15126.6(b); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 556 (EIR must consider alternatives that "offer substantial environmental advantages").) The range must be sufficient "to permit a reasonable choice of alternatives so far as environmental aspects are concerned." (*San Bernardino Valley Audubon Soc'y* v. *County of San Bernardino* (1984) 155 Cal.App.3d 738, 750; see also *Sierra Club* v. *Contra Costa County* (1992) 10 Cal.App.4th 1212, 1217-18, 1222 (EIR that only considered two alternatives for less development was not a range of reasonable alternatives).)

The FEIR fails to provide a reasonable range of alternatives that avoid or substantially lessen the proposed project's significant environmental impacts. The proposed project identifies significant and unavoidable impacts to agricultural resources and air quality. The FEIR considers three project alternatives: the No Project Alternative, the Reduced Size Alternative, and the Alternate Project Location Alternative. The No Project alternative asserts that it would avoid these impacts because the site would remain undeveloped. (FEIR, Vol. 1 at 150; *see also id.* at 148 ("In this case, if the proposed project were not to move forward, it is unlikely that any other form of development would occur there.").) This conclusion is undermined, however, by directly contradictory assertions in the FEIR that the entire site would be developed if the project were either downsized. (See e.g. Responses to Comments at 35 ("Moreover, it is important to note, as pointed out on page 147 of the DEIR, that under the Reduced Project Size alternative, the remaining undeveloped site acreage could (and probably would) still ultimately be developed for shopping center land use under the applicable General Plan designation and zoning district.").)

As this last citation illustrates, the FEIR also concludes that the Reduced Size Alternative would not avoid or "substantially" lessen environmental impacts. (FEIR, Vol. 1 at 147 (any reduction in level of environmental impact from Reduced Project Alternative "would ultimately be illusory since it would ignore the remaining acreage on the property which still can be developed for shopping center land use . . . .").) As for the Alternative Site Location Alternative, the FEIR concludes that "the impacts associated with the development of the Flag City site would be somewhat greater than for the proposed site."

In sum, the FEIR presents no alternative that avoids or substantially lessens the environmental impact of the proposed development. CEQA Guidelines section 15126.6(a) is quite clear that the alternative discussion must

describe a range of reasonable and feasible alternatives that would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project. The FEIR does not contain a single alternative that meets this standard. As such, the FEIR fails to contain a reasonable range of feasible alternatives to the proposed project. As such the Draft EIR's alternatives analysis must be revised and the document recirculated for public review and comment.

Very truly yours,

Donald B. Mooney
Attorney

cc: Clients

B-1

RECEIVED
FEB 01 2005
City Clerk
City of Lodi

February 1, 2005

Members of the City Council,

My name is Terry Schimke and I am the Accounting/Registration Chair for the Lodi Relay for Life. I, along with Janene Culbertson and Sally Snyde from the Relay Committee, were in attendance at the January 19th Council meeting. Due to a conflict of schedules we were not able to attend the meeting on the 3rd.

We would like to let the council know that we feel that Wal-Mart is a good Corporate Citizen of Lodi. 2005 will be the 3rd year that Relay for Life has been in Lodi. Each of those years Wal-Mart has not only made a monetary donation, but they have donated items such as pallets of water, lent flowers to decorate table and paper products just to name a few. They have allowed us to also be at their location numerous times to promote the event.

Relay for Life is a 24-hour team event. The first year Wal-Mart had one team; last year and again this year they have registered two teams. Mike Folkner, the store Manager, was not only on the team but he was there the full 24-hours each year with his employees supporting the event.

I sat and listened to Mr. Herum comments on the 19th and was a little taken back by some of his comments. He made a big issue about being able to purchase broccoli in a Department Store. But what about purchasing broccoli at a Bank? Isn't that what is done when you do your banking inside three of the major grocery chains located in Lodi? You not only can do your banking, you can purchase prescription drugs, clothing, oil for your car or flowers for your loved one.

The other comment that he made was that the new site was zoned "Neighborhood Commercial". I haven't looked into the zoning of the area, but I would think that the other three corners would also be zoned the same. Don't they also draw regionally?

The last comment that I would like to make is regarding the fact that in the last several weeks I have received several fliers. These fliers do not identify who the sender(s) are. This is irritating to me. If you believe in something this strongly you should be willing to put your name out there.

Thank you for your time.

Terry L. Schimke

B-1

RECEIVED
FEB 01 2005
City Clerk
City of Lodi

Susan J. Blackston
City Clerk
221 West Pine Street
Lodi,CA

Subject: Wal-Mart Supercenter to be located in the Lodi Shopping Center.

I, as a Lodi resident, do approve of the building of the shopping center with a Wal-Mart Supercenter.
Being an RV traveler I have found the Wal-Mart Supercenters across the country have the items needed for RVs. They welcome RVs at their locations with the products and parking needed for big Motorhomes. One stop shopping saves time and fuel.

This city needs the additional revenue and jobs. Otherwise people will be going to Stockton as they countinue to add new shopping and jobs. Wal-Mart Supercenters have quality products at low prices which fit low and fix incomes.

Thank You.

Russell Young
303 Cork Oak Way
Lodi,CA 95242

B-1

RECEIVED

FEB 01 2005

City Clerk
City of Lodi

Susan J. Blackston
City Clerk
305 West Pine
Lodi, Ca. 95242

I would like the Super Wall-Mart to come to Lodi. I was very pleased when I heard they were planning on building here, Now I understand some individuals do not like this plan. One of the arguments is they don't want another Stockton. They should have thought of that before they started building all the housing in this area. The present Wall-Mart is not large enough for the town. The store is always crowded and hard to get around the store. I like the Super Wall-Mart as they have a larger variety of items and most of all I like the low prices.

I feel the Super Wall-Mart will provide much needed jobs for our young people and older individuals that need extra income. They are a people friendly store. I feel also that Lodi needs very badly to benefit from the sales tax revenue. If they do not approve this store, I'm sure Galt will be only to happy to benefit if they build there, I personally will have to go to Stockton to shop, but I would rather spend my money here,

Thank You,

Marjorie A. Young

Marjorie A. Young
303 Cork Oak Wy
Lodi, Ca 95242

B-1

Living Word Ministries
551 N. Loma Drive
Lodi Ca. 95242

February 1st 2005

To whom this my concern:
There is a public hearing on February 3rd at 6.00 p.m. concerning the New Super Wall Mart and you sent me a letter, We can not make the meeting because we are Pastors of a church and have a meeting that we can't miss that night.

We want to comment on the New Super Wall mart:
We believe Lodi would benefit with a Supper Wal Mart in many ways not only will it put 500 people to work, but city of Lodi would benefit from the revenue that would come in the city.

We have been to several Wall Mart Super centers across the nation and we do not see where it can be appose by one store in Bakersfield. We have to believe in our city planners to not make the same mistakes (if they were mistakes). Wall Mart is the only company that we know of that is willing to help out communities with Grants and fund-raises and where they see that there is a need. There is several other benefits Wall Mart will help the city of Lodi but I know I need to keep our letter short.

Thank you

Pastor David Butt
Pastor David Butt

Co-Pastor Lee Butt
Lee Butt