CITY COUNCIL MEETING

AUGUST 3, 1983

PUBLIC HEARINGS Notices thereof having been published in accordance with law and affidavits of publication being on file in the office of the City Clerk, Mayor Olson called for the Public Hearings to consider:

a) the recommendation of the Lodi Planning Commission to the City Council that the Final Environmental Impact Report for Sunwest IV,a 52.6 acre mixed Residential or Residential-Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane, Lodi, was adequate.

SUNWEST IV

b) the Lodi City Planning Commissions recommendation that Sunwest IV, a 52.6 acre mixed Residential or Residential Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane be prezoned to P-D (25), Planned Development District No. 25 with conditions.

The matter was introduced by Community Development Director Schroeder who presented diagrams of the subject area.

Assistant Planner David Morimoto detailed the Final Environmental Impact Report and responded to questions regarding the subject as were posed by the Council.

The following persons spoke on behalf of the subject project:

1. Glen Baumbach, Baumbach and Piazza, 323 W. Elm St.,Lodi

2. Wayne Craig, 222 W. Lockeford, Suite 1, Lodi

The following persons spoke in opposition addressing their concerns regarding the traffic flow on Filly Drive, Lodi:

1. Mrs. Renee M. Matson, 911 Laver Court, Lodi

- all the land surrounding the City of Lodi is prime agricultural land. The Sunwest IV property is contiguous to existing City development and is a logical location for residential development.

2. That Lower Sacramento Road, Vine Street and the street within the development will adequately handle the additional traffic generated by this project.

3. That the impact of high noise levels adjacent to Lower Sacramento Road will be reduced by requiring special sound reduction design and construction.

4. That the L.U.S.D. has acknowledged that an agreement has been entered into with the developer to mitigate the adverse impact of additional school children.

5. That the development of Sunwest IV will be contingent on the construction of an adequate storm drain facility to serve the project.

Council Member Pinkerton then moved the introduction of Ordinance No. 1292 prezoning Sunwest IV, a 52.6 acre mixed Residential or Residential-Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane, Lodi, California to P-D (25), Planned Development District No. 25 with the following conditions:

a) that the single-family areas in the project conform to the City's R-1, Single-Family Residential District;

b) that the cluster homes development be limited to 15 units per acre and conform to the City's R-GA, Garden Apartment Residential District.

ORD. NO. 1292 INTRODUCED

The motion was seconded by Mayor Pro Tempore Snider and carried by the following vote:

Ayes: Council Members - Murphy, Pinkerton, Snider, and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - Reid

MEASURE TO BE VOTED ON BY ELECTORATE

RES. 83-82

On motion of Council Member Pinkerton, Murphy second, Council adopted Resolution No. 83-82 placing the following measure on the November 8, 1983 ballot to be voted on by the electorate of the City of Lodi:

"Shall the Land Use Element of the Lodi General Plan be amended to include Sunwest IV, a proposed 52.6 acre project containing 103 single-family lots, a 7.8 acre parcel for cluster homes and a 4.6 acre parcel for cluster homes or a church site. The project is bounded by Sunwest, Unit No. 3 on the north, the Woodbridge Irrigation District Canal on the east; a line one-quarter mile north of West Kettleman Lane (State Route 12) on the south and Lower Sacramento Road on the West?"

Further, on motion of Council Member Murphy, Snider second, the City Clerk was directed to negotiate with the County Clerk for certain services for the November 8, 1983 election at which time the heretofore listed measure will be voted on.

RECESS

Mayor Olson declared a 5 minute recess and the meeting reconvened at approximately 9:55 p.m.

PLANNING COMMISSION

City Manager Glaves gave the following report of the Planning Commission Meeting of July 25, 1983:

PUBLIC HEARINGS Notices thereof having been published in accordance with law and affidavits of publication being on file in the office of the City Clerk, Mayor Olson called for the Public Hearings to consider:

a) the recommendation of the Lodi Planning Commission to the City Council that the Final Environmental Impact Report for Sunwest IV, a 52.6 acre mixed Residential or Residential-Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane, Lodi, was adequate.

SUNWEST IV

b) the Lodi City Planning Commissions recommendation that Sunwest IV, a 52.6 acre mixed Residential or Residential Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane be prezoned to P-D (25), Planned Development District No. 25 with conditions.

The matter was introduced by Community Development Director Schroeder who presented diagrams of the subject area.

Assistant Planner David Morimoto detailed the Final Environmental Impact Report and responded to questions regarding the subject as were posed by the Council.

The following persons spoke on behalf of the subject project:

1. Glen Baumbach, Baumbach and Piazza, 323 W. Elm St., Lodi

2. Wayne Craig, 222 W. Lockeford, Suite 1, Lodi

The following persons spoke in opposition addressing their concerns regarding the traffic flow on Filly Drive, Lodi:

1. Mrs. Renee M. Matson, 911 Laver Court, Lodi

2. Mr. Roy Edwards, 2124 Sunwest Drive, Lodi

3. Dr. Mike Matson, 911 Laver Court, Lodi

There being no other persons in the audience wishing to speak on the matter, the public portion of the hearing was closed.
Following additional discussion, on motion of Council Member Pinkerton, Snider second, Council certified that the Final Environmental Impact Report for Sunwest IV was adequate and established the following findings:

1. The adverse impact of the loss of agricultural land is overridden by the following considerations:

   - prior to the passage of the Measure A growth initiative, the area had been designated for urban development in the Lodi General Plan.

   - there will be sufficient need for additional residential acreage to warrant the conversion of this agricultural land. Based on current projections, the City has a 3.75 year supply of residential acreage. Because of the time required for the election, governmental processing and major utility installations, the first residences in Sunwest IV will not be completed until sometime in 1985. By this time the City will have depleted much of the current supply of residential acreage.

JUSTIFICATION OF PROPOSAL
FOR REORGANIZATION OR CHANGE OF ORGANIZATION AFFECTING LOCAL AGENCIES

Filed with:
LOCAL AGENCY FORMATION COMMISSION OF SAN JOAQUIN COUNTY
c/o Gerald F. Scott, Executive Officer
1810 E. Hazelton
Stockton, CA 95205

Phone: (209) 944-2196 Date: December 18, 1984

The undersigned, on behalf of the proponents of the subject proposal, hereby give notice of intention to:

_____	incorporate a city	_____	disincorporate a city
_____	form a district	_____	dissolve a district
X	annex territory to an agency	X	detach territory from an agency
_____	consolidate existing agencies		

To further deliberations by the Commission, we submit the following:

1. Three (3) copies of this completed "Justification of Proposal".
2. Fifteen (15) copies of legal metes and bounds description of affected territory consistent with standards acceptable to the County Surveyor's Office.
3. Fifteen (15) copies of maps showing affected territory and affected agencies (maps to be no smaller than 8½" x 11" which is the most preferable size and shall be no larger than 18" x 26".
4. Filing and processing fees in accordance with LAFCO fee schedule.

The following persons (not to exceed three) are to be mailed copies of the Executive Officer's Report and Notice of Commission hearings regarding the subject proposal.

(Name)	(Address)	(Phone)
FRED BAKER ,	317 W. Lodi Avenue, Lodi, CA 95240	(209) 333-2881
JAMES B. SCHROEDER,	221 W. Pine Street, Lodi, CA 95240	(209) 333-6711
ALICE M. REIMCHE,	221 W. Pine Street, Lodi, CA 95240	(209) 333-6700

James B. Schroeder
(Signed)

COMPLETE ALL QUESTIONNAIRE ITEMS
If a question is not applicable to your proposal, you may so state.

1. Local Agency organization changes hereby proposed--designate affected agencies and annexations by name:
   Sunwest IV Reorganization. Annexation to the City of Lodi. Detachment of affected territory from the Woodbridge Fire District & Woodbridge Water Users Conservation District.

2. Statutory provisions governing proceedings:
   Title 6, Division 1 (commencing with Sec. 65000) of the California Government Code District Reorganization Act of 1965.

3. Do proposed boundaries create an island or corridor of unincorporated territory?
NO

4. Do proposed boundaries split lines of assessment or ownership?
No

5. Land area affected: Square miles -- Acres 54.711

6. Population in subject area: 2 Number of registered voters: 2

7. Registered voter density (per acre): .03 Number of dwelling units: 1

8. Estimate of population increase in next 10 years:
500-800

9. Present land use of subject area:
Agriculture.

10. What is the intended development of this area:
Residential

11. Present zoning: GA-40, General Agriculture - 40 acre minimum.

12. Describe proposed zoning changes:
Prezone to PD, Planned Development.

13. Assessed value of land: $ 71,233

14. Assessed value of improvements $ 37,385

15. Value of publicly owned land in area: $ -0-

16. Governmental services required by this proposal which are not presently available: Water, Sewer, Storm drainage and other municipal services required for urban development.

17. What alternative measures would provide services listed in Item 16 above?
None.

18. What modifications must be made to existing utility and governmental facilities to provide services initiated by this proposal?
Extension of streets, water, sewer and storm drainage from adjacent properties.
Storm drainage will require a major line extension and partial construction of a basin.

19. What approximate costs will be incurred in accomplishing requirements of Item 18 above?
No cost estimate.

20. How will such costs be met?
Initial cost will be paid by developer. City will participate for oversized lines.
Future users may also reimburse develoepr for portions of the cost.

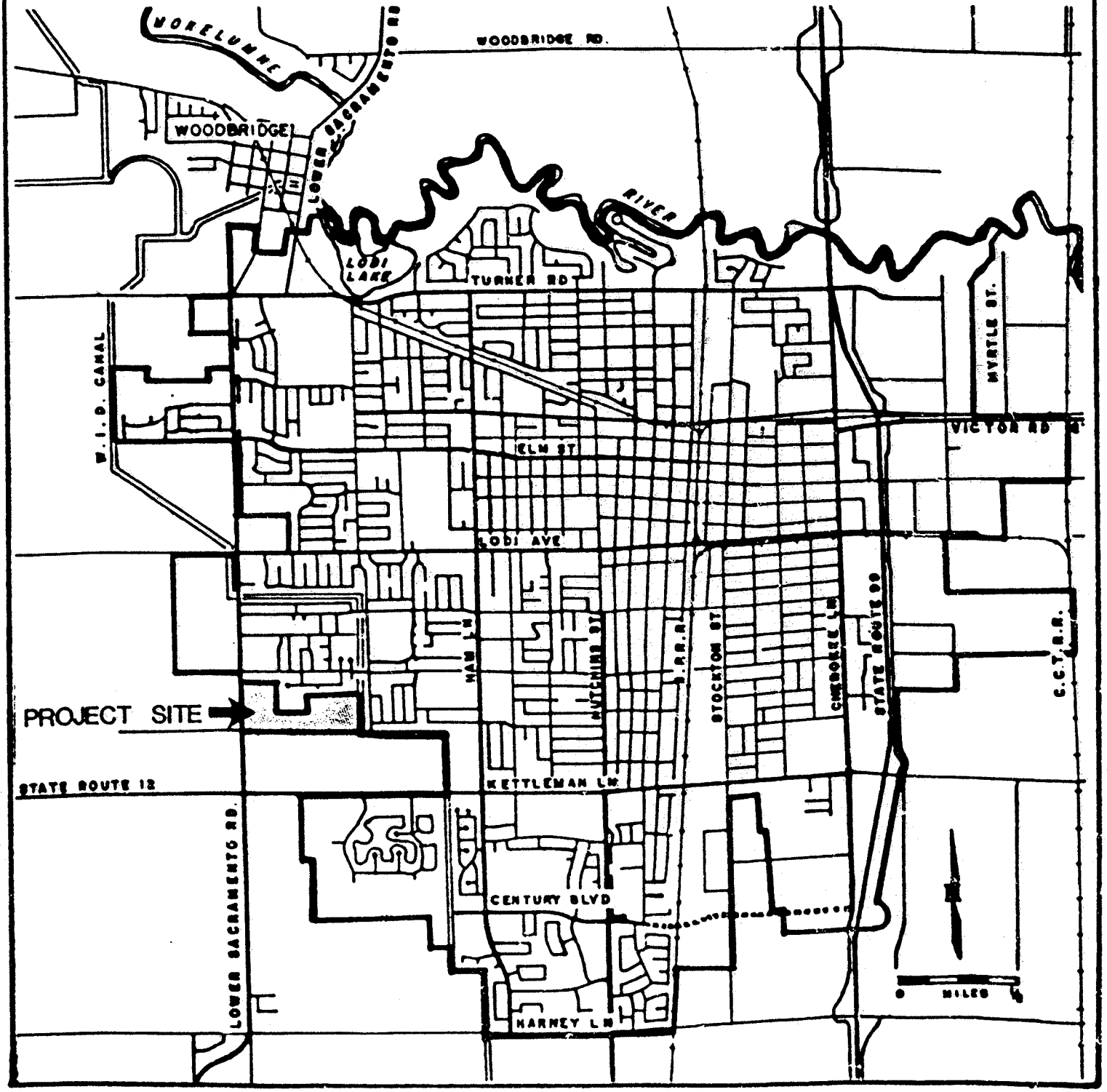
21. Will provisions of this proposal impose greater than normal burden on servicing agency or affected property?
NO

22. ☒ Check here if you are submitting further comments and evaluations on additional pages.

(Rev. 7-82)

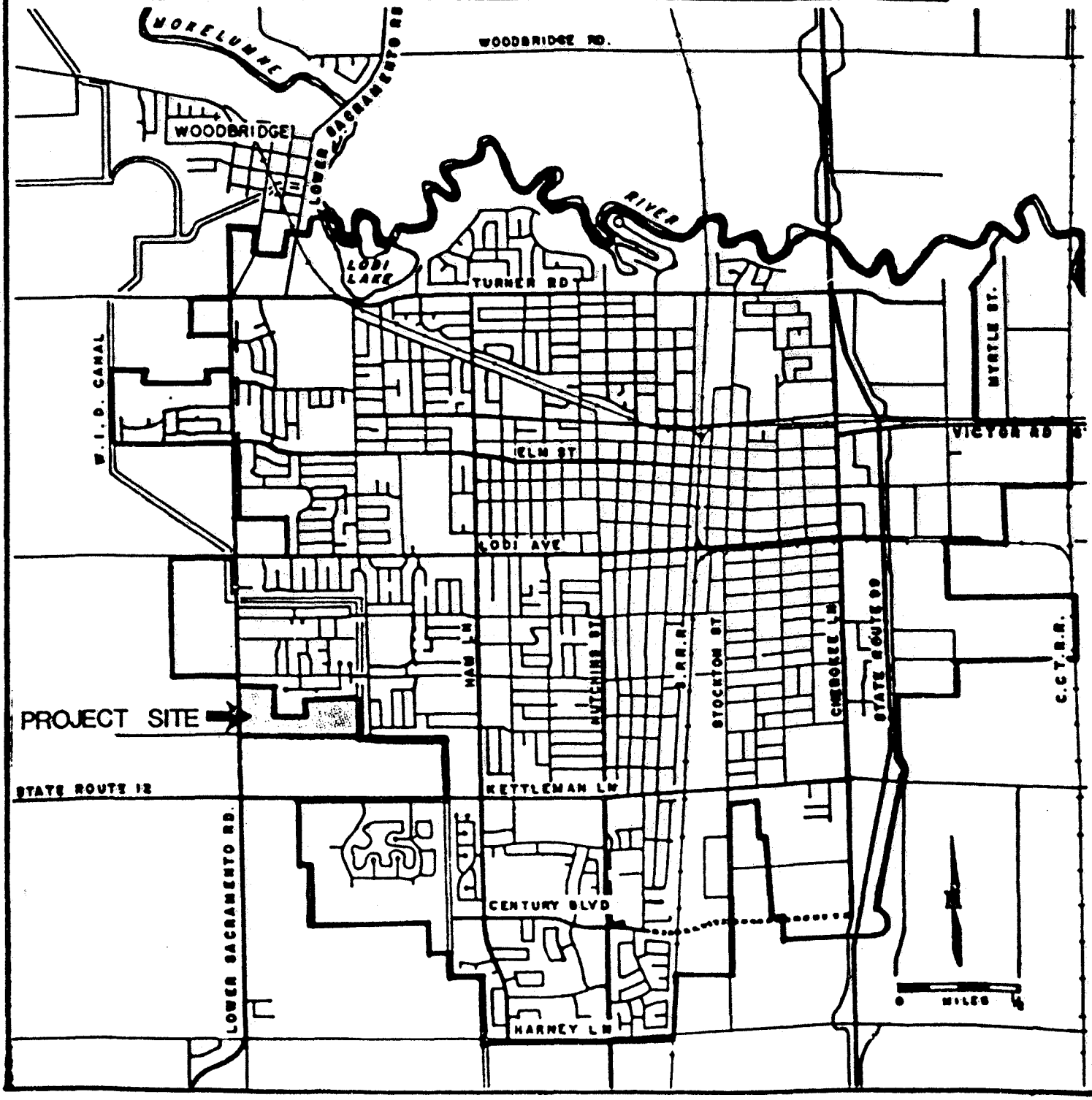
VICINITY MAP

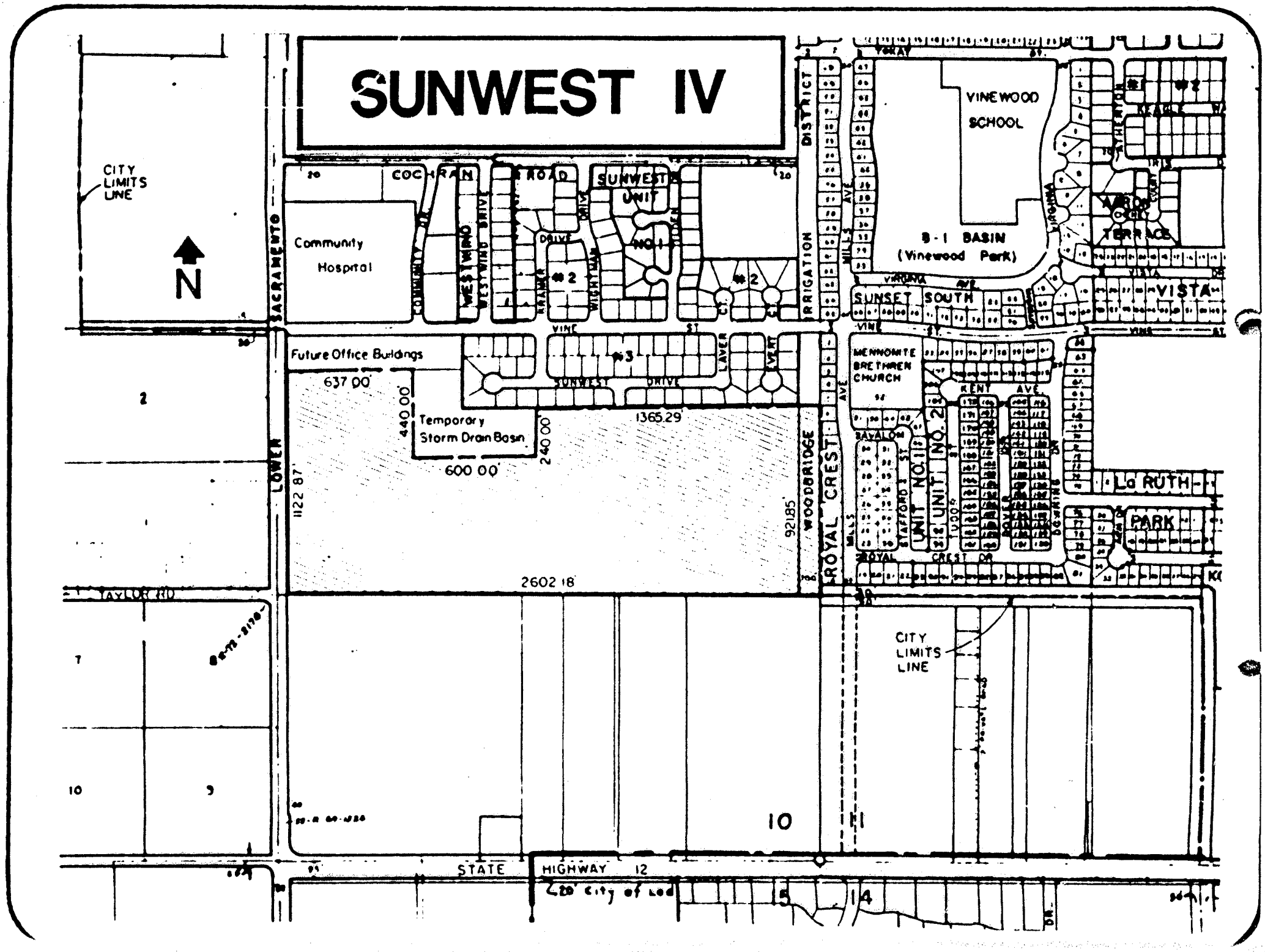
SUNWEST IV



VICINITY MAP

SUNWEST IV




SUNWEST IV
CITY LIMITS LINE
N
SACRAMENTO
LOWER
COCHRAN
ROAD
Community Hospital
WESTWIND DRIVE
SUNWEST UNIT NO. 1
#2
#3
VINE ST
SUNWEST DRIVE
Future Office Buildings
637.00'
440.00'
Temporary Storm Drain Basin
600.00'
240.00'
1365.29'
1122.87'
2602.18'
92.185'
TAYLOR RD
IRRIGATION DISTRICT
WOODBRIDGE
ROYAL CREST AVE
VINEWOOD SCHOOL
B-1 BASIN (Vinewood Park)
VIRGINIA AVE
SUNSET SOUTH
MENNONITE BRETHREN CHURCH
KENT AVE
UNIT NO. 2
UNIT NO. 1
ROYAL CREST DR
VISTA
TERRACE
La RUTH
PARK
CITY LIMITS LINE
STATE HIGHWAY 12
City of Lod
10
11
14
15

SUNWEST IV ANNEXATION

A portion of the southeast Quarter of Section 10, Township 3 North Range 6 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Commencing at a railroad spike at the center of said Section 10 as shown on that Parcel Map recorded in Book 2 of Parcel Maps, page 144, San Joaquin County Records, said point also being on the center line of the 80.00 foot wide right-of-way for Lower Sacramento Road; thence South 89° 12' 30" East 40.00 feet along the northerly line of said Southeast 1/4 of Section 10 to a point on the east line of said Lower Sacramento Road; thence South 200.00 feet along said east line, said line being also the City Limits line of the City of Lodi, to the TRUE POINT OF BEGINNING; thence along the City Limits line of the City of Lodi the following six courses: (1) South 89° 12' 30" East, 637.00 feet; (2) South 440.00 feet; (3) South 89° 12' 30" East, 600.00 feet; (4) North 240.00 feet; (5) South 89° 12' 30" East, 1365.29 feet to the east line of said Section 10; (6) South 0° 0' 30" East, 921.85 feet along said east line; thence leaving said City Limits line, North 89° 13' 54" West, 2602.18 feet to the east line of said 80.00 foot wide right-of-way for Lower Sacramento Road; thence North 1122.87 feet along said east line to the true point of beginning, containing 54.711 acres, more or less.

RESOLUTION NO.

RESOLUTION OF THE LODI CITY COUNCIL FOR THE APPLICATION TO THE SAN JOAQUIN COUNTY LOCAL AGENCY FORMATION COMMISSION IN THE MATTER OF THE PROPOSED "SUNWEST IV ANNEXATION REORGANIZATION, INCLUDING THE DETACHMENT OF CERTAIN TERRITORY WITHIN THE AREA PROPOSED FOR ANNEXATION TO THE CITY OF LODI

WHEREAS, this proposal is made pursuant to the District Reorganization Act of 1965 contained in Division 1 of Title 6 (commencing with Section 56000) of the California Government Code, and;

WHEREAS, the nature of the proposed change of organization is the annexation to the City of Lodi an area comprising 54.711 acres, more or less, and withdrawal of said 54.711 acres from the Woodbridge Rural Fire Protection District, and located within the area to be annexed to the City of Lodi as described and depicted in Exhibit "A", and;

WHEREAS, no other counties, cities, or districts are affected, and;

WHEREAS, the subject area proposed to be annexed to the City of Lodi and detached from the Woodbridge Rural Fire Protection District is uninhabited, and;

WHEREAS, no new districts are proposed to be formed by this reorganization, and;

WHEREAS, the reasons for this proposal are as follows:

(1) The uninhabited subject area is within the urban confines of the City and will generate service needs substantially similar to that of other incorporated urban areas which require municipal government service.

(2) Annexation to the City of Lodi of the subject area will result in improved economics of scale in governmental operations while improving coordination in the delivery of planning services

(3) The residents and taxpayers of the County of San Joaquin will benefit from the proposed reorganization as a result of savings to the County by reduction of County required services in unincorporated but urban oriented area;

(4) The subject area proposed to be annexed to the City of Lodi is geographically, socially, economically and politically part of the same urban area of which the City of Lodi is also a part.

(5) The subject area is within the Lodi Sphere of Influence.

(6) Future inhabitants of a city residential subdivision in the subject area will gain immediate response in regard to police and fire protection, unlimited city garbage and trash collection service, street lighting service, a modern sewer system, other municipal services, and improvement of property values.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Lodi that the San Joaquin County Local Agency Formation Commission is hereby requested to approve the proposed "Sunwest IV Annexation" reorganization which includes annexation of 54.711 acres from the Woodbridge Rural Fire Protection District, as described and depicted in Exhibit "A" attached hereto. This all, subject to the aforementioned terms and conditions.

Dated:

I hereby certify that Resolution No.
was passed and adopted by the City Council
of the City of Lodi in a regular meeting
held by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Alice M. Reimche
City Clerk

SUNWEST IV REORGANIZATION

CITY SERVICE PLAN

If the proposed Sunwest IV property is annexed to the City of Lodi, the City will provide all required utility services except natural gas (PG&E) and telephone (Pacific Bell). All services are currently available on adjacent properties to the north. Briefly, required extensions and construction of facilities will include the following:

Water

There are existing water lines in Lower Sacramento Road, Vine Street and Filley Drive which will be extended to serve the project. Water service is adequate to serve the project site and the City's Water Master Plan does not include a City well site in this project. Water line extensions will be paid for by the developer.

Sanitary Sewer

The City's White Slough Waste Water Treatment Facility has adequate capacity to serve the project. The project site will be served by two major lines. The western half, adjacent to Lower Sacramento Road will be served by an existing line in Lower Sacramento Road. The eastern half will flow south to an existing line in Kettleman Lane. The sewer line extensions will be paid for by the developer.

Streets

Sunwest IV will tie into the existing City street system. The only new streets required will be those streets constructed within the development. These streets will be designed to connect with Vine Street to the north, Lower Sacramento Road to the west and provide for future connections to the south.

The east side of Lower Sacramento Road will be improved to City street standards which will include widening and the installation of curb, gutter and sidewalk. The developer will pay for all street construction.

Police and Fire

The City will provide police and fire protection. Existing levels of personnel and equipment are adequate to service the Sunwest IV project.

Storm Drainage

The City of Lodi operates a system of interconnecting storm drainage basins to provide temporary storage for peak storm runoff. The runoff is stored until the water can be pumped into the Woodbridge Irrigation District Canal (WID) or the Mokelumne River. The Sunwest IV property is served by drainage basin G-South. This basin site is at the southwest corner of Lower Sacramento Road and the future extension of Century Boulevard. It is approximately 3/4 of a mile south of the project site and 1/2 mile south of Highway 12/Kettleman Lane.

The G-South basin is not fully developed. A portion of the basin is being developed to serve another project in the drainage service area. When Sunwest IV is developed, an additional portion of the basin will need to be completed. When there is sufficient demand, the entire basin will be developed and landscaped to also serve as a City park.

Providing storm drainage for Sunwest IV will require developing a portion of the G-basin with sufficient capacity to serve the project. The project will also require the installation of a major storm drain line south from Sunwest IV to the G-South basin site. This line will be designed to serve not only the Sunwest IV but also future projects constructed south of Sunwest IV. The costs for the oversizing of the line will be shared by the Sunwest IV developer and future developments that tie into this line. There may also be some City participation in the cost.

Availability of Services

The City services discussed are available subject to City approval and the actual construction of the facilities by the developer. The major portion of the cost will be borne by the developer. This will include significant costs for the storm drainage facilities. However, once the financial and engineering considerations are resolved, the developer could begin constructing the facilities within the next year.

SUNWEST IV

CONVERSION OF PRIME AG-LAND

The Sunwest IV project will result in the annexation and development of 52+ acres of prime agricultural land. Unfortunately, all land in and around the City of Lodi is designed prime agricultural land. The entire area surrounding the City is in agricultural use. Almost every development, large or small, must utilize agricultural land. There are no non-prime soil, non-agricultural parcels around Lodi.

As of this date, the City has no uncommitted residential acreage of any significant size. Virtually all land designed for residential use has already been developed, is under development, or has an approved project planned for the acreage. In the latter two categories, the City has approximately 1000 residential lots with an approved subdivision map or has preliminary development approval. At the City's 10 year building average, this represents approximately a 5 year supply of residential lots.

The City's Growth Initiative has placed a further restriction on available residential acreage. The Sunwest IV annexation is the first annexation approved by the voters since the Initiative was approved over 3 years ago. When the current supply of residential lots are built-upon, no additional lots will be available without additional voter approval.

PUBLIC HEARINGS Notices thereof having been published in accordance with law and affidavits of publication being on file in the office of the City Clerk, Mayor Olson called for the Public Hearings to consider:

a) the recommendation of the Lodi Planning Commission to the City Council that the Final Environmental Impact Report for Sunwest IV, a 52.6 acre mixed Residential or Residential-Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane, Lodi, was adequate.

SUNWEST IV

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The matter was introduced by Community Development Director Schroeder who presented diagrams of the subject area.

Assistant Planner David Morimoto detailed the Final Environmental Impact Report and responded to questions regarding the subject as were posed by the Council.

The following persons spoke on behalf of the subject project:

1. Glen Baumbach, Baumbach and Piazza, 323 W. Elm St., Lodi

2. Wayne Craig, 222 W. Lockeford, Suite 1, Lodi

The following persons spoke in opposition addressing their concerns regarding the traffic flow on Filly Drive, Lodi:

1. Mrs. Renee M. Matson, 911 Laver Court, Lodi

2. Mr. Roy Edwards, 2124 Sunwest Drive, Lodi

3. Dr. Mike Matson, 911 Laver Court, Lodi

There being no other persons in the audience wishing to speak on the matter, the public portion of the hearing was closed.
Following additional discussion, on motion of Council Member Pinkerton, Snider second, Council certified that the Final Environmental Impact Report for Sunwest IV was adequate and established the following findings:

1. The adverse impact of the loss of agricultural land is overridden by the following considerations:

   - prior to the passage of the Measure A growth initiative, the area had been designated for urban development in the Lodi General Plan.

   - there will be sufficient need for additional residential acreage to warrant the conversion of this agricultural land. Based on current projections, the City has a 3.75 year supply of residential acreage. Because of the time required for the election, governmental processing and major utility installations, the first residences in Sunwest IV will not be completed until sometime in 1985. By this time the City will have depleted much of the current supply of residential acreage.

- all the land surrounding the City of Lodi is prime agricultural land. The Sunwest IV property is contiguous to existing City development and is a logical location for residential development.

2. That Lower Sacramento Road, Vine Street and the street within the development will adequately handle the additional traffic generated by this project.

3. That the impact of high noise levels adjacent to Lower Sacramento Road will be reduced by requiring special sound reduction design and construction.

4. That the L.U.S.D. has acknowledged that an agreement has been entered into with the developer to mitigate the adverse impact of additional school children.

5. That the development of Sunwest IV will be contingent on the construction of an adequate storm drain facility to serve the project.

Council Member Pinkerton then moved the introduction of Ordinance No. 1292 prezoning Sunwest IV, a 52.6 acre mixed Residential or Residential-Institutional Project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane, Lodi, California to P-D (25), Planned Development District No. 25 with the following conditions:

a) that the single-family areas in the project conform to the City's R-1, Single-Family Residential District;

b) that the cluster homes development be limited to 15 units per acre and conform to the City's R-GA, Garden Apartment Residential District.

ORD. NO. 1292 INTRODUCED

The motion was seconded by Mayor Pro Tempore Snider and carried by the following vote:

Ayes: Council Members - Murphy, Pinkerton, Snider, and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - Reid

SUNWEST IV

FINAL

83-1

ENVIRONMENTAL IMPACT REPORT

FINAL ENVIRONMENTAL IMPACT REPORT

FOR

SUN WEST UNIT NO. 4

APPLICANT
Baumbach and Piazza, Engineers
323 West Elm Street
Lodi, CA 95240

PROPERTY OWNER
Dr. Kris Kessler and Fred Baker

AGENCY PREPARING EIR
City of Lodi
Community Development Department
221 West Pine Street
Lodi, CA 95240

DESCRIPTION OF ACTION
The proposed project is a 52.6± acre mixed residential project located east of Lower Sacramento Road and 1/4 mile north of Kettleman Lane (Highway 12). The project will contain 133 single-family lots and 186 units of cluster housing.

The project will require certification of an EIR; approval by the voters of the City of Lodi; annexation approval by LAFCO and the City of Lodi; granting of a City of Lodi zoning designation of Planned Development; and approval of a specific plan and subdivision map.

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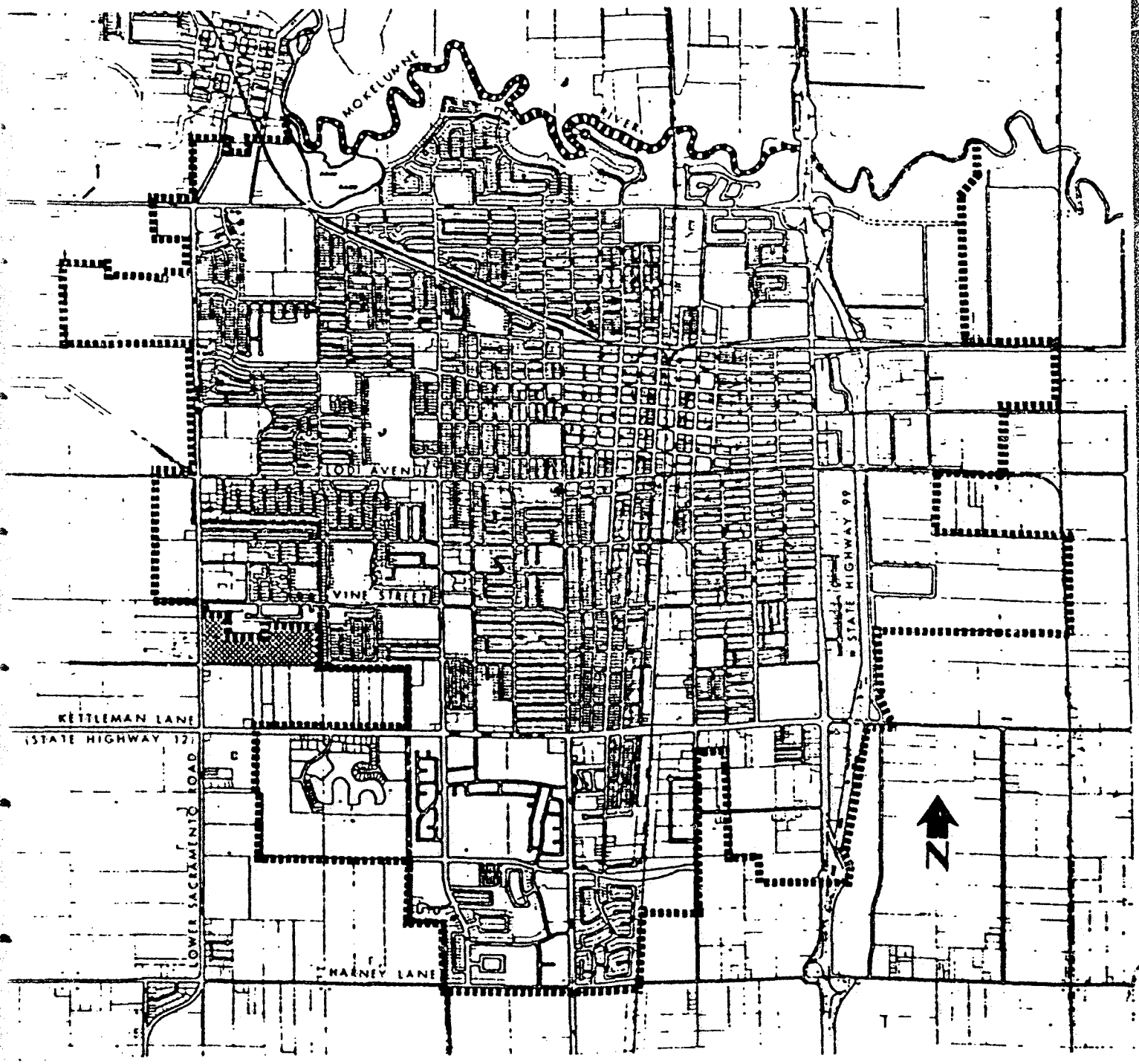
SUNWEST IV
LOCATION MAP



TENTATIVE MAP OF TRACT NO. 1733

SUNWEST IV

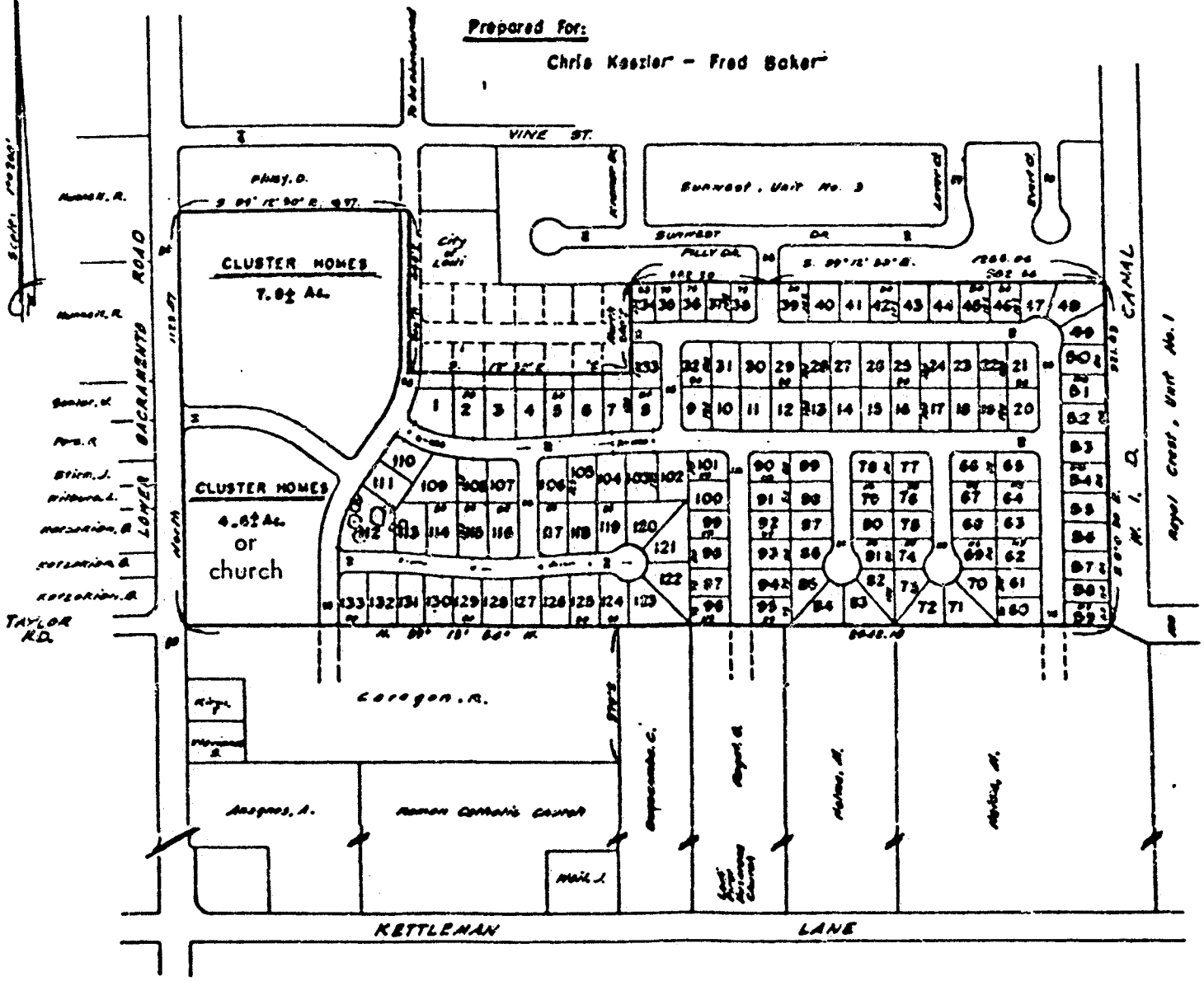
SUBDIVISIONS OF SAN JOAQUIN COUNTY

Being a portion of the southeast quarter of Section 10, T.3 N, R.6 E, M.D.B.&M., City of Lodi, San Joaquin County, California

June 1982 Scale: 1" = 200'

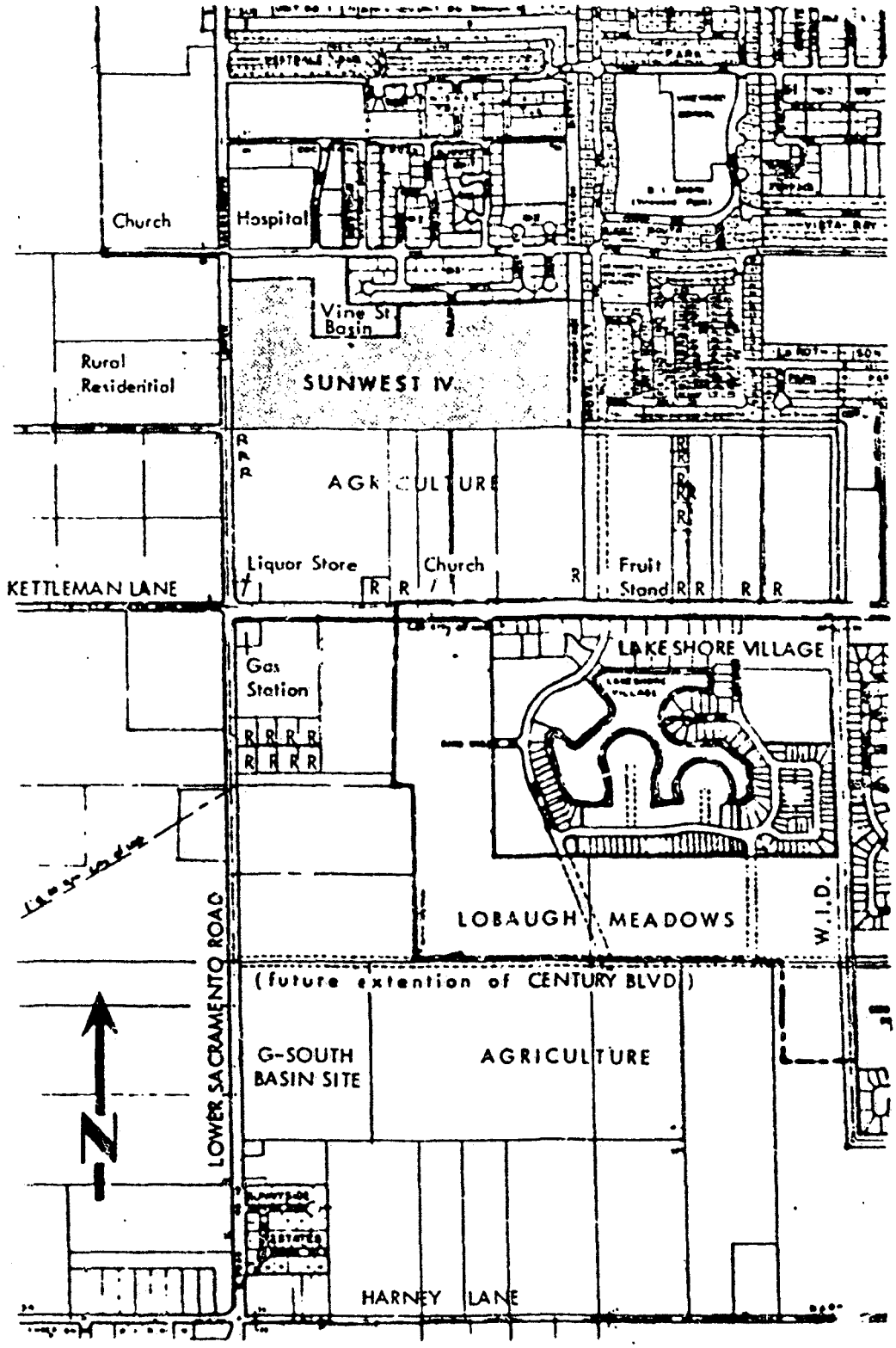
Prepared for:

Chris Kaesler - Fred Baker



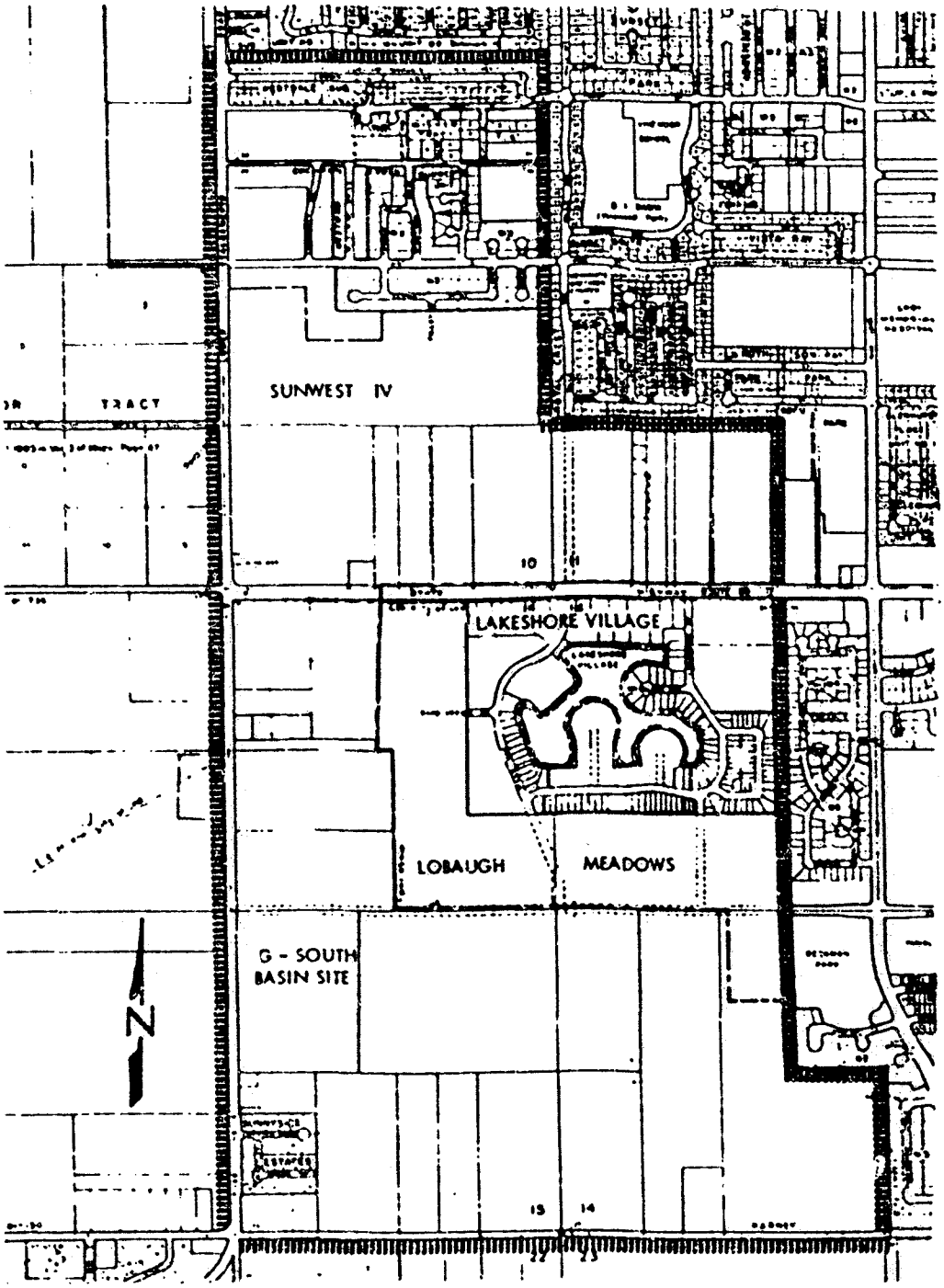
	ACRES	UNITS	U.P.A.
RESIDENTIAL	40.2	133	3.3
CLUSTER HOMES	12.4	186	15
TOTAL	52.6	319	—
NET DENSITY — 6.1 U.P.A.			

SUNWEST IV
LAND USE MAP



G-BASIN
STORM DRAINAGE AREA

AREA BOUNDARY



SUMMARY

SUN WEST UNIT NO. 4

Environmental Impact Report

PROJECT DESCRIPTION

The project is a 52.6± acre residential development. The project will contain 133 single-family lots and 186 cluster homes.

The subject site is currently designated low-density residential in the Lodi General Plan. This designation permits an overall residential density of 1-10 units per acre. The parcel is currently zoned GA-40 (San Joaquin County) and will require a rezoning to P-D, Planned Development. The project will require an annexation to the City of Lodi and the approval of the voters of the City of Lodi under the requirements of Measure A (Greenbelt Initiative).

LOCATION

The project will be located on the east side of Lower Sacramento Road, 1/4 mile north of Kettleman Lane (Highway 12). The parcel is designated as San Joaquin County Assessor's parcel 027-040-21.

ENVIRONMENTAL IMPACTS

1. Loss of 52.6± acres of prime agricultural soil. Parcel is Class 1 soil made up of Hanford Sandy Loam; well suited for a variety of agricultural uses. Development will mean loss of agricultural use of land.

   Urbanization will affect adjacent agricultural parcels by restricting normal spraying and cultivation operations. Vandalism, trespassing and homeowner's complaints could increase.

2. Traffic will increase on Lower Sacramento Road and Vine Street. The project will generate approximately 2,449 vehicle trips per day when fully developed.

3. Air pollution will increase slightly as a result of increased vehicular traffic. Increase will be less than 1% of City of Lodi emissions.

4. Residential units adjacent to Lower Sacramento Road will be subject to noise levels that exceed recommended levels for residential units.

5. Approximately 263 additional school-aged children could be added to the already overcrowded L.U.S.D. Providing adequate classroom space could be a problem.

MITIGATING MEASURES

1. No real mitigation possible for loss of agricultural land. Entire Lodi area is prime agricultural land.

2. Additional traffic can be mitigated by proper design and construction of the street system, and by limiting access to Lower Sacramento Road.

3. Noise levels in residential structures can be reduced by shielding the units with a sound wall along Lower Sacramento Road. Also design features can be built into the units (insulation, double-glazed windows, etc.) to reduce noise levels inside of the units.

4. Impaction of schools can be mitigated by the developer financially assisting the L.U.S.D.. to provide additional classroom space. The developer has signed an agreement with the L.U.S.D. to pay an agreed upon amount to the school district. (See page 22.a)

ALTERNATIVE TO THE PROJECT

1. "No building" alternative. Eliminates all impacts by leaving the site in agricultural use.

2. Different mix of residential and/or commercial uses. Does not significantly improve or change the environmental impacts of the proposed project. Loss of agricultural land is not affected.

IRREVERSIBLE AND LONG-TERM IMPACTS

1. Loss of agricultural land is permanent and irreversible.

CUMULATIVE IMPACTS

Loss of agricultural land is cumulative. In the past years, several hundred acres of land have been developed with various residential, commercial and industrial projects. Because the City of Lodi is entirely surrounded by prime agricultural land, all future projects will utilize agricultural land.

2. There is a cumulative impact on the L.U.S.D. The L.U.S.D. includes much of the northern San Joaquin County, including the City of Lodi and north Stockton. It is estimated that there is the potential for an additional several thousand students in projects currently approved and in some state of development. This includes Lodi, north Stockton and the unincorporated County areas. This would seriously affect the L.U.S.D.

   The L.U.S.D. is working with developers in the north County area to assist the District financially to provide additional classroom space. Many, including the Sun West Unit No. 4 developer, have signed agreements with the District.

GROWTH-INDUCING IMPACT

1. The installation of public utilities in the area, particularly storm drainage could have an affect on growth in the area. The "Greenbelt" initiative will, however, be a major factor controlling growth.

SUN WEST UNIT NO. 4
Environmental Impact Report

I. PROJECT DESCRIPTION

The applicants are proposing a 52.6± acre mixed residential project. The project will contain a total of 319 residential units broken down as follows:

	Acres	Units	Units/Acre
Single Family lots	40.2	133	3.3
Cluster Housing	12.4	186	15
TOTAL	52.6	319	

Overall density 6.1 U.P.A.

The project is designed as an extension of an existing subdivision, Sun West No. 1, No. 2 and No. 3. The first three units of the Sun West Subdivision are developed and contain 126 single family lots. Units No. 1 and No. 2 are completely built-out and Unit No. 3 has approximately 93% of the lots built on. The existing 3 units of Sun West are within the City limits of Lodi. The proposed Sun West No. 4 is located immediately south of Unit No. 3 but is outside of the City Limits.

The proposed project will require the following governmental actions: Certification of an Environmental Impact Report: prezoning by the City of Lodi; voter approval under the requirements of Measure A (Greenbelt initiative); annexation approval by LAFCO and City of Lodi; granting of a City of Lodi zoning classification of Planned Development; and approval of a subdivision map and specific plan.

The project is requesting annexation to the City of Lodi in order to obtain City services and utilities such as water, sewer, storm drainage, etc.

II. SITE LOCATION & DESCRIPTION

The project site contains 52.6± acres and is located adjacent to the existing Lodi City Limits. The parcel is San Joaquin County Assessor Parcel 027-040-21. The area is located east of Lower Sacramento Road and approximately 1300' north of Highway 12 (Kettleman Lane). See Vicinity Map.

The 52.6 acre parcel is the remainder of what once was an 80 acre parcel. The northern 37.4 acres were annexed to the City of Lodi several years ago, and are currently being developed as a part of the Sun West Subdivision. A portion of that land is also being used as a temporary storm drainage facility for the Sun West area.

The project property is currently being farmed. Approximately 8 acres are planted in vineyards with the remainder planted in field crops. There is also a farm residence and related structures located on the property.

The area surrounding the project site is primarily residential or agricultural. On the north are residential subdivisions and Lodi Community Hospital. On the east, across the Woodbridge Irrigation Canal (W.I.D.) are residential subdivisions. To the south are agricultural properties with scattered residences, a church and a commercial business. To the west are agricultural parcels and a concentration of small lot rural residences located along Taylor Road and Lower Sacramento Road. (See Land Use Map).

III. GENERAL PLAN AND ZONING DESIGNATION

The project parcel is currently designated General Agriculture-40 acre minimum parcel size (GA-40) by the San Joaquin County General Plan and Zoning Map. The property is not included in the City of Lodi General Plan as a result of Measure A (Greenbelt Initiative) that was passed by the voters in 1981. This Initiative removed from the City's General Plan all land that was not within the City limits at the time the Initiative was approved. In order to be included in the City's General Plan the voters of the City of Lodi must approve an amendment to the General Plan. Unless the General Plan Amendment is approved, the land cannot be annexed to the City or developed as a part of the City of Lodi. (See Appendix for text of Measure A).

The applicants will be requesting a General Plan designation of low density residential. The overall project density of 6.1 units per acre will meet the requirements of the low density designation. The zoning requested will be Planned Development (P-D), which will permit the mix of single family lots and cluster housing if approved by the City.

IV. DESCRIPTION OF ENVIRONMENTAL SETTING

A. TOPOGRAPHY

The project site and the surrounding area are generally flat with elevations of approximately 40-45 feet above sea level. The land in Lodi slopes gently from the northeast to the southwest at the rate of approximately 5' per mile. It is probable that the land was leveled sometime in the past to facilitate surface irrigation. The parcel contains no natural drainage channels or other topographic feature.

B. HYDRAULICS

There are no natural water features or drainage channels located on the project site. The Woodbridge Irrigation Canal runs along the east propertyline and is a source of agricultural irrigation to this and other properties in the area. The property does not lie within the floodplain of the Mokelumne River and would not be affected during a 100 year flood.

Except for agricultural properties served by the Woodbridge Irrigation District Canal, the majority of properties in the Lodi area, including the City of Lodi, are supplied by water pumped from underground sources. There are existing private agricultural and domestic water wells on the property.

Using figures provided by the San Joaquin County Farm advisor for agricultural water uses, we can make some water use comparisons. The average vineyard requires approximately 35 inches of water annually. Natural rainfall provides approximately 9 inches of the annual demand. The remaining 26 inches are supplied by irrigation. Converted to acre feet, each acre of vineyard will use approximately 2.2 acre feet of water per year, excluding rainfall.

The 52.6 acres of the project x 2.2 acre feet equal approximately 115.7 acre feet of water required by the agricultural operation annually.

The following water consumption chart breaks down the various water uses by acre feet/acre year for different types of residential development.

Single family residence	3.1 acre feet/acre year
Multiple family residence	2.4 acre feet/acre year

The proposed development has the following number of acres in the above described uses.

Use	No. Acres	No./Ac. ft/ Acre/Year	Total No/Ac.Ft/ Year
Single Fam. Res.	40.1	3.1	124.62
Multi-Fam. Residential	12.4	2.4	29.76
			154.38

The estimated water usage for the proposed project will be approximately 154 acre feet/year compared to the existing water usage of 115.7 acre feet/year.

C. SOIL CONDITIONS

The soil type of the project site is Hanford Sandy Loam. The surface soil of the Hanford Sandy Loam consists of an 8 to 14 inch layer of light, grayish brown, soft friable sandy loam which has a distinct grayish cast when thoroughly dry. The material grades downward into a subsoil of slightly darker and richer brown soil.

Agriculturally, Hanford Sandy Loam is one of the best soils. It is used in the production of orchard, vineyard and other intensive perennial crops. In the Lodi area this soil is primarily used for grape vineyards. The soil conservation

service rates Hanford Sandy Loam as Class 1 (the highest rating) and the Storie Index rates it at 95 percent for the ability to produce crops.

The soil is also rated good for construction purposes. The bearing capacity of the soil is 2,000 lbs. per square foot. It does not have expansive qualities and will support most structural building loads.

The 1978 edition of the Uniform Building Code designates Lodi as being in Seismic Zone 3, one that requires the strictest design factors for lateral forces.

D. SEISMIC HAZARD

Earthquake faults are not found in the immediate vicinity of the subject parcel. The nearest faults are approximately 14 miles to the south and west. The most probable sources of strong ground motion are from the San Andreas Fault, Hayward Fault, the Livermore Fault and the Calaveras Fault, all located in the San Francisco Bay area.

E. BIOTIC CONDITIONS

The site has been cleared of natural vegetation and replaced with cultivated crops. The property currently contains grape vineyards and field crops. The type of plants and wildlife found on the site are common to lands in the agricultural areas surrounding Lodi. There are no known rare or endangered species of plant or animal located on the project site.

F. ATMOSPHERIC CONDITIONS

Air Quality in the San Joaquin Valley is affected by a combination of climatology and topography. Topographically, San Joaquin County is located approximately in the middle of the Sacramento/San Joaquin Valley. The valley has a trough-like configuration that acts as a trap for pollutants. Mountain ranges surrounding the valley restrict horizontal air movement and frequent temperature inversions prevent vertical air movement. The inversion forms a lid over the valley trough, preventing the escape of pollutants.

Climatology also affects the air quality. High summer temperatures accelerate the formation of smog. This, combined with summer high pressures which create low wind speeds and summer temperature inversions to create the potential for high smog concentrations.

San Joaquin county air quality is not in compliance with National Air Quality Standards.

Pollutant	Nat. Air Quality Standard	San Joaquin Air Quality
Ozone	0.12 pp. (1 hr.avg)	0.17 ppm
Carbon Monoxide	9.0 ppm (8 hr. avg)	14.4 ppm
Total suspended particulate matter	75 ug/m^3 (AGM)	81 (highest AGM)
Sulfur-dioxide	365 ug/m^3 (24 hr.avg) 80 ug/m^3 (annual avg)	no measurement

The primary source of air pollution generated by the development will be from vehicular traffic. The trip generation estimates are based on data from the Institute of Traffic Engineers.

Single-Family Residential:

Based on 9 vehicle trip ends per unit, the 133 units will generate 1197 vehicle trips per day.

Attached Housing Units:

Based on 7 vehicle trip ends per unit, the 186 units will generate 1302 vehicle trips per day.

Total vehicle trip generation will be 2,499 vehicle trips per weekday generated by the proposed development

There is no specific data for the City of Lodi, so information was generated based on the data for San Joaquin County. The City of Lodi was assumed to generate 9.9% of the total for San Joaquin County. The following emission data was generated:

	*SOx	*Particulate Matter	Lead	Hydro-Carbons	*CO	*NOx
San Joaquin County	1.687	3.065	0.209	22.052	221.394	26.851
City of Lodi 9.9% of S.J.C.	.167	.303	.021	2.183	21.918	2.658
Sun West Unit No. 4 2 cars per house	.007	.012	.001	.088	.886	.107

*Figures in Tons/day

Sun West Unit No.4 would account for less than 1% of the total for the City of Lodi. This is a worst-case situation and the figure for Sun West Unit No. 4 is probably higher than what will actually be generated.

G. NOISE

The primary source of noise in the area of the proposed project will be vehicular traffic on Lower Sacramento Road. Lower Sacramento Road serves as a major north-south collector street connecting the north San Joaquin County area with Lodi and Stockton.

City of Lodi noise contour maps based on 1995 traffic projections show the following:

70 decibels to 60' of the roadway
65 decibels to 160' of the roadway

Readings are based on Ldn noise criteria.

The San Joaquin County Noise Element sets forth the following noise guidelines for residential development:

Less than 60 decibels	=	Acceptable
60 - 69 decibels	=	Conditionally acceptable
70 - 74 decibels	=	Normally unacceptable
75 decibels or greater	=	Clearly unacceptable

This data indicates that noise levels up to 60' of the roadway are unacceptable and noise levels up to 160' of the roadway are classified as conditionally acceptable:

As currently proposed, a portion of the parcels designated for cluster housing units will fall within the high noise area.

V. UTILITIES

A. STORM DRAINAGE

The City of Lodi operates a system of interconnecting storm drainage basins to provide temporary storage for peak storm runoff. The runoff is stored until the water can be pumped into the Woodbridge Irrigation District Canal or the Mokelumne River at a controlled rate. Currently, the City does not have a storm drainage basin to serve the Sun West No. 4 drainage area.

The Sun West No. 4 project is located in storm drain Area G. This particular drainage area is bordered by the W.I.D. Canal on the north and east, Lower Sacramento Road on the west, and Harney Lane on the south. Presently, there are two areas of the G-Basin area that are developed or under development with subdivisions.

The northern portion, between the W.I.D. Canal on the north and Kettleman Lane on the south is developed with several subdivisions, including Sun West No. 1, No. 2 and No. 3. These existing subdivisions are served by two small temporary basins, the Westdale pump station at Tokay and the W.I.D. Canal and the Vine Street basin located at the west end of Sun West Drive. Both basins are only designed to serve the existing developments and will be eliminated once a permanent basin is constructed.

The other area of G-Basin drainage area that is under development is the area south of Kettleman Lane and north of Harney Lane. Two developments are approved for this area, Lakeshore Village and Lobaugh Meadows. Lakeshore Village has development underway on a 90+ acre office and residential development. Storm drainage for this project is being provided by an on-site lake. The lake functions as both a private recreational lake for the development and a temporary drainage basin. The lake/basin will serve the project until a permanent City basin is constructed to provide drainage for the entire area.

Lobaugh Meadows is a 90+ acre development that wraps around Lakeshore Village. The office and residential project has been approved by the City but development has not begun. Except for the northern 20 acres, the majority of this project is not served by storm drainage. The northern 20 acres will be served by the adjacent Lakeshore Village Lake/Basin. The remaining 70± acres cannot be developed until all or a portion of the City's G-South Basin is constructed.

A permanent storm drainage solution for the G-Basin area will require the construction of a City basin(s) with sufficient capacity to serve the entire drainage area. The City of Lodi Public Works Department recently prepared a report entitled "G-Area Storm Drain Basin Study."

The study analyzed two alternatives for providing storm drainage for providing storm drainage for the G-Basin area. The study examined cost, engineering, time frames, land use, etc.

Alternative A was for a two-basin system. One basin (G-North) would be located north of Kettleman Lane (Highway 12) and a second basin (G-South) would be located south of Kettleman Lane, on a parcel owned by the City. G-North would serve the area north of Kettleman Lane, including the Sun West No. 4 project. G-South would serve the area south from Kettleman to Harney Lane.

Alternate B proposes to construct a single basin to serve the entire G-Basin service area. This basin would be large enough to provide storm water retention for both the G-North and G-South area. The basin would be located on Lower Sacramento Road and the extension of Century Boulevard where the City currently owns some property.

After considering the two alternatives, it was decided by the City Council to adopt Alternate B, the single basin proposal. This means that the storm drainage from the proposed Sun West No. 4 will be handled by the Alternative B basin site. Until the basin is constructed and the interconnecting storm drain lines are installed, the Sun West No. 4 project cannot be developed.

The Alternate B plan will require the construction of a major storm drain line from the northern portion of the drainage are south to the proposed basin site. The line will either run along

Lower Sacramento Road or down an alignment midway between Lower Sacramento Road and the W.I.D. Canal. This alignment would take it through Lobaugh Meadows to Century Boulevard then west to the basin site.

The basin itself can either be built all at once or be built in phases according to demand. The development of Sun West No. 4 will require at least the partial construction of the basin, the installation of the pump works, and the installation of the major storm drain lines.

B. SANITARY SEWER

The proposed project will be served by the City of Lodi Sanitary System. There is an existing line along Lower Sacramento Road that will handle the western portion of the project. Sufficient grade is not available to all the sewage from the eastern portion of the the development to Lower Sacramento Road. The area east of Filley Drive is planned to drain south to Highway 12 at Mills Avenue to a future lift station.

The City's White Slough Waste Water Treatment Facility has adequate capacity to handle all sanitary sewage generated by this project.

C. DOMESTIC WATER

Domestic water will be provided by the City of Lodi. There are existing lines on Lower Sacramento Road, Vine Street and Filley Drive, which will be extended to serve the project. The City's Water Master Plan does not include a City well site in this project. Some looping of waste lines may be required in order to obtain reasonable interim fire flows.

Existing agricultural and private domestic wells on the site will be abandoned when the project is developed.

D. OTHER UTILITIES

Electricity will be provided by the City of Lodi. Natural gas will be supplied by P.G. & E. and Pacific Telephone Company will provide telephone service. All services can be adequately supplied to the project with normal line extensions.

VI. COMMUNITY SERVICES

A. TRAFFIC AND CIRCULATION (Also see Atmospheric section)

The project site will tie into the City's street system. Lower Sacramento Road which runs along the west property line, will be the major street serving the property. The property will also be served by extensions of Community Drive and Filley Drive which will connect to Vine Street to the north. Community Drive should be extended to Vine Street at this time.

Lower Sacramento Road is a major north-south street carrying traffic between Stockton, Lodi and north county areas. Traffic counts taken by the City of Lodi in 1979 and 1980 for Lower Sacramento Road are 7,500 vehicle trips per day north of Vine Street, and 6,500 vehicle trips per day between Vine Street and Kettleman Lane.

The Specific Plan for Lower Sacramento Road requires a total right-of-way width of 110 feet. This provides for a main thoroughfare having two travel lanes and one emergency parking lane in each direction and also provides for a center median. The Specific Plan denies access on the east side of Lower Sacramento Road from Kettleman Lane to Vine Street. The developer is proposing access to Lower Sacramento Road via a public street. This proposed access will require an amendment to the existing Specific Plan. The developer is proposing that all access to the cluster home parcels be taken off of interior streets and not off of Lower Sacramento Road.

Kettleman Lane Lane (Highway 12) is a major east-west street and is located 1/4 mile south of the project site. Kettleman Lane currently carries 10,000 vehicle trips per day between Lower Sacramento and Ham Lane. Kettleman Lane serves as a major connector between the west and east side of Lodi. The street also connects I-5 and State Highway 99.

Lodi Avenue, located 1/4 mile north of the project site is a major connector between West Lodi and the central business district. Current traffic volumes on Lodi Avenue are 5,500 vehicle trips per day between Lower Sacramento Road and Mills Avenue and 10,000 vehicle trips per day between Mills Avenue and Ham Lane.

Filley Drive will connect the proposed development to Sun West Subdivision to the north. Community Drive will serve as the major north-south collector street in the project, connecting to Vine Street to the north and to future developments to the south.

The proposed project will have a total of 319 residential units. There will be 133 single-family lots and 186 units of cluster housing.

Using a factor of 9 vehicle trips per single family dwelling, the single-family lots will generate 1,197 vehicle trips per day (v.t./sfd x 133 units = 1,197 v.t.).

For the cluster housing we use a factor of 7 v.t. per unit. The cluster housing would generate 1,302 v.t. per day (7 v.t./cluster unit x 186 units = 1,302 v.t.).

The total vehicle trips generated by the Sun West No. 4 project would be 2,499 v.t. per day.

B. POLICE AND FIRE PROTECTION

The City of Lodi will provide police and fire protection to the proposed development. The Chief of Police has indicated that the department has no "level of reserve" which should be maintained in the city department. He indicates that the additional service for the subject property will come from reordering of departmental enforcement priorities. The Chief notes, however, that this new development and other areas of the city will receive uniform treatment with regard to service levels.

The Chief of Police will review the project plans to insure that the street lighting system and building and street layout permit adequate security surveillance by police patrol units.

The nearest fire station to the subject development is the Fire Station No. 3 at Ham Lane and Arundel Court. The Fire Chief will review all plans to assure adequate fire protection. He will work with the developer on the number and location of fire hydrants and will review the project plan to insure adequate accessibility for fire equipment.

C. SCHOOLS

The Lodi Unified School District (LUSD) is experiencing a problem of student overcrowing in many of its schools. Many of the schools are at maximum capacity and the District must transport students out of their normal attendance area to accommodate all the students.

In order to defray the costs of construction of needed interim school facilities, the City of Lodi passed City Ordinance No. 1149. This ordinance, passed pursuant to Senate Bill 201, was enacted prior to the passage of Proposition 13 of 1978. The ordinance provided for the City Building Department to collect a "fee" of $200 per bedroom in new residential developments.

The developer has a recorded agreement with the LUSD to provide some type of payment to the school district. The developer has agreed to pay directly to the district a monetary amount equal to the fees established by No. 1149.

The agreement also states that the LUSD can request dedication of a school site in lieu of payment of the fees. This would be at the discretion of LUSD.

The proposed project will contain approximately 319 residential units. The number of students is estimated as follows:

Housing Type	No. of Units	Child Per Unit	TOTAL
Single Family homes	133	1.0	133
Cluster Homes	186	0.7	130
		TOTAL CHILDREN	263

The school district allocates children in new developments proportionately among their thirteen grade system

It can be concluded that the proposed development does not, in itself, warrant construction of a school or schools; however, in combination with existing need and future development in the project area, additional classroom space will be required.

D. RECREATION

The proposed project does not set aside any land for parks or other public recreation. It is possible that some private recreational facilities will be constructed as a part of the cluster home developments. These might include a swimming pool, a spa, a recreation room or other facilities provided for the tenants of the cluster housing.

The Sun West Swim and Racquet Club, a private facility is located approximately 1/2 mile north of the proposed project. The Vinewood park, a City storm basin/park is located approximately one mile to the northwest. Vinewood Park has ball diamonds, playing fields, picnic areas and play equipment that are open to the public.

Additionally, there will be a permanent storm drainage basin/park approximately 1 mile south when G-South basin is constructed at Lower Sacramento Road and Century Boulevard. This facility, when fully developed, will have a variety of open space and recreational facilities.

E. SOLID WASTE

Existing collection of residential solid waste within the City of Lodi is on a weekly basis by a franchise collector. At the present time the waste is hauled to a transfer station and resource recovery station located at the company's headquarters in the east side industrial area. The refuse is sorted with recyclable material removed. The remaining refuse is then loaded onto large transfer trucks and hauled to the Harney Lane Disposal site, a Class II-2 Landfill. Current operations are consistent with the San Joaquin County Solid Waste Management Plan, adopted June, 1979. The subject area is within County Refuse Service Number 3 and the North County Disposal Area, which is served by the Harney Lane Site.

The number of units built in the project will be 319. The City's franchise collector estimates that each residential unit in the City of Lodi generates an average of 39 lbs. of solid waste per week.

317 units x 39 lbs/week = 12,.41 estimated lbs. of solid waste.

VII. SPECIAL DISTRICTS

The proposed project will affect two special districts - the Woodbridge Irrigation District (W.I.D.), which has a canal along the east property line of the project, and the Woodbridge Fire Protection District.

The W.I.D. has an open irrigation canal along the east property line. Because the Canal is open, the District is concerned with possible trespass and accidents involving their canal. They have requested that the developer be required to construct a 6' chainlink fence along the project boundary adjacent to the Canal. The fence will serve as a barrier between the project and the Canal. This could be done as a part of requirements of the project approval or as a condition of the tentative subdivision map.

The property will also be detached from the W.I.D. Once the property is annexed to the City of Lodi.

The Woodbridge Fire Protection District will be affected by having the subject property detached from their District. The City of Lodi will take over fire protection responsibility once the property is annexed to the City The District is concerned with the loss of property tax revenue which is lost when property is removed from their District. The W.F.P.D. and other special districts are experiencing financial problems as a result of Proposition 13 tax limits.

VIII. MEASURE A - "GREENBELT INITIATIVE"

On August 25, 1981, the voters of the City of Lodi passed an initiative ordinance to limit future expansion of the City. The initiative, known as the "Greenbelt" initiative, amended the City's General Plan by removing the Planned Urban Growth Area from the Land Use Element of the General Plan. The Urban Growth area now includes only those areas that were within the City Limits at the time of passage of the initiative. The ordinance now requires that any addition to the Urban Growth area, i.e. annexations, requires an amendment to the Land Use Element of the General Plan. These annexation related amendments to the General Plan require approval by the voters.

Because the proposed Sun West No. 4 property is outside of the present City limits, therefore, outside of the Urban Growth Boundaries, it will require voter approval. An election will have to be held prior to any action being taken by the City to amend the General Plan or annexing the property.

IX. HISTORIC AND ARCHEOLOGICAL SITE

There are no sites or buildings on the subject property that are designated as historical landmarks by any Federal, State or local agencies. The nearest recorded landmarks are in the community of Woodbridge, 1½ miles to the north.

Although there are no recorded archeological surveys of the site, it is doubtful that there are any archeological sites on the property. Known Indian sites in the Lodi area are usually located along the banks of the Mokelumne River, 2 miles to the north.

The property has been extensively cultivated for many years. There is no record of any items of antiquity every being unearthed on the site. Additionally, the extensive digging and plowing to cultivate the vineyards and the trenching to install irrigation lines would have destroyed any archeological material.

If, during construction, some artifacts of possible archeological interest should be unearthed, work will be halted and a qualified archeologist called in to examine the findings.

X. ENVIRONMENTAL ASSESSMENTS

A. ENVIRONMENTAL IMPACTS

The development of the Sun West No. 4 project will result in the loss of 52.6 acres of prime agricultural land. The project site currently contains 10 acre vineyard and 40± acres of row crops. The project soil is made of Hanford Sandy Loan, the predominant soil type in the Lodi area. This type of soil is rated as Class I soil for agricultural production. The soil can be planted with a wide variety of crops. In the Lodi area the soil type is extensively planted in vineyards.

Development of the site with residential uses will terminate further use of the property for agricultural purposes. The existing crops will be removed and the land covered with streets, houses and other urban improvements.

Urbanization of the subject parcel will also affect the continued agricultural use of adjacent parcels. The presence of a residential development may restrict or limit normal farming operations on adjacent agricultural lands. The use of certain pesticides and herbicides will be restricted on areas adjacent to residential developments. Cultivation and harvesting operations may result in complaints from urban residents concerning noise and dust. Agricultural operations adjacent to urbanized areas may also be subject to an increased amount of trespassing and vandalism.

The project will increase traffic on adjacent streets, particularly Lower Sacramento Road and Vine Street. The project

is estimated to generate 2,499 additional vehicle trips per weekday when fully developed.

The increased vehicular traffic will produce additional air pollution in the area of the project. The project-generated pollution will have a localized affect on air quality, but will not significantly affect the overall air quality of San Joaquin County. Based on a worst-case situation, vehicular traffic generated by the development would increase overall air pollutants in the City of Lodi by less than 1%.

Portions of the project will be located adjacent to Lower Sacramento Road, a high noise traffic route. The project will have residential units that will fall within areas that exceed 60 decibels of noise. The 60 decibel noise level is generally considered the maximum acceptable level of noise for a residential unit. Units built in areas that exceed the 60 decibel level may require some sound reduction measures.

The project will generate an estimated 263 additional school-aged children when fully developed. The addition of these students will adversely affect the L.U.S.D. and its ability to provide adequate classroom space. The L.U.S.D. has filed a Declaration of Impaction that states that the schools are at maximum capacity and that new students cannot be guaranteed classroom space.

B. MITIGATION MEASURES

If the Sun West No. 4 project is approved and constructed, the 52.6 acres of prime agricultural land will be removed from further agricultural use. There is no practical way to mitigate the loss of this land. Once cleared and developed with streets and houses, it is unlikely that the land will ever return to agricultural use. The property is currently not in the Urban Growth area of the General Plan. Prior to the Greenbelt Inititative, the property was designated residential in the General Plan for a number of years.

The possible impact on adjacent agricultural properties is also difficult to mitigate. The project will have residential lots that back up to agricultural properties to the south. Constructing a solid fence along the entire south property line will help to reduce trespassing and vandalism. Another possible mitigation would be to provide a buffer area between the residential units and the agricultural area. The buffer would probably need to be at least 50' or more to be effective. This would not be possible with the proposed layout and would require a redesign of the project.

To some extent, the agricultural properties along the west property line are already affected by non-agricultural uses. There are existing residential subdivisions to the east across the W.I.D. Canal. There are also existing scattered residential and commercial uses, as well as a church, along the north side of

Kettleman Lane (Highway 12) There are also large commercial and residential developments under construction on the south side of Kettleman Lane. To the west there are concentrations of rural residential homes along Lower Sacramento Road and Taylor Road. These existing uses already affect the agricultural activities on the surrounding agricultural properties

Alternatives proposed by the developer are for possible change in the use of the 2 parcels designated for cluster housing. It is possible that one of the parcels could be utilized as a church site. This would reduce traffic generation except for the one or two days a week when large services or activities are conducted. It would also decrease the impact of traffic noise from Lower Sacramento Road and would eliminate approximatey 48 school-aged children from the project.

The other alternative is to utilize one or both of the cluster housing sites for an office-institutional use. This could include medical offices or a skilled nursing facility. This type of facility would be compatible with Lodi Community Hospital located one block north of the project. These types of projects would eliminate the impact on the L.U.S.D. Traffic generation would be higher if both properties were developed with medical offices.

Neither of the alternatives would affect the major impact which is the loss of agricultural land.

The problem of high noise levels along Lower Sacramento Road and its impact on residential structures can be mitigated in two ways. First, construction of a sound wall along the roadway will partially shield the residential units and reduce the noise levels by approximately 10 dBA. Second, the design and placement of the residential units can further reduce the noise levels. Those structures immediately adjacent to the roadway will require special noise insulation that could include double glazed windows, extra wall insulation, caulking of all pipe and electrical wire holes cut in the walls, etc. Additionally, limiting the first row of houses to single story structures will make the same barrier more effective.

The impact of the additional students on the L.U.S.D. has been at least partially mitigated by the signing of an agreement between the developer and the school district. The agreement provides for the payment of an agreed upon amount of money for each residential unit to help pay for additional classroom space.

C. ALTERNATIVES TO THE PROJECT

The principle alternative to the proposed project would be a "no build" alternative. This would maintain the existing agricultural use of the land and eliminate the adverse impacts resulting from the proposed project.

The other alternative would be a different type of project. This could involve a different combination of land uses, i.e., more single family/less attached housing or less residential/some commercial, etc.

Ultimately, the second alternative would not significantly change the impacts resulting from the project. The primary impact, the loss of agricultural land, would result regardless of the project mix. The other impacts, the air quality, noise and school children would change slightly according to the mix, but not enough to make a significant difference.

D. IRREVERSIBLE AND LONG TERM IMPACTS

The loss of agricultural land will be an irreversible and long-term impact. Once the land is developed with homes and businesses, there is little likelihood that the land will ever be used for agricultural purposes.

E. CUMULATIVE IMPACTS

The proposed project will have a cumulative impact on the loss of agricultural land In the past several years, Lakeshore Village, a 96± acre development, Lobaugh Meadows, a 92± acre development and Kennedy Ranch, a 88± acre development have been approved. These development will utilize a total of 276± acres of agricultural land when these projects are constructed.

Unfortunately, all land in and around the City of Lodi is designated prime agricultural land. The entire area surrounding the City is in agricultural use. Almost every development, large or small, must utilize agricultural land. There are no non-prime soil, non-agricultural parcels around Lodi. The residential, commercial and industrial requirements of the City and its residents necessitate urbanization of agricultrual land.

The other significant cumulative impact is the impact on the L.U.S.D. L.U.S.D. estimates place the number of new students generated by developments in Lodi and North Stockton at several thousand students in the next few years. These students place a strain on the District's ability to provide classroom space, particularly in light of the fiscal problems facing schools.

Currently, developers both in Lodi and in Stockton have been working with the L.U.S.D. to provide funds for additional classroom space. This will help alleviate some of the short-term problems facing the schools.

F. GROWTH-INDUCING IMPACTS

The installation of various public utilities, particularly storm drainage, could allow additional development of the area. The construction of the G-South storm drainage basin could provide storm drainage for the area from Vine Street south to Harney

Lane. This would remove a major roadblock to development of this area.

It must be noted, however, that the "Greenbelt" initiative will determine whether any further development will take place in this area. Currently all the land outside of the existing City limits must have voter approval prior to annexation and development.

G. ENERGY CONSERVATION

Structures in the project will be constructed to meet State of California Energy Standards. The standards include such things as window area, insulation, energy efficient appliances, etc.

A majority of the lots in the project have a north-south orientation. This orientation provides the best adaptability for both passive and active solar design. The developer could also offer various solar design packages as part of the construction of the homes.

LIST OF RESOURCE PUBLICATIONS

Residential Growth Statistics - City of Lodi, 1981.

Planning Level Subsurface Investigation - Lodi-Tamba Development, Moore & Taber - Consulting Engineers & Geologist, 1979.

Lakeshore Village Final EIR, City of Lodi, 1980.

City of Lodi General Plan - City of Lodi.

San Joaquin County General Plan to 1995 - Noise Element.

Transportation & Engineers Handbook - Institute for Traffic Engineers, 1976.

San Joaquin County General Plan - Conservation Element.

Procedure for Basis for Estimating On-Road Motor Vehicle Emissions - State of California Air Resources Board, January 1981.

Kennedy Ranch Draft EIR, City of Lodi, 1981

Soils Investigation - Proposed 10 Acre Lake - Kennedy Ranch, J. H. Kleinfelder & Assoc., Geotechnical Consultants, Engineering Lab; 1981.

Filley Ranch EIR 81-2 - City of Lodi, 1981

COMMENTS

State of California
GOVERNOR'S OFFICE
OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

GEORGE DEUKMEJIAN
GOVERNOR

June 17, 1983

David Morimoto
City of Lodi
221 W. Pine Street
Lodi, California 95240

Subject: # 83050502 Sunwest IV Draft EIR (83-1)

Dear Mr. Morimoto:

The State Clearinghouse submitted the above named draft Environmental Impact Report (EIR) to selected state agencies for review. The review period is closed and the comments of the individual agency(ies) is(are) attached. If you would like to discuss their concerns and recommendations, please contact the staff from the appropriate agency(ies).

When preparing the final EIR, you must include all comments and responses (CEQA Guidelines, Section 15146). The certified EIR must be considered in the decision-making process for the project. In addition, we urge you to respond directly to the commenting agency(ies) by writing to them, including the State Clearinghouse number on all correspondence.

A 1981 Appellate Court decision in Cleary v. County of Stanislaus (118 Cal. App. 3d 348) clarified requirements for responding to review comments. Specifically, the court indicated that comments must be addressed in detail, giving reasons why the specific comments and suggestions were not accepted. The responses must show factors of overriding significance which required the suggestion or comment to be rejected. Responses to comments must not be conclusory statements but must be supported by empirical or experimental data, scientific authority or explanatory information of any kind. The court further said that the responses must be a good faith, reasoned analysis.

In the event that the project is approved without adequate mitigation of significant effects, the lead agency must make written findings for each significant effect and it must support its actions with a written statement of overriding considerations for each unmitigated significant effect (CEQA Guidelines Section 15088 and 15089).

If the project requires discretionary approval from any state agency, the Notice of Determination must be filed with the Secretary for Resources, as well as with the County Clerk. Please contact Debora Fudge at (916) 445-0613 if you have any questions about the environmental review process.

Sincerely,

Ron Bass

Ron Bass, Director
State Clearinghouse

RECEIVED
JUN 20 1983
COMMUNITY DEVELOPMENT

cc: Resources Agency
attachment

State of California
GOVERNOR'S OFFICE
OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

GEORGE DEUKMEJIAN
GOVERNOR

June 17, 1983

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Sincerely,

Ron Bass

Ron Bass, Director
State Clearinghouse

RECEIVED
JUN 20 1983
COMMUNITY DEVELOPMENT

cc: Resources Agency
attachment

State of California

Business and Transportation Agency

Memorandum

To : Ron Bass, Director
State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

Date: June 7, 1983

File : 10-SJ-12
Sunwest IV
Residential Development
SCH #83050502

From : DEPARTMENT OF TRANSPORTATION
Preston W. Kelley, District 10 Director

Subject:

We have reviewed the above noted report and offer the following comment:

The EIR should address the impact of increased traffic from the subdivision on the intersection of Lower Sacramento Road and State Route 12.

Please send a copy of the final report to John Gagliano, Caltrans, District 10 Office, P. O. Box 2048, Stockton, CA 95201.

John Gagliano

JOHN GAGLIANO, P.E.
A-95 Coordinator
(209) 948-7875
ATSS 423-7875

RECEIVED
JUN 14 1983
State Clearinghouse

JGE:jh

Attachment

cc: TGSmith

State of California

Department of Health Services

Memorandum

To : Ron Bass
STATE CLEARINGHOUSE
1400 Tenth Street, Room 121

Date : JUN 08 1983

Subject : Sunwest IV DEIR
SCH #83050502

From : ENVIRONMENTAL HEALTH DIVISION
714 P Street, Room 430
322-2308

The Department has reviewed the subject environmental document and offers the following comments.

The section on noise indicates that a portion of the site is and will continue to be exposed to noise levels in excess of standards specified in the County's Noise Element. Because the noise exposures are high, i.e., in excess of 65 L_{dn}, specific mitigation measures and their effectiveness should be described.

A potential noise source not described in the EIR is that due to agricultural operations immediately south of the site. Although such noise impacts may be seasonal, they do warrant some discussion.

Finally, noise is described in units of decibels, not "decibles".

If you have any questions or need further information concerning these comments, please contact Dr. Jerome Lukas of the Noise Control Program, Office of Local Environmental Health Programs, at 2151 Berkeley Way, Room 613, Berkeley, CA 94704, 415/540-2665.

Harvey F. Collins

Harvey F. Collins, Ph.D.
Deputy Director
ENVIRONMENTAL HEALTH DIVISION

RECEIVED
JUN 03 1983
State Clearinghouse

lodi unified school district

FACILITIES and PLANNING, 815 W. LOCKEFORD ST., LODI, CA. 95240 (209) 369-7411 - 466-0353

June 8, 1983

City of Lodi
Community Development Department
221 West Pine Street
Lodi, CA 95240

Subject: Draft EIR - Sun West Unit No. 4

Gentlemen:

The EIR should fully address the following:

A. Number of students per home the project will generate.
B. Schools students will be attending and distance from project site.
C. Will busing be required.
D. Current enrollment in attendance area schools.
E. Ways developer can help mitigate the impact of additional students.

This project is located in the following attendance areas:

Vinewood	K-6
Sr. Elementary	7-8
Lodi High	9-12

Projected enrollment for 1983-84:

Vinewood	620
Sr. Elementary	880
Lodi High	2134

Student transportation:

Transportation is provided if students live no less than the following distances from school.

K-6	1.5 miles
7-8	2.5 miles
9-12	3.5 miles

Exceptions to the above may be made at the discretion of the Superintendent on the basis of pupil safety, pupil hardship, or District convenience.

District has signed agreement with developer for direct payment of development fees. These monies can then be applied towards construction of permanent facilities, rather than interim facilities as mandated by the law now in effect regarding impaction fees.

Sincerely,

Mary Joan Starr, AICP
Facilities & Planning

BM/js

RECEIVED
JUN 10 1983
COMMUNITY DEVELOPMENT DEPARTMENT

Mailed to Lodi Unified and Filley 315 W. McKinnon St Lodi, Cal. 95240

0102000

1981 APR 24 AM 10 25

RECORDED AT REQUEST OF

FEE

AGREEMENT

This AGREEMENT, made and entered into this 21st day of April, 1981, by and between FILLEY RANCH, a General Partnership, having its principal place of business in Lodi, California, (hereinafter, "DEVELOPER") and LODI UNIFIED SCHOOL DISTRICT OF SAN JOAQUIN COUNTY, a Political Subdivision of the State of California, (hereinafter, "LODI UNIFIED").

W_I_T_N_E_S_S_E_T_H:

The parties hereto acknowledge and mutually agree that:

1. The purpose of this Agreement is to mitigate the adverse environmental impacts upon Lodi Unified caused by Developer's planned residential development.

2. During a period to cover approximately three (3) years, Developer plans to construct approximately two hundred twenty-five (225) residentail units within the district governed by Lodi Unified, as part of a project commonly know as "FILLEY RANCH."

3. Construction of said residential units will cause increased enrollment in the district, compounding the current problems faced by Lodi Unified in providing facilities for students.

4. Developer desires to alleviate the impact upon Lodi Unified of said anticipated increase in enrollment.

5. The real property constituting the site upon which the heretofore mentioned project is to be constructed is more particularly described as:

That certain real property situate in the County of San Joaquin, State of California, described as follows:

A portion of the Southeast Quarter of Section 10, Township 3 North, Range 6 East, Mount Diablo Base and Meridian, more particularly described as follows:

Parcel "B" as said Parcel is shown upon that certain

Parcel Map filed December 7, 1976, in Book 3 of Parcel Maps, at page 173, San Joaquin County Records.

6. Lodi Unified has no objection to Developer's "Filley Ranch" project, provided that Developer makes a reasonable and appropriate contribution to mitigate the impact that the project may have on Lodi Unified.

7. Developer shall make such reasonable and appropriate contribution by:

(a) Depositing with Lodi Unified an amount equal to, and in lieu of, any sums prescribed to be deposited for such a residential development by Lodi City Ordinance number 1149, Chapter 19A of the Lodi City Code, commonly referred to as the "School Facilities Dedication Ordinance."

(1) It is understood by the parties hereto that the fee schedule, under the provisions of said Ordinance, is set by the City Council periodically by resolution.

(2) The rate of fees applicable to this Agreement shall be the rate in effect on the date payment becomes due under the terms of this Agreement.

(3) In no event shall the fees exceed two percent (2%) of the actual construction cost of the Developer.

(4) In the event that said Ordinance is declared unconstitutional by any court of law having jurisdiction over the City of Lodi, the applicable rate of fees shall be the last rate set by the Lodi City Council prior to the effective date of the court's ruling. Said declaration of unconstitutionality shall have no force or effect upon Lodi Unified's ability or right to collect the fees set by this Agreement.

(5) Said fees shall be due and deposited with Lodi Unified at such time as Developer shall be in a position to receive from the City of Lodi, all building permits necessary for the construction of such portion of the development as Developer is then currently planning to develop.

(6) Upon receipt of the fees provided for by this Agreement, Lodi Unified shall notify the City of Lodi of its receipt thereof and request that the Developer be exempt from any fee imposed upon the same residential units by Lodi City Ordinance number 1149, Chapter 19A of the Lodi City Code.

(7) In the event that the City of Lodi should

collect any fees under said Ordinance, upon residential units for which Developer has already paid a fee under this Agreement, Lodi Unified shall reimburse Developer for any duplication of payment based upon the same residentail units, and in no event shall Lodi Unified collect the fee both under the Ordinance and this Agreement.

8. In the event that school facilities are constructed with proceeds from the sale of bonds and/or by levy of a special override tax by Lodi Unified eliminating the student housing shortage caused by Developer's project prior to completion of said project, Developer shall be released from its obligation under this Agreement, and shall be refunded all unexpended moneys then on deposit with Lodi Unified.

9. There is currently a "County Task Force Dealing With School Housing Shortage" which is working to find a solution to the aforementioned shortage of facilities for students in the Lodi Unified School District. In order that this Agreement will not hinder the efforts of said Task Force, in the event that the "Task Force" should conclude that a fee is an appropriate vehicle to remedy the aforementioned shortage of facilities, and the City Council of Lodi should approve of, and assess such a fee within six months of the execution of this Agreement, the Developer shall abide by said fee and Ordinance, and this Agreement shall become null and void and of no further effect.

10. In the event that the Developer should breach any term of this Agreement, Lodi Unified reserves the right to notify the City of said breach and request that the City withdraw its approval of Developer's project and refrain from issuing any further approvals until Developer agrees to remedy the breach or otherwise mitigate the impact of its project on Lodi Unified's overcrowded classroom conditions. Lodi Unified's reserved right under this paragraph shall be in addition to, and shall in no way preclude, its right to pursue other lawful remedies for breach of this Agreement.

11. So long as Developer performs under the terms of this Agreement, Lodi Unified will not oppose Developer's efforts to gain approval from any public agency or entity of any aspsect of the "Filley Ranch" project.

12. Lodi Unified shall record a copy of this Agreement in the Official Records of San Joaquin County. From and after the date of such recording, the obligation to pay any fee under this Agreement shall constitute a lien on the title to each residential unit contained in the "Filley

Ranch" Development, until such time as the lien is extinguished by payment of the appropriate fee. Lodi Unified shall execute appropriate releases for each residential unit upon receipt of fees pursuant to this Agreement.

13. In the event any portion of the Agreement shall be found or declared by a court of competent jurisdiction to be invalid, the remaining terms and conditions hereof not expressly declared invalid shall remain in full force and effect. A legislative or judicial amendment or declaration altering or eliminating the authority conferred upon the City of Lodi by the provisions of Government Code Section 65970, et seq., or otherwise declaring the School Facilities Dedication Ordinance to be invalid shall not affect the rights and obligations created by this Agreement, except as specifically provided hereinbefore.

14. In the event that either party to this Agreement resorts to litigation to enforce the terms and conditions hereof, or to seek declaratory relief, or to collect damages for breach hereof, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees.

15. All notices and payments to be given or made under this Agreement shall be in writing and shall be delivered either personally or by first-class U.S. mail, postage prepaid to the following persons at the locations specified:

FOR THE DISTRICT

Director of Facilities & Planning
Lodi Unified School District
815 West Lockeford Street
Lodi, California 95240

FOR THE DEVELOPER

Ronald B. Thomas
1209 W. Tokay Street
Suite 7
Lodi, California 95240

16. TERM. This Agreement shall be effective the date first above written and shall terminate upon completion of the construction of the final residential unit in the project, unless otherwise agreed by the parties.

17. MODIFICATION. This Agreement contains each and every term and condition agreed to by the parties and may

not be amended except by mutual written agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement the day and year first written above.

FILLEY RANCH, a Partnership,

By _____

By _____

-Hereinabove Called "DEVELOPER"-

LODI UNIFIED SCHOOL DISTRICT OF SAN JOAQUIN COUNTY, a Political Subdivision of the State of California,

By _____

-Hereinabove Called "LODI UNIFIED"-

81026690

STATE OF CALIFORNIA)
(SS.
COUNTY OF SAN JOAQUIN)

On this 22nd day of April, 1981, before me, the undersigned, a Notary Public in and for the County of San Joaquin, State of California, residing therein, duly commissioned and sworn, personally appeared Ronald B. Thomas and Richard J. Ward, known to me to be two of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Nadine V. Horst
- NOTARY PUBLIC
in and for the State of California, with principal office in the County of San Joaquin.

OFFICIAL SEAL
NADINE V. HORST
Notary Public-California
San Joaquin County
My Commission Expires June 3, 1983

My Commission Expires: 6/3/83

STATE OF CALIFORNIA)
(SS.
COUNTY OF SAN JOAQUIN)

On this 21st day of April, 1981, before me, the undersigned, a Notary Public in and for the County of San Joaquin, State of California, residing therein, duly commissioned and sworn, personally appeared Elberth C. Larson, known to me to be the Superintendent of the entity described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the entity therein named, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of San Joaquin the day and year in this Certificate first above written.

Barbara J. Minton
-- NOTARY PUBLIC
in and for said County and State.

OFFICIAL SEAL
BARBARA J. MINTON
NOTARY PUBLIC — CALIFORNIA
Principal Office in San Joaquin County
My Commission Expires March 8, 1984

My Commission Expires: 3/8/84

Chris Keszler, D.D.S., Inc.
816 WEST LODI AVENUE
LODI, CALIFORNIA 95240

June 14, 1983

Mr. David Morimoto
Lodi Planning Department
221 West Pine Street
Lodi, CA 95240

Re: Draft EIR No. 83-1
SUNWEST IV Development

Dear Mr. Morimoto:

Two comments regarding the draft EIR:

1. Potential Office - Institutional Uses.

Because of the proximity of SUNWEST IV to Lodi Community Hospital, we have been approached and are considering using the property closest to Lodi Community Hospital and along Lower Sacramento Road for offices or institutions (nursing home/board and care). The two parcels I am speaking of are currently designated on the map as "cluster homes".

2. SUNWEST III 92.6% built out.

On page 1, paragraph I you indicate that SUNWEST Unit No. 3 has approximately 85% of the lots built on. We now find that, of the 54 lots in SUNWEST III, only 4 remain bare. Therefore SUNWEST III is actually 92.6% built on at this time.

Thank you for this opportunity to comment.

Very truly yours,

Chris R. Keszler

Chris R. Keszler

June 8, 1983

City of Lodi
Planning Department
221 West Pine Street
Lodi, CA 95240

Attention: Mr. David Morimoto

Re: Draft EIR No. 83-1
SUNWEST IV Development

Dear Mr. Morimoto:

We, the undersigned, are neighbors immediately adjacent to the proposed SUNWEST IV development. In talking with the developers, we understand that this project will generally be low-density residential with some higher density or office-institutional uses toward Lower Sacramento Road.

It appears that one of the main concerns contained in the draft EIR is the impact of the SUNWEST IV development on adjacent farmland. (See SUNWEST IV Draft EIR, Summary paragraph 1, page V.)

For many years urbanization of property in our area has been a reality. Many of the parcels have been cut and recut in size. This has already restricted farming operations.

It is therefore our belief that this project will have no impact, neither will it restrict or limit the farming operations as they presently exist in the areas surrounding this project.

Very truly yours,

James Amaral
0801 E. Hwy 12
Lodi CA

Melvin O. Helms
1613 E. Hwy 12
Lodi, CA 95240

[illegible]
970 E. Hwy 12 Lodi

Jack Weil
Box 1081 E. Hwy 12
Lodi Ca. 95240

RESPONSES TO COMMENTS

RESPONSE TO DEPARTMENT OF TRANSPORTATION COMMENT
TRAFFIC IMPACT ON HIGHWAY 12 - LOWER SACRAMENTO ROAD INTERSECTION

The project will generate approximately 1197 vehicle trips per day. Assuming that approximately one-half of the project vehicles will travel north on Lower Sacramento Road and one-half will travel south on Lower Sacramento Road, 600 v.t.s. will be added to the Kettleman Lane/Lower Sacramento Road intersection. Currently there are 6,500 v.t.s. on Lower Sacramento Road between the project and Kettleman Lane (Highway 12) and 10,000 v.t.s on Kettleman Lane east of Lower Sacramento Road. The 600 v.t.s. added by the project will represent an additional 9% on Lower Sacramento Road and 6% on Kettleman Lane.

It is not expected that the added traffic volume will significantly impact the Kettleman Lane/Lower Sacramento Road intersection. The current 4-way stop handles traffic without any unusual traffic delays or safety hazards. At some future date, as the southwest portion of Lodi continues to develop, there may be a need for a traffic signal light at the intersection. That determination will be made by Cal Trans and San Joaquin County.

RESPONSE TO DEPARTMENT OF HEALTH SERVICES

Noise Impact on Residences

The Noise Contour estimates prepared by the City of Lodi in cooperation with the San Joaquin County Council of Governments (COG) indicates that the 1995 traffic projections show the following:

70 decibels to 60' of the roadway
65 decibels to 160' of the roadway.

The U.S. Department of Transportation has determined that with proper construction techniques, the full reduction potential of a sensitive use structure can be realized. This corresponds to approximately 20 dBA for an ordinary wood frame construction and 25 dBA for masonry buildings.

Building Type	Window Condition	Noise Reduction Due to Exterior of the Structure
All	Open	10 dB
Light Frame	Ordinary Sash Closed	20
	With Storm Windows	25
Masonry	Single Glazed	25
Masonry	Double Glazed	35

With the use of good construction techniques, double-glazed windows and reduced window area on the west sides of the building, a reduction of 25 dBA is possible. With added insulation and at least 30' of setback from the nearest travel lane of Lower Sacramento Road.

The City can require that the developer provide an acoustical analysis for any residential project that falls within the high noise contours. The analysis would determine the extent of the noise problem, what is the most effective and economical way of reducing those levels and make sure that the required results are achieved.

Agricultural Noise

Although there will be some agriculturally related noise from tractors, spraying and harvesting equipment, the noise is seasonal and intermittent. Agricultural noise also occurs primarily during the day, when there is already a higher ambient noise level and most people are not sleeping.

In 1973, the San Joaquin COG conducted a countywide survey on noise. Of the several hundred responses received, not one complaint involved agricultural noise. This is significant considering that San Joaquin

County is a highly agricultural area. Every city in the county has numerous residential developments adjacent to agricultural land.

While this does not mean that there are not agriculturally related noise problems, it does appear that people are less bothered by agricultural noises than by other sources of noise. It may be that because the noise is seasonal, of relatively short duration and primarily daytime, people are more tolerant of these noises.

NOTICE OF PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF LODI TO CONSIDER THE RECOMMENDATION OF THE LODI PLANNING COMMISSION TO THE CITY COUNCIL THAT THE FINAL ENVIRONMENTAL IMPACT REPORT FOR SUNWEST IV, A 52.6 ACRE MIXED RESIDENTIAL OR RESIDENTIAL-INSTITUTIONAL PROJECT PROPOSED FOR THE EAST SIDE OF LOWER SACRAMENTO ROAD, LODI, ONE-QUARTER MILE NORTH OF KETTLEMAN LANE, LODI, WAS ADEQUATE

NOTICE IS HEREBY GIVEN that on Wednesday, August 3, 1983 at the hour of 8:00 p.m. or as soon thereafter as the matter may be heard, the Lodi City Council will conduct a public hearing in the Council Chambers, City Hall, 221 West Pine Street, Lodi, California, to consider the recommendation of the Lodi Planning Commission to the City Council that the Final Environmental Impact Report for Sunwest IV, a 52.6 acre mixed residential or residential-institutional project proposed for the east side of Lower Sacramento Road, Lodi, one-quarter mile north of Kettleman Lane was adequate.

A copy of the subject Final Environmental Impact Report for Sunwest IV is on file in the office of the City Clerk and can be reviewed at any time during regular business hours.

Information regarding this item may be obtained in the office of the Community Development Director at 221 West Pine Street, Lodi, California. All interested persons are invited

to present their views either for or against the above proposal. 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.

Dated: July 20, 1983

By Order of the City Council

Alice M. Reimche

ALICE M. REIMCHE
City Clerk

'83 JUN -9 AM 9 24

MEMORANDUM , City of Lodi, Community Development Department

TO: CITY CLERK AND CITY ATTORNEY

FROM: COMMUNITY DEVELOPMENT DIRECTOR

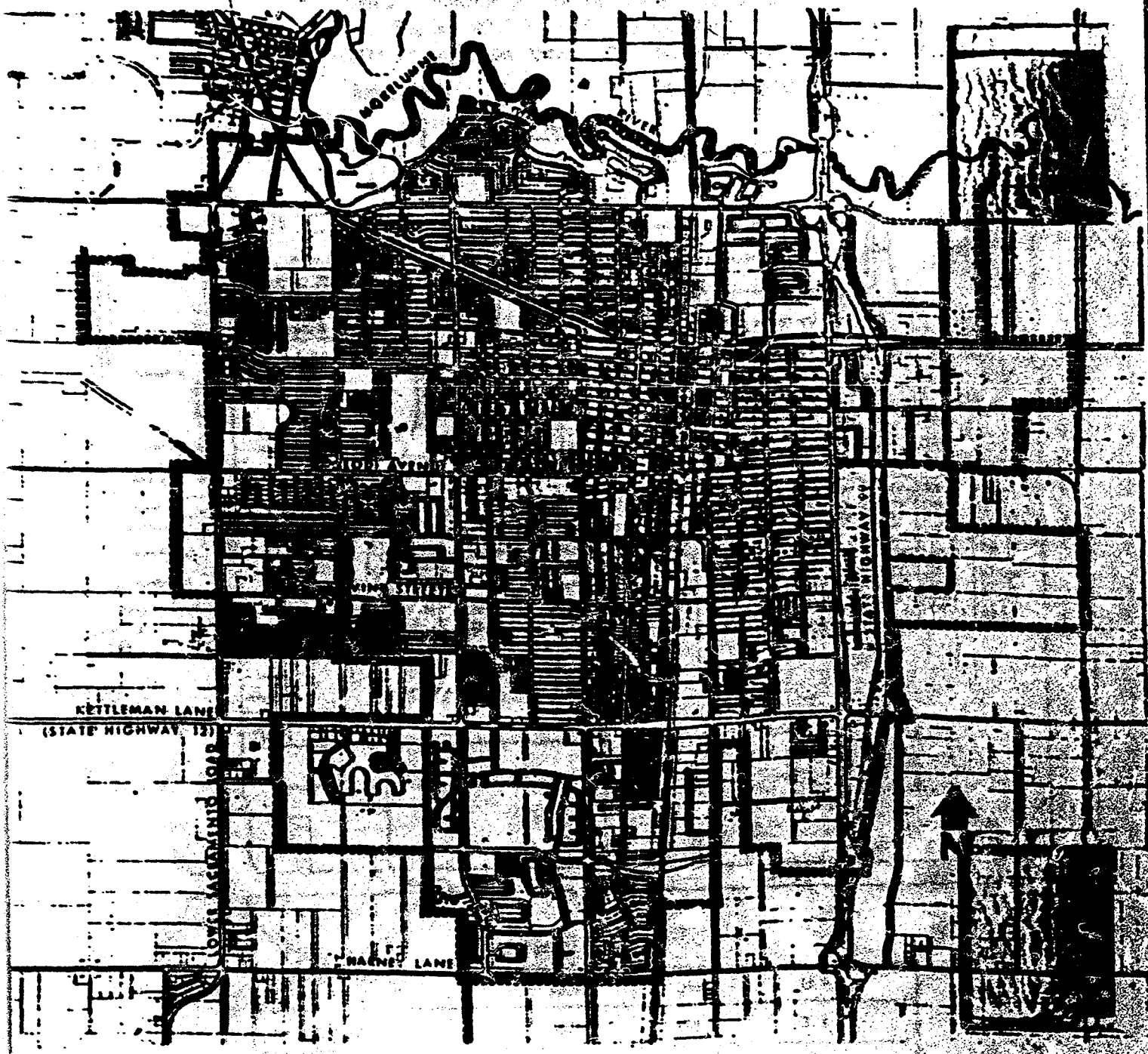
DATE: JUNE 7, 1983

SUBJECT: NOVEMBER, 1983 - GENERAL PLAN ELECTION
LANGUAGE FOR BALLOT

Shall the Land Use Element of the Lodi General Plan be amended to include Sunwest IV, a proposed 52.6 acre project containing 103 single-family lots, a 7.8 acre parcel for cluster homes and a 4.6 acre parcel for cluster homes or a church site. The project is bounded by Sunwest, Unit No. 3 on the north, the Woodbridge Irrigation District Canal on the east; a line one-quarter mile north of West Kettleman Lane (State Route 12) on the south and Lower Sacramento Road on the west.

SUNWEST IV
LOCATION MAP

EIR 83-1 Z-83-03



TENTATIVE MAP OF TRACT NO. 1733

SUNWEST IV

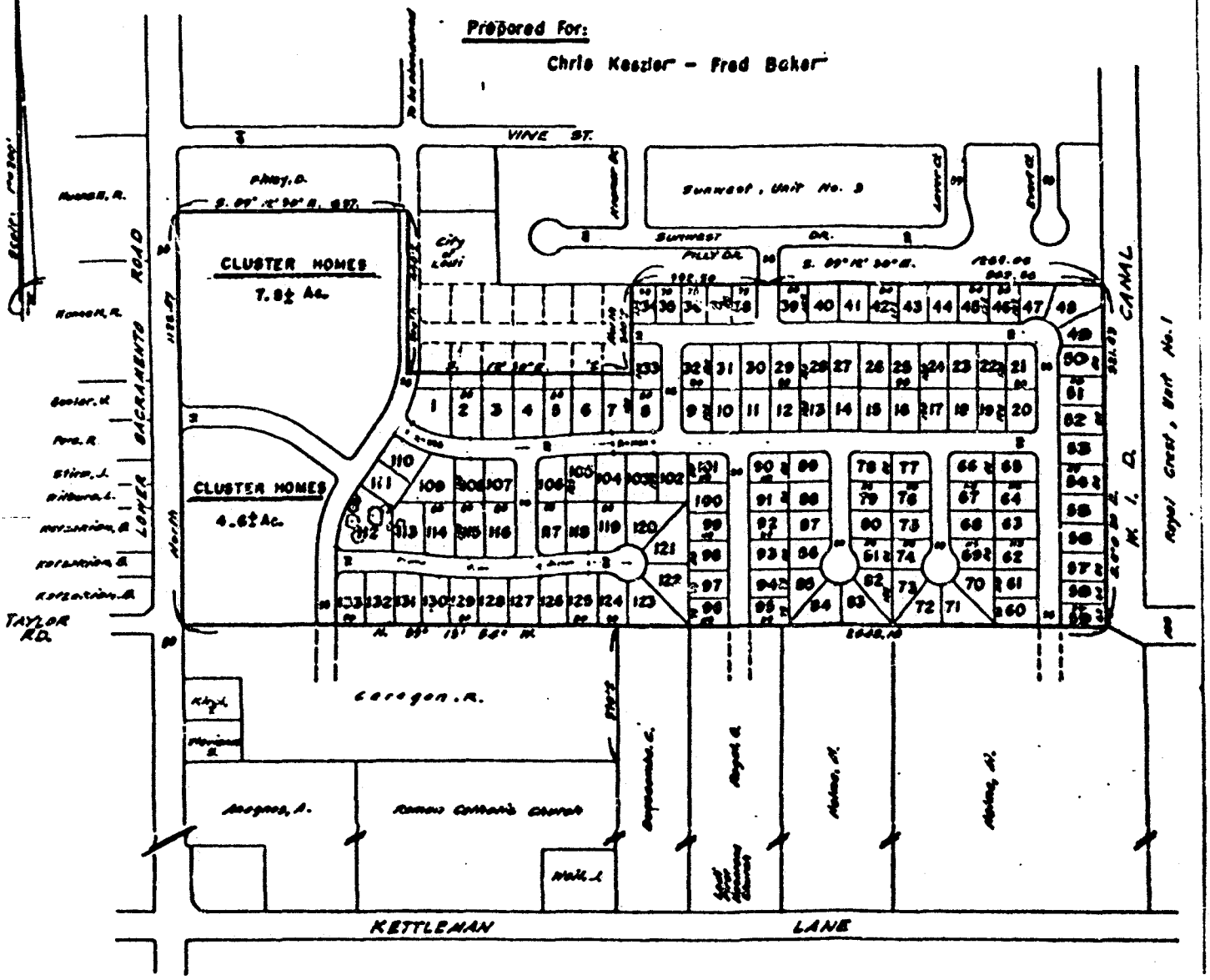
SUBDIVISIONS OF SAN JOAQUIN COUNTY

Being a portion of the southeast quarter of
Section 10, T.3N, R.6E, M.D.B.& M,
City of Lodi, San Joaquin County, California.

June 1982 Scale: 1" = 200'

Prepared For:

Chris Keszler - Fred Baker



	ACRES	UNITS	U.P.A.
RESIDENTIAL	40.2	133	3.3
CLUSTER HOMES	12.4	186	15
TOTAL	52.6	319	—
NET DENSITY — 6.1 U.P.A.			

Lodi City Council
City of Lodi
Lodi, Ca. 95240

8/3/83

We the undersign oppose to the opening of Filly Drive. The additional traffic is extremely dangerous to the residence & especially the children in our area. With only two entrances the traffic will be continuous & heavy.

AUG 3 8 1983
ALICE M. REYNOLDS
CITY CLERK
CITY OF LODI

Jerry Antrim
Donna Antrim
903 Laver Court
Lodi, Ca. 95240

RECEIVED

1983 AUG -3 PM 3:48

ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

August 2, 1983

Members of the Lodi City Council
City Hall
221 W. Pine St.
Lodi, California 95240

RE: Adequacy of the final Environmental Impact Report for Sunwest IV

Dear Sir:

As residents of Sunwest Drive and South Laver Court, we are totally opposed to the proposed plans for traffic flow from Sunwest IV.

The opening of Filley Drive will create a thoroughfare of traffic in our neighborhood. We have many children living here and their safety is our utmost concern. We feel the level of noise and congestion caused by this traffic will adversely effect our homes.

We strongly disagree with the findings of the EIR!!

At this time, we do not oppose the development of Sunwest IV. However, if the traffic pattern is not adjusted, we may be forced to reevaluate our position.

We propose the alternative use of the Filley Drive area into a green belt for pedestrian and bicycle traffic. The area must be closed to all motor vehicles.

Thank you for your consideration.

Donna Antrim 903 LAVER CT.
Jerry Antrim 903 LAVER CT.
Mabel Sisemore 2106 Sunwest Dr
Roy Edwards 2124 Sunwest
R. Sisemore 2106 Sunwest
Linda M. Balfour - 916 S. LAVER CT LODI, CA.
Harold V. Schmidt 2117 Sunwest Dr. Lodi.
Lorene E. Schmidt 2117 Sunwest Dr
Gene M. Matson 911 Laver Court
Michael R. Matson 911 Laver Ct.
Donald S. Clark 2111 Sunwest Dr

CC: Lodi News-Sentinel

Sharon A. Clark 2111 Sunwest Dr
Gordon Dahl 910 Laver Ct.
Carolyn Dahl 910 Laver Ct.
Jennie Wong Donald Wong 2112 Sunwest Dr.

Aug. 2, 1983

Lodi City Council,

As we will be unable to attend the Council meeting this evening on the proposed Sunwest IV subdivision, we would like to express our view on one aspect of it. This was the topic of a recent neighborhood meeting with the developers, Kessler & Baker. As we, and our neighbors, explained to the above developers, we are not in opposition to the proposed development, only one aspect of the planning, and that is the opening of Filly Dr. to automobile traffic. From looking at the map of Sunwest IV, it is apparent that about 60% of the residents of the single dwellings will use Filly Dr. and then Sunwest Dr. in order to get to Vine St., and the greater Lodi area. They would have to go out of their way to use the proposed Community Dr., and have even less reason to use lower Sacramento Rd.. We believe this would create a dangerous and high density traffic pattern on Sunwest

Dr.. Now, we are only in opposition to the opening of Filly Dr. to automotive traffic, not pedestrian traffic. We support any type of access way that allows for pedestrian traffic, children going to school, etc., and for fire trucks if that is a necessity, there are other areas in town where this has been done. Thank you for your consideration of our views on Filley Dr..

Mr. & Mrs. Gordon Dahl
910 Lamar Ct.
Lodi

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1983 AUG -3 PM 3:48
ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

August 2, 1983

RECEIVED

1983 AUG -3 PM 3:49

ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

Members of the Lodi City Council
City Hall
221 West Pir· Street
Lodi, Calif· ıia, 95240

Re: Notice of public hearing on the adequacy of the final Evironmental Impact Report (EIR) for Sunwest IV, August 3, 1983.

Dear Council Member:

We invite your attention to the EIR's statements about traffic volume and flow into Vine Street from the proposed Sunwest IV development. The statement is made that Community Drive will be the street carrying the major portion of the traffic from the entire Sunwest IV area to Vine Street. A cursory glance at the map might lead one to believe this conclusion since Community Drive is a relatively long and impressive street when compared to Filley Street, Kramer Drive, and Laver Court. We believe a more thorough examination of the map in the EIR and having lived on Sunwest Drive and observing traffic here will lead to another conclusion. Vehicular traffic going to central Lodi from Sunwest IV will take the path of least resistance or the shortest distance between two points. This means that traffic from over 100 of the 133 lots will enter Vine Street after having been funneled through Filley Drive, Sunwest Drive, and either Kramer Drive or Laver Court and more likely the latter. It would be totally unacceptable to have a major portion of the 2500 daily vehicular trips projected added to Sunwest Drive traffic volume.

Therefore, it is our vigorous objection to the conclusion that Community Drive will carry the major portion of traffic to Vine Street. Indeed, Sunwest Drive will become one of the busiest streets for its length in Lodi unless this street plan is revised to force the traffic to use Community Drive to reach Vine Street.

We believe the best alternative is to close Filley Street to vehicular traffic and limit it to pedestrian and bicycle traffic so that children from Sunwest IV will have a shorter and safer route to schools. This would be considerably safer for the children living in Sunwest III (Sunwest and Kramer Drives and Laver Court) as well.

Respectfully submitted for your consideration,

D. Sisemore MD

Mabel E. Sisemore

Daniel C. Sisemore, M. D.
Mabel E. Sisemore
Home owners and residents at 2106 Sunwest Drive

RECEIVED
1983 AUG -3 PM 3 48
ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

Dr. and Mrs. Morris Balfour
916 S. Laver Court
Lodi, Ca. 95240

August 2, 1983

Members of the City Council
City Hall
221 W. Pine St.
Lodi, Ca. 95240

Re: Adequacy of the Final Environmental Impact Report for Sunwest IV

Dear Council Members:

As residents of Sunwest III and as owners/occupants of the home located on the west side of the curve where Sunwest Dr. becomes South Laver Court, we are immediately concerned with the planned traffic flow pattern for Sunwest IV. We have examined the Final Environmental Impact Report for Sunwest IV and both tentative maps for Tract No. 1733. We believe that both maps, if in fact developed, would result in an unacceptable amount of vehicular traffic funneling down Sunwest Dr. and particularly around the curve onto South Laver Court and so out onto Vine St. eastbound toward the center of Lodi.

In either map, residents of Sunwest IV having any reason to go to downtown Lodi or to any of the schools attended by Sunwest IV children, i.e. Vinewood Elementary, Senior El or Lodi High, would find that the shortest way (the "short-cut") would be north out Filly Dr. to Sunwest Dr. From Sunwest Dr. traffic could go out to Vine St. by proceeding either north on Kramer Dr. or north on South Laver Court. However, anyone heading either toward the center of town or toward any of the schools serving Sunwest IV would tend to move out to Vine St. via South Laver Court.

This traffic flow pattern would result in transforming a low traffic volume residential street (Sunwest Dr./South Laver Court) into a high volume thoroughfare.

We have two very young children and we fear for their lives and safety should Sunwest Dr./South Laver Court become a busy street. In addition, there are at least 10 other young children living in the homes located immediately around ours at the curve of Sunwest Dr./South Laver Court. This curve was <u>clearly</u> <u>not</u> designed to accommodate a high traffic volume!

We speak as the owners/occupants of the house located directly in the path of any driver who might miss the curve of Sunwest Dr. onto South Laver Court.

We do not, at this time, object to the residential development of Sunwest IV. However, we <u>do</u> <u>object</u> to the planned vehicular traffic pattern.

We propose instead that Filly Dr. be developed as a walkway and bikeway between Sunwest III and IV, and be closed to <u>vehicular</u> traffic. In this way, the schoolchildren of Sunwest IV could walk in the most direct route to their schools <u>and</u> <u>also</u> be safe from the hazzards high vehicular

cont...

traffic on that route would present. There are numerous precidents in Lodi for such a walkway/bikeway. Also, as Sunwest IV has no plans for any parks, this area between Sunwest III and IV along what is now called Filly Dr. would be an excellant place for a green and grassy area!

Thank you for your consideration of our request.

Morris A. Balfour, M. D.
Linda M. Balfour

cc: Councilman Randy Snider
Public Works Director Jack Ronsko

MEMORANDUM, City of Lodi, Community Development Department

TO: CITY COUNCIL

FROM: COMMUNITY DEVELOPMENT DIRECTOR

DATE: AUGUST 3, 1983

SUBJECT: FINDINGS OF APPROVAL FOR SUNWEST IV - EIR 83-1

Approval of the project with the following findings:

1. The adverse impact of the loss of agricultural land is overridden by the following considerations:

   - prior to the passage of the Measure A growth initiative, the area had been designated for urban development in the Lodi General Plan.

   - there will be sufficient need for additional residential acreage to warrant the conversion of this agricultural land. Based on current projections, the City has a 3.75 year supply of residential acreage. Because of the time required for the election, governmental processing and major utility installations, the first residences in Sunwest IV will not be completed until sometime in 1985. By this time the City will have depleted much of the current supply of residential acreage.

   - all the land surrounding the C[illegible] of Lodi is prime agricultural land. The Sunwest IV property is contiguous to existing City development and is a logical location for residential development.

2. That Lower Sacramento Road, Vine Street and the street within the development will adequately handle the additional traffic generated by this project.

3. That the impact of high noise levels adjacent to Lower Sacramento Road will be reduced by requiring special sound reduction design and construction.

4. That the L.U.S.D. has acknowledged that an agreement has been entered into with the developer to mitigate the adverse impact of additional school children.

5. That the development of Sunwest IV will be contingent on the construction of an adequate storm drain facility to serve the project.

0035
0045a

Page 12

Council was apprised that at the last regular Planning Commission meeting, on August 8, 1983, Mr. Howard Arnaiz asked the Planning Commission to approve a Parcel Map which did not include the required cul-de-sac at the north end of Awani Drive. The Planning Commission indicated to Mr. Arnaiz that they could take no action unless the City Council changed their position on the need for the cul-de-sac and officially abandoned the public right-of-way.

A letter from the Sanguinetti & Arnaiz Development Company, Inc., requesting the City Council to abandon the unimproved public right-of-way located at the north end of Awani Drive was presented for Council's perusal. Awani Drive is located in the Mokelumne Village subdivision.

The unimproved cul-de-sac right-of-way fronts the City's old dumpsite (SOL) which was purchased by Howard Arnaiz in July 1982. A copy of the bidding documents which clearly indicates on page 3 that the new owner of the property (Howard Arnaiz) is responsible for the completion of the cul-de-sac at the end of Awani Drive was presented for Council's perusal. Mr. Arnaiz's bid transmittal indicating that his bid is being submitted in accordance with the conditions contained in the bidding document was also presented. Also presented was a copy of the plot plan that went with the bidding documents to show the bidders the exact parcel which they were acquiring and that the parcel did not include the future cul-de-sac right-of-way. It is felt that there is no question that Mr. Arnaiz purchased the City property knowing full well that he would have to construct a standard City cul-de-sac at the end of Awani Drive. It was made very clear to all parties bidding on the City's SOL that it would be their responsibility to construct the cul-de-sac improvements. If the Council now changes that requirement, then there is a real question whether that is fair to the other bidder. The estimated cost of the improvements is approximately $15,000. If this change was made prior to the bidding, it certainly appears that the bids the City received may have been $15,000 higher.

responded to questions as were posed by the Council...

ABANDONMENT OF AWANI DRIVE

A very lengthy discussion followed with questions being directed to Staff and again to Mr. Arnaiz.

RES. NO. 83-93

On motion of Council Member Pinkerton, Snider second, Council adopted Resolution No. 83-93 indicating its intention to abandon a portion of Awani Drive. The motion carried by the following vote:

Ayes: Council Members - Pinkerton, Snider, and Olson (Mayor)

Noes: Council Members - Murphy

Absent: Council Members - Reid

Based on what Mr. Arnaiz wants to do with the property, the Public Works Department has provided him with two other alternates which provide for standard street terminations, which would provide nearly the same development concept.

The Public Works and Community Development Departments feel very strongly that the City should not allow any substandard street terminations in Lodi. It is recommended that the City council not change the conditions of the SOL sale and that the subject public right-of-way not be abandoned.

Mr. Howard Arnaiz, President of Sanguinetti and Arnaiz Development addressed the Council regarding this matter and responded to questions as were posed by the Council.

ABANDONMENT OF AWANI DRIVE

A very lengthy discussion followed with questions being directed to Staff and again to Mr. Arnaiz.

RES. NO. 83-93

On motion of Council Member Pinkerton, Snider second, Council adopted Resolution No. 83-93 indicating its intention to abandon a portion of Awani Drive. The motion carried by the following vote:

Ayes: Council Members - Pinkerton, Snider, and Olson (Mayor)

Noes: Council Members - Murphy

Absent: Council Members - Reid

Sanguinetti & Arnaiz Development Co., Inc.

P. O. Box 8492 - Stockton, California 95208 - (209) 951-7230

August 10, 1983

Mr. Glen Robinson
City Engineer
221 W. Pine Street
Lodi, CA. 95240

RE: Scenic Overlook Parcel Map

Dear Mr. Robinson:

Pursuant to our conversation this day please consider this letter my official request of the Lodi City Council for their abandonment of that certain unimproved street right of way located at the north end of Awani Drive. This street right of way was retained by the City when they sold the scenic overlook property.

This request is necessary as per the instruction of Mr. Jim Schroder at the Planning Commission meeting of August 8, 1983 so that the City Planning Commission may act upon my tentative subdivision map which I have submitted and does not include this portion of street right of way as a public road.

I agree to pay the abandonment fees as required by the City.

It is my understanding that this request will be considered by the City Council at their regular meeting of August 17, 1983.

If there is additional information that I may provide you with or if you have any question please call me.

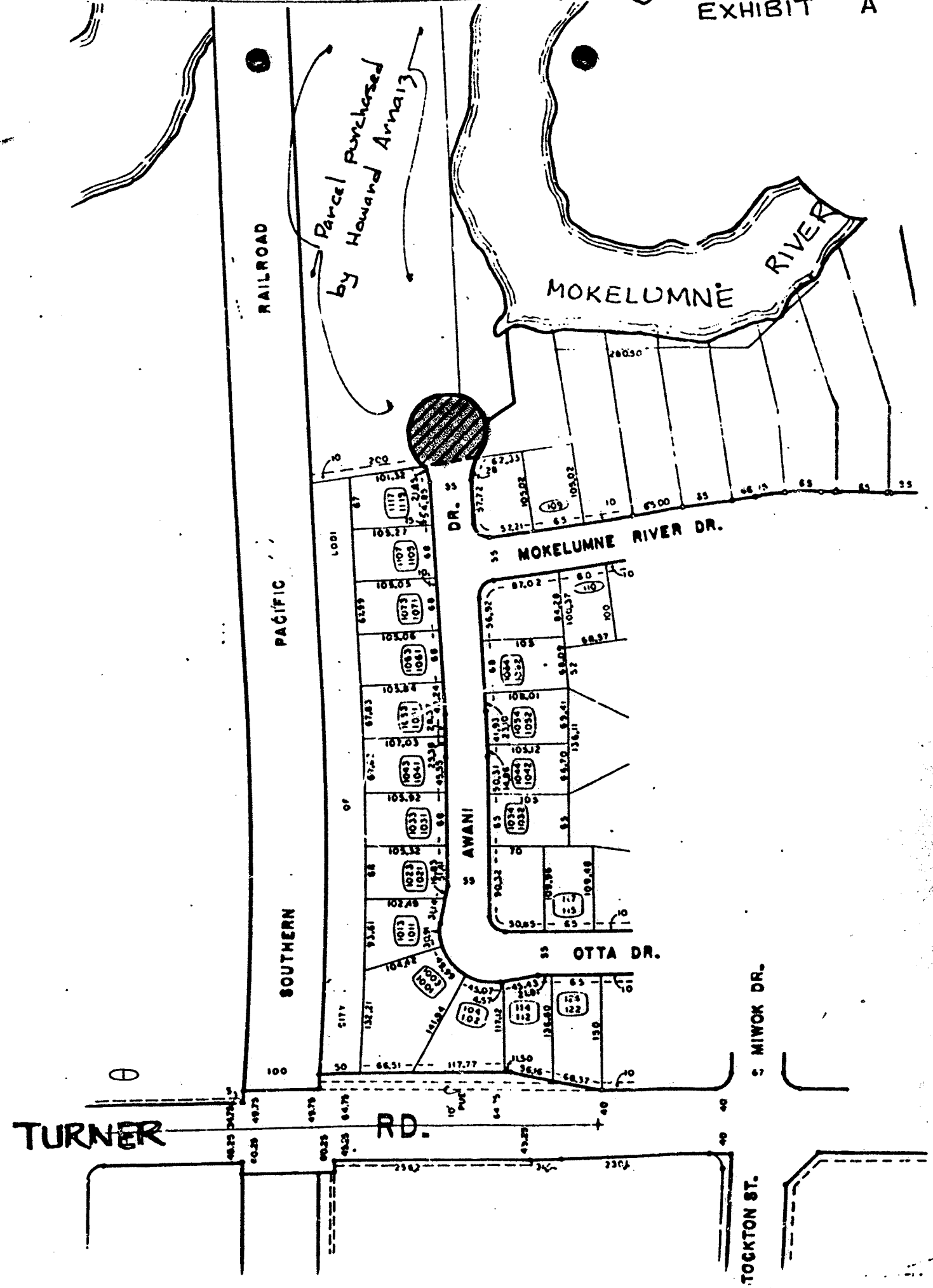
Sincerely yours,

HOWARD ARNAIZ, Pres.
Sanguinetti & Arnaiz Development
Co., Inc.

HA/rtd

RECEIVED
AUG 11 1983
CITY OF LODI
PUBLIC WORKS DEPARTMENT

EXHIBIT "A"


Parcel purchased by Howard Arnaiz
MOKELUMNE RIVER
RAILROAD
PACIFIC
SOUTHERN
MOKELUMNE RIVER DR.
AWANI DR.
OTTA DR.
MIWOK DR.
TURNER RD.
STOCKTON ST.

Bidder's Document

EXHIBIT "B"

RESOLUTION NO. 81-173

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI DECLARING ITS INTENTION TO SELL SURPLUS REAL PROPERTY

WHEREAS, the City of Lodi is the owner of certain real property described as follows:

A portion of the southeast quarter of Section 36, T4N, R6E, MDB&M; more particularly described as follows:

Beginning at the north west corner of Lot 35 of Mokelumne Village as filed for record September 26, 1978 in Volume 23, page 95, San Joaquin County Records; thence N 8° 21' E, 101.32 feet to the northeast corner of said Lot 35; thence 12.75 feet along a nontangent curve, concave to the southwest said corner having a radius of 50.00 feet, and a long chord which bears N 34° 38' 23" W; thence 136.97 feet along a reversing curve to the right, said curve having a radius of 50.00 feet, and a long chord which bears N 36° 31' 48" E; thence N 3° 00' W to the point of intersection with the south bank of the Mokelumne River; thence northerly and westerly along said south bank to the point of intersection with the Southern Pacific Company right of way; thence S 3° 00' E along said right of way to a point which bears S 82° 21' W from the northwest corner of above described Lot 35; thence N 82° 21' E, 27.43 feet to the point of beginning; and

Reserving an easement for public utilities, 10 feet in width, lying north and west of the following described line.

Beginning at the NE corner of the above described Lot 35; thence 12.75 feet along a nontangent curve, concave to the southwest said curve having a radius of 50.00 feet, and a long chord which bears N 34° 38' 23" W; thence 136.97 feet along a reversing curve to the right, said curve having a radius of 50.00 feet, and a long chord which

bears N 36° 31' 48" E to the termination of said 10 foot easement.

Also reserving an easement for public utilities, 15 feet in width, the centerline being described as follows:

Beginning at a point on the west line of above described parcel, 6.45 feet from the southwest corner of said parcel; thence N 49° 57' E to the east line of said parcel, also being the termination of said 15 foot easement.

Also reserving an easement and vehicular access described as follows:

The south 15 feet of the above described parcel; and

WHEREAS, the said real property is not needed by the City of Lodi;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi in an adjourned regular meeting held December 9, 1981 that it hereby declared its intention to sell the said real property to the highest bidder therefor pursuant to the provisions of Sections 25520-25535, inclusive, of the Government Code.

BE IT FURTHER RESOLVED that the terms on which the real property will be sold are as follows: Each bid shall be in a sealed envelope marked so as to denote the contents and addressed to the City Council of the City of Lodi, c/o Alice M. Reimche, City Clerk of the City of Lodi, 221 W. Pine Street, Lodi, California 95240. Such bids may either be sent by mail to the City Council at said address or filed with the Clerk on or before June 29, 1982. Each bid must be accompanied with a deposit in cash or cashier's check in the

amount of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00). The balance of the purchase price is to be paid within 60 days after the acceptance of the offer through escrow with a mutually agreed upon bank or title company. At the close of escrow, the City of Lodi's Grant Deed subject to easements and encumbrances of record will be delivered to the successful bidder. If the successful bidder fails to complete the purchase of the property in accordance with the terms hereof, his deposit will be forfeited and retained by the City of Lodi as liquidated damages and he shall forfeit all rights hereunder. It is agreed that damages in the event of failure to complete the purchase would be difficult to ascertain and that such sum represents a reasonable attempt to ascertain what such damages would be. The successful bidder agrees to pay for the cost of all escrow and recording fees, documentary transfer taxes, and title insurance if desired. The City will pay for the cost of publishing this resolution.

BE IT FURTHER RESOLVED that bids must be submitted for the entire property hereinabove described. The following matters concerning said real property should be noted and taken into consideration by prospective bidders: that the property has multiple easements; that the developer of the property is responsible for the completion of construction of the cul-de-sac at the end of Awani Drive; that the City gives no guarantee as to the soil conditions, which may limit the feasibility of building on the property as the area has been used as City landfill for many years; that prior to September

30, 1982 additional leaves may be removed from subject property and the existing ground may vary from what presently exists; that the developer is responsible for all normal City policies and fees covering like developments within the City, including storm drainage; and that a vehicular access is being retained along the south 15.00 feet of the property for the City of Lodi and Southern Pacific Company.

BE IT FURTHER RESOLVED that July 7, 1982 at the hour of 8:00 p.m. is the time when, and the City Council Chamber, City Hall, 221 W. Pine Street, Lodi, California is the place where a regular meeting of the City Council of the City of Lodi will be held at which time sealed proposals to purchase the said real property will be opened and considered. Before accepting any written proposal, the City Council will call for oral bids. If, upon the call for oral bids, any responsible person offers to purchase the property for a price exceeding by at least five (5) percent of the highest written proposal, then the highest oral bid by a responsible person shall be finally accepted. To submit an oral bid, each such bidder must deposit in cash or cashier's check the amount of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00). The balance of the purchase price shall be paid in the manner specified above.

The City Council of the City of Lodi reserves to itself the right to reject any or all bids, either written or oral, and the right to withdraw the property from sale.

BE IT FURTHER RESOLVED that the notice of the adoption of this resolution, and the time and place of holding said

meeting, shall be given by posting copies of this resolution, signed by the City Clerk of the City of Lodi in three public places in the City of Lodi, as follows, to wit:

One on the bulletin board at the north entrance to City Hall, 221 W. Pine Street, Lodi, California

One on the bulletin board at the entrance to the Public Safety Building, 230 W. Elm Street, Lodi, California

One on the bulletin board located at the Lodi Public Library, 201 W. Locust Street, Lodi, California

not less than fifteen (15) days before the date of the meeting, and by publishing notice of the adoption of this resolution not less than once a week for three (3) successive weeks before the meeting in the Lodi Life and Times, a newspaper of general circulation published in the City of Lodi.

Dated: December 9, 1981

I hereby certify that Resolution No. 81-173 was passed and adopted by the City Council of the City of Lodi in a regular meeting held December 9, 1981 by the following vote:

Ayes: Councilmen - Hughes, Murphy, Pinkerton, Katnich and McCarty

Noes: Councilmen - None

Absent: Councilmen - None

Alice M. Reimche

ALICE M. REIMCHE
City Clerk

"FOR INFORMATION CONCERNING THIS MATTER, PLEASE CONTACT THE CITY OF LODI PUBLIC WORKS DEPARTMENT - (209) 334-5634."

Bid Transmittal

EXHIBIT "C"

June 28, 1982

City Council
City of Lodi
221 W. Pine Street
Lodi, CA. 95240

Attention: Alice M. Reimche

Subject: Resolution No. 81-173

Dear Ms. Reimche:

Pursuant to the City Council of the City of Lodi declaring its intention to sell surplus real property and in accordance with the property description, survey map and other conditions contained in the subject resolution, I submit my bid in the amount of Ten Thousand Three Hundred and Fifty Dollars ($10,350.00) to purchase said property.

Enclosed is a cashier's check in the amount of Fifteen Hundred Dollars ($1,500.00) as deposit required by you.

Respectfully submitted,

HOWARD D. ARNAIZ
1073 Awani Drive
Lodi, CA. 95240

Mailing Address:

P.O. Box 8492
Stockton, CA. 95208

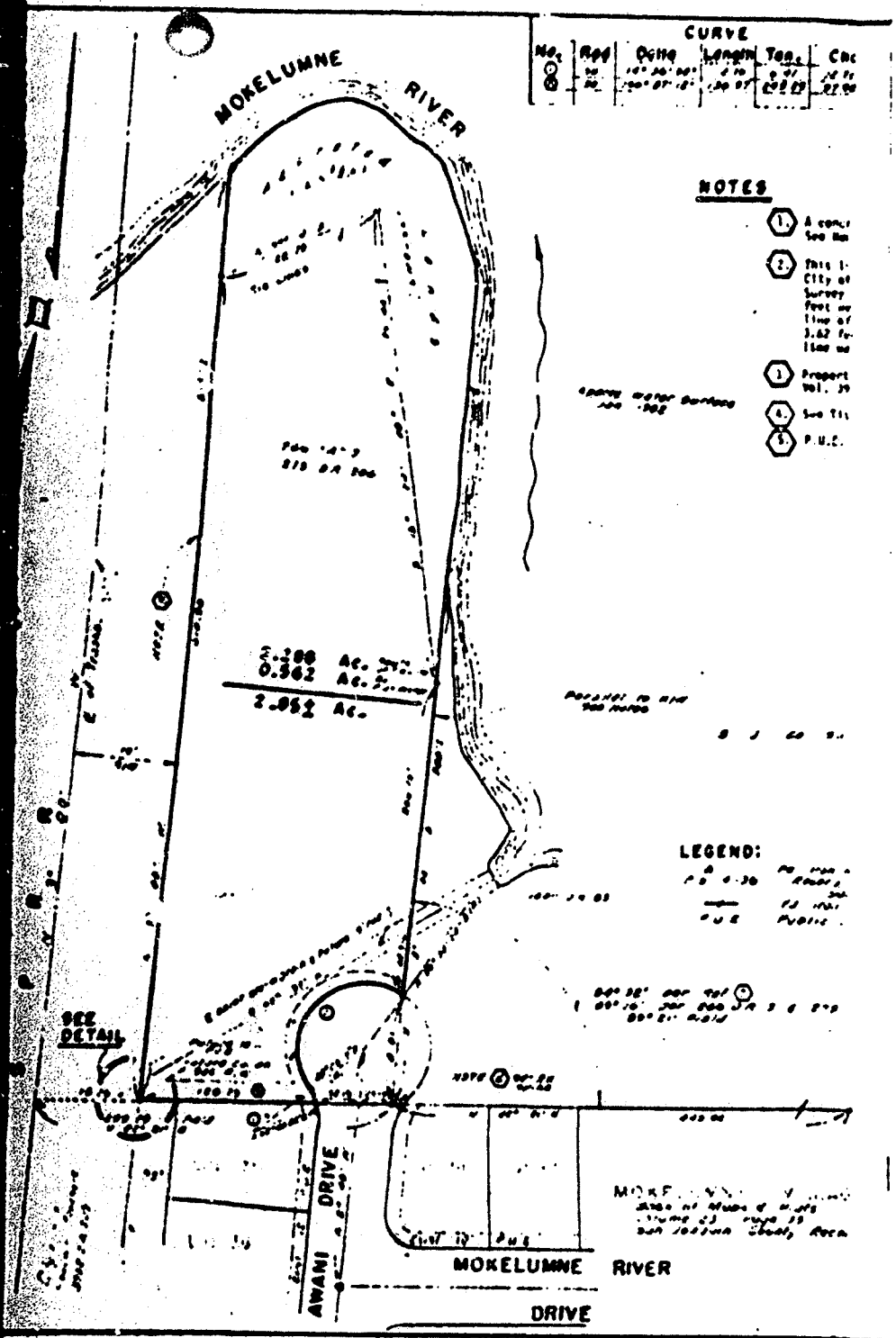
Check to Finance
8/16/82

MAP of SURVEY

A portion of the southeast quarter of Section 36, T.4N.,R.6E., M.D.B.&M., City of Lodi, San Joaquin County, Calif.

January 1982 Scale: 1" = 60'

Baumbach & Piazza
Civil Engineers
Lodi, Calif.



BASIS OF BEARING

MONUMENTS SET

SURVEYOR CERTIFICATE

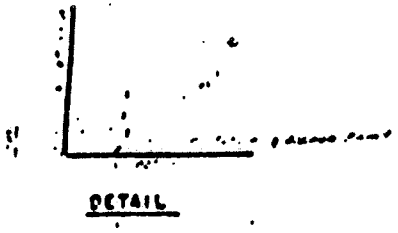


EXHIBIT "D"

Page 487

CCfc

CITY COUNCIL MEETING

AUGUST 3, 1983

CLAIMS

On recommendation of the City Attorney and R. L. Kautz and Company, Council, on motion of Council Member Murphy, Snider second denied the following claims and referred them back to R. L. Kautz and Company:

Ronald Meier DOL 2/9/83

9/7 cc 4c cc 3d

RECEIVED

1983 AUG 18 AM 8 56

ALICE M. REINCHE
CITY CLERK
CITY OF LODI

R. L. KAUTZ & CO.
INSURANCE MANAGEMENT
NO. 8 UNION SQUARE BLVD. • (415) 487-4940
UNION CITY, CALIFORNIA 94587

August 16, 1983

Mr. Ronald Stein
City Attorney
CITY OF LODI
221 West Pine Street
Lodi, CA 95240

RE: Frank Freice vs. City of Lodi
Date of Loss: 4/13/83

Dear Ron:

Although the claimant's allegations in his claim against the City are somewhat ambiguous, it appears as though he is contending his arrest was unlawful and as a result he suffered physical and emotional damages.

I called the claimant on 8/12/83 in order to attempt to ascertain more clearly what his version is of what happened, but he refused to speak with me. He indicated he had retained an attorney to represent him and when asked for the name of the attorney, he told me he could not tell me this either. Therefore, our recommendation in this case is going to have to be based upon the police officer's account.

FACTS

On the above date, Officer Harbin observed the claimant's vehicle accelerating at a high rate of speed and "smoking" his rear tires. Officer Harbin instituted a traffic stop and when he confronted the claimant, he noted a very heavy odor of alcohol on his breath. A field sobriety test was taken which the claimant failed and Officer Harbin then made the decision to arrest the claimant for driving under the influence of alcohol. The claimant was then transported to Lodi City Jail where a blood test was performed showing a result of a blood alcohol level of 0.20 (twice the presumed level of intoxication in California).

DAMAGES

The claimant does not specify in his claim what his purported injuries are but does seek general and punitive damages totaling $1,565,000.00 plus.

R. L. KAUTZ & CO.
INSURANCE MANAGEMENT
NO. 8 UNION SQUARE BLVD. • (415) 487-4940
UNION CITY, CALIFORNIA 94587

Mr. Ronald Stein
RE: Frank Preice vs. City of Lodi

LIABILITY

Based upon what information we currently have, we view this as a case of absolutely no liability against the City of Lodi.

It is readily apparent that Officer Harbin had probable cause to stop the claimant when he observed him burning rubber and it is also apparent that based upon the claimant's blood alcohol level of 0.20 he was, in fact, under the influence of alcohol. Lastly, there appears to be no real force necessary in arresting the claimant and therefore we do not feel any allegation of excessive force could be supportable unless the claimant has proof. The only comment contained in the arrest report is that apparently the claimant had had prior surgery on his wrist and that the handcuffs did create some discomfort. This, however, we feel to be by no means excessive force.

RECOMMENDATIONS

We would therefore recommend to your City Council that Mr. Preice's claim be denied at the earliest possible date.

Very truly yours,

Bill Benson

Bill Benson
Liability Claims Supervisor

BB/wd

cc: Ms. Alice Reimche

R. L. KAUTZ & CO.
INSURANCE MANAGEMENT
NO. 8 UNION SQUARE BLVD. • (415) 487-4940
UNION CITY, CALIFORNIA 94587

RECEIVED
1983 AUG 19 AM 8:45
ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

August 17, 1983

Mr. Ronald Stein
City Attorney
CITY OF LODI
P.O. Box 320
Lodi, CA 95240

RE: Mary Ellen Hayes vs. City of Lodi
Date of Loss: 9/4/82

Dear Ron:

As you are aware, Mrs. Hayes had earlier filed a claim on behalf of her daughter, Mary Ellen Hayes, but this claim was rejected as premature in accordance with Section 945.3 of the California Government Code (it should be noted there have been some recent legislative changes to this Government Code Section).

Mrs. Hayes has now once again filed a claim on behalf of her daughter for the incident which occurred on 9/4/82 and since this incident has already been investigated, we would like to waste little time in submitting this letter, recommending Mrs. Hayes' claim be denied at the earliest possible date. We would further recommend that Mrs. Hayes be fully made aware of the City's intent to cover costs of defense should her claim be judicially determined to be without merit or frivolous.

Before going further, we should note that Mary Ellen Hayes was adjudicated to have been guilty of resisting arrest.

FACTS

In order to avoid repetition and to provide you with the full benefit of our outside adjuster's investigation, I am enclosing a copy of Mr. Layton's letters dated 2/13/83 and 4/8/83.

DAMAGES

The claimant's mother submitted a claim for medical and legal expenses totaling in excess of $1,300.00.

R. L. KAUTZ & CO.
INSURANCE MANAGEMENT
NO. 8 UNION SQUARE BLVD. • (415) 487-4940
UNION CITY, CALIFORNIA 94587

Mr. Ronald Stein
RE: Mary Ellen Hayes vs. City of Lodi

LIABILITY

Based upon the results of the investigation conducted into this matter, we evaluate this case to be one of absolutely no liability against the City of Lodi or its police department.

RECOMMENDATIONS

We would strongly recommend that this claim be denied at the earliest possible date.

Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Very truly yours,

Bill Benson

Bill Benson
Liability Claims Supervisor

BB/wd

cc: Ms. Alice Reimche

S. L. Layton Company *Insurance Adjusters*

Reply to: P.O. Box 31126 • 4226 22nd Street • San Francisco, California 94131 • (415) 821-3910
S.F. CA 94131

April 8, 1983 1-3565-83

John P. Caudle, Attorney at Law
100 Webster Street
Suite 300
Oakland, CA 94607

Re: Mary Ellen Hayes v. City of Lodi
D/L: 9/4/82

Dear Mr. Caudle:

As per Ms. Dedmon's letter dated February 22, 1983, we spoke to Bruce Kirby who stated that claimant Hayes had initially been placed on an informal probation and he was the officer in charge.

When interviewing Ms. Hayes, she stated the facts as follows.

She was attending a party and had consumed two beers, and became upset over a girlfriend and left. She was followed by claimant Kinter whom she attempted to evade, being overwrought at this time.

She confirms the police being on the scene and being told to get into the police car which she refused to do. Ms. Hayes is stating that she was never informed by the police officer that she was under arrest, and this is why she did not initially get into the police car. The officer then told claimant that she had to get into the car, and when she was trying to do so claims the officer hit her with a baton.

Mr. Kirby confirms that he spoke to both Mr. and Mrs. Hayes, describing claimant's father as passive, and her mother as bitter against the Lodi Police Dept. and in this instant case, was incensed that police officers would handle a juvenile female in the manner they did.

While claimant Hayes was on informal probation, Mr. Kirby received a telephone call from her high school principal, requesting his help. Apparently claimant wished to run away from home with her companion, this was after finding out she had been adopted.

Subsequently, claimant went to stay with an adult boyfriend overnight.

During this period, Mr. Kirby learned from claimant Hayes that there were fights between her and her mother and Ms. Hayes stated that Mrs. Hayes was very hostile toward her.

Because of this incident, claimant Hayes' informal probation was revoked and formal charges were filed. Naturally at the hearing claimant Hayes changed her story relative to the relationship with her mother.

Mr. Kirby did not have his file with him when speaking to this writer, but confirms there was a report sent to Mr. Bowers in which was mentioned that claimant Hayes had out of control tendencies. Because claimant Hayes is a juvenile, it is not known whether in the future this writer would be able to review Mr. Kirby's report, but if this matter continues, we can contact Mr. Bowers in this regard.

Mr. Kirby stated that no probation officer was assigned to claimant Kinter, due to the fact that the charges were still pending. A Mr. Harris represented the probation department in court but was not claimant Kinter's probation officer.

We learned that claimant Kinter had two prior felonies, an auto theft and a burglary and was assigned to the probation department. This dated back to 1980. We also learned that during this period he had been suspended from high school for non-attendance. He also served 60 days in juvenile hall.

As of this writing, we have not attempted to secure additional background information on claimant Kinter, but could attempt to do so at a later date if necessary. It must be borne in mind that we are dealing with juveniles, and therefore the type of information I am attempting to assemble is privileged.

We spoke to Sheryl Dick relative to claimant Hayes' appearance and demeanor after she arrived at the Lodi Police Department.

Sheryl Dick recalls claimant Hayes, stating that she was small in stature, had dark hair and was very, very drunk. Claimant was hysterical, screaming, and carrying on like a wild person. Claimant was screaming about a friend with the given name of Chris who was going to commit suicide. Sheryl Dick felt that claimant was almost uncontrollable and had to be physically restrained in order to prevent claimant from hurting herself.

It is assumed by Ms. Dick that claimant was wearing handcuffs at the time of booking, as this is usual procedure. She learned that claimant had been combattive when the Lodi police officers were arresting claimant.

Claimant also mentioned that at the time of her arrest, claimant Kinter, her boyfriend, was trying to restrain her rather than beating her up. Ms. Dick described claimant as being dirty and scuffed up from being on the ground, but did not notice any cuts or bleeding. Ms. Dick stated that if there were obvious injuries she would have administered first aid.

Ms. Dick gave claimant a pat-down search, and recalls Ms. Hayes was wearing Levis and a top.

Claimant Hayes continued to talk about her best friend Chris, and because Ms. Dick had a daughter with this given name, she questioned her quite thoroughly. However, it was not until a subsequent contact that Ms. Dick learned the Chris who supposedly was going to commit suicide was Ms. Dick's daughter.

Claimant was left in the juvenile cell while Ms. Dick went to do paperwork. When Ms. Dick returned to the cell, she noted claimant sticking her head into the toilet bowl and saying she was trying to end it all. She mentioned having trouble with her parents, that they did not want her, and she wanted out. Ms. Dick stated that she took claimant Hayes' head out of the toilet bowl several times because claimant Hayes kept dunking it. Ms. Dick realized that claimant was not really trying to commit suicide, simply putting on a show.

Ms. Dick called in a supervisor who took a look at claimant and advised Ms. Dick not to do anything. Ms. Dick then describes claimant as laying across the toilet and hitting her head on the wall. During this whole process, Ms. Dick was attempting to reason with claimant, mentioning there were germs in the toilet bowl, etc.

It appears claimant was still in the juvenile cell when Ms. Dick went off duty. At this time claimant's hair was still disheveled, her face was dirty, eyes red from crying. Apparently there was an odor of alcohol about claimant's person, and as mentioned earlier, Ms. Dick did feel claimant was drunk.

Some time after the incident at hand, Ms. Dick picked claimant up in her car in order to drive Ms. Hayes and her daughter Chris to a mutual friend's. Claimant did not recognize Ms. Dick but the incident in question was talked about. Ms. Dick mentioned the incident involving the toilet bowl and claimant stated she could not recall same. She also mentioned at this time that she was having trouble with her parents, that they were cruel and abusive and that she hated them. It was also mentioned at this time that claimant had learned she was adopted.

Ms. Dick's impression was that Mr. and Mrs. Hayes were not actually abusive, just restrictive.

Chris Dick told her mother that on the evening that the incident occurred, claimant was already intoxicated when Chris Dick arrived at the party. At no time did Chris Dick state she was going to commit suicide, but admits getting annoyed with a boyfriend. She also confirmed that claimant Hayes was a friend but not a close one.

However, Ms. Dick stated that her daughter being a teenager, has a tendency to support her peers.

We contacted Jerry Wilson who was on duty when dispatch at the Lodi Police Dept. received the call relative to the incident involving Hayes and Kinter. Ms. Wilson was aware that police officers had been dispatched to the scene. She then heard via the radio that the Lodi police was on route to the City Jail with a female prisoner.

When claimant Hayes arrived, she was screaming and crying and immediately put into a booking cell. Claimant was alone and still in handcuffs at this time. Ms. Wilson describes claimant as acting like a spoiled brat.

Ms. Wilson thought that Officer Craig Miller, along with a reserve officer, had brought claimant Hayes into the booking area.

Claimant Hayes went into the booking cell first, followed by Ms. Wilson and Officer Miller. Claimant was screaming that she wanted the cuffs off and then jumped up onto a bench and yelled to get Officer Miller out of the cell. Ms. Wilson held claimant's hand and said that Officer Miller was in the cell to protect her, not to touch her. Apparently there was some conversation back and forth in this regard. Eventually, Sheryl Dick came into the booking cell and claimant calmed down and the handcuffs were taken off her and a patting down search was made. At this time Officer Miller had left the booking cell.

During this period Claimant Hayes confirmed she had been running and screaming to get help, and mentioned the only reason for doing so was that her sister was going to commit suicide. Ms. Wilson asked where claimant Hayes' sister was, and she mentioned at the apartment and so Ms. Wilson offered to send an officer to assist. Ms. Hayes then said that the person was not her sister, just a best friend and like a sister.

When questioned further, claimant Hayes did not know the best friend's last name, and at this juncture Ms. Wilson stopped taking claimant seriously.

Ms. Wilson confirms that claimant Hayes kept repeating that her sister was going to kill herself, then changing it to her best friend was going to kill herself. Claimant also stated that she did not know why she had been arrested.

At the time claimant Hayes was disheveled, her eyes were red because she had been crying, she was uncoordinated, and obviously under the influence of something. Ms. Wilson did not note any blood about claimant's person, and to her knowledge there were no complaints of injuries. Ms. Wilson stated that claimant Hayes may have registered some type of complaint about the handcuffs.

Ms. Wilson stated that claimant was being over-emotional like a person trying to get attention. During the conversation Ms. Wilson cannot recall claimant Hayes mentioning her parents. Ms. Wilson stated that at first claimant seemed surprised at being arrested, but later probably realized she had fought with the police officer and that was the reason he had done so. Ms. Wilson never found out exactly what had happened.

Ms. Wilson could not recall if she had started the paperwork but had obtained claimant's name and other information. Ms. Wilson is stating that she was the matron that went off duty and that Sheryl Dick was the one who took over. As you will note, there is some confusion in this regard between Ms. Dick and Ms. Wilson. However, I feel it is not a crucial point.

Ms. Wilson stated that she had never met claimant Hayes prior to the time of the incident.

We secured a recorded statement from Edwin Bender, age 54, resides 207 S. Hutchins, Lodi, CA, is married to Patricia Bender, they have no minor children and he is employed as a printer by San Juaquin Packaging in Stockton. We have not had the statement transcribed to date and will not do so unless advised to the contrary.

Briefly, Mr. Bender states that both he and his wife were in their kitchen when they heard screaming coming from outside. At first they did not pay much attention to the situation, due to the fact that they live near Jack-in-the-Box and on weekends there is quite a lot of noise from teenagers. Mr. Bender stated that you hear peeling of tires, etc., this type of noise. However, after the screaming kept up for a period

of time, Mr. and Mrs. Bender thought that the situation might be serious. Both walked outside their home and noted a vehicle parked across the street and realized there was scuffling going on behind same.

Because of the parked vehicle, Mr. and Mrs. Bender could not observe claimants. Mr. Bender suggested his wife call the Lodi Police Department and she went inside to do so. However, Mrs. Bender learned that the call had already been made. While Mrs. Bender was in the house the Lodi police arrived. Mr. Bender recalls seeing one officer and thought that there might have been two. Then other cars arrived within 30 seconds apart, and he felt there were three police cars and at least three officers.

He saw a male individual run down by the parking lot, but did not identify this person. He described claimant Hayes as resisting to a degree and heard a police officer say, get in there. He then saw two officers with claimant Kinter. He describes claimant Kinter's hands as being behind his back.

The first suspect he saw was claimant Hayes, and this was at the police car and he imagined she was under arrest. He did not feel there was any conversation and only noted one officer with her. Witness Bender stated he did not observe any nightsticks but did observe a flashlight. He stated there was no evidence of force.

He did not notice claimant Kinter until two police officers brought him across the street to a patrol car. As Mr. Bender pointed out, the vehicle parked at the street was blocking his view.

He describes three or four persons being at the scene when the police arrived and that the crowd did not seem to increase. Mr. Bender stated that teenagers gather at the Jack-in-the-Box fast food restaurant and cruise Lodi Avenue. He stated that South Hutchins where he lives is a natural turn-around for them.

He states there have been debates in the City Council about restricting parking in the area.

Mr. Bender did not feel that the neighborhood was a problem area, just confirming that there is quite a bit of noise on Friday and Saturday nights. He did not talk to anybody at the situs and knows of no other witnesses. Mr. Bender is assuming that claimant Hayes was down on the lawn with claimant Kinter on top of her.

However, as mentioned earlier, he did not observe this.

I feel Mr. Bender is somewhat negative, due to the fact that he could not be very specific. He confirmed being subpoenaed but has not testified in the actions against Hayes and Kinter.

We called Lilly Robinson relative to her giving a statement. Mrs. Robinson sounded quite elderly and was very uncooperative, stating that she had already given a statement to the police, and did not see any reason for giving another one. During the conversation she mentioned that her husband was seriously ill in the hospital and that she was upset and did not wish to be bothered.

Though we attempted to pursuade her to give a statement, she would not do so. We had asked Mrs. Robinson if it would be convenient to stop by one evening and she stated no. We did arrange to call her in a few weeks, hoping that she may be in a better frame of mind at that time.

We made contact with Maryanne Gantz who is employed at Peterson Juvenile Hall. She would not discuss the situation with this writer, and we were referred to her supervisor, Jack Schepcoff.

We explained to Mr. Schepcoff that we represented the City of Lodi in this matter and wished to talk to Ms. Gantz and the counselor on duty at Peterson Hall when claimant was transported over.

Mr. Schepcoff stated that we would have to obtain permission from a Leonard Gibson, the superintendent, and requested I have the City of Lodi write a letter. He did identify the counselor as a Jess Hampton.

We had a letter compiled and signed by Mr. Stein, forwarded to Leonard Gibson. We are attaching the letter in order to complete your file.

We have heard nothing further regarding these contacts and have not followed up as of this writing.

During my investigation, I have been in contact with Mike Bower who is handling this case for the DA's office. He has been most cooperative, but at the time of our last contact, the criminal cases were still pending.

Mr. Bower had taken recorded statements from the police officers, and indicated that he had other information contained in the file. I feel if this case continues, we should attempt to

review Mr. Bower's file which in all probability, could save work.

When last in the City of Lodi, we spoke to Captain Williams relative to the matter at hand. He indicated that attorneys were discussing the case at this time, attempting to compromise the situation by reducing or dropping the charges against Hayes and Kinter in exchange for the withdrawing of their civil claims.

Because of this fact we did not wish to pursue the investigation further, as if the compromise is achieved, it will not be necessary.

I intend to maintain contact with Captain Williams in order to determine the status.

If the civil suits are not withdrawn, I will then continue with the investigation.

Our further reports will follow.

Very truly yours,

S.L. Layton

SLL:jr
Enc
cc: R.L. Kautz & Co.

S. L. Layton Company *Insurance Adjusters*

Reply to: P.O. Box 31126 • 4226 22nd Street • San Francisco, California 94131 • (415) 821-3910
S.F. CA 94131

February 13, 1983 REVIEW 1-3565-83

FEB 17 1983

BENSON

R.L. Kautz & Co.
No. 8 Union Square Blvd.
Suite 102
Union City, CA 94587

Attn: Connie Dedmon

Re: Mary Ellen Hayes v. City of Lodi
D/L: 9/4/82

Dear Connie:

This will acknowledge receipt of the assignment via your letter dated January 17, 1983.

As per your instructions, we made the following contacts.

A meeting was arranged by Lieutenant A. Thornesberry at the Lodi Police Dept. Present were Lieutenant Thornsberry, regular police officers Dennis Lewis, Sil Sinigaglia, Terry Miller, Ray Punta, plus reserve officers Gary Sage, Lloyd Gums, and this writer.

We took the events in sequence, obtaining the following information.

Lieutenant Thornesberry was on patrol and happened to be approximately two miles away from an altercation. He heard the Lodi Police Dept. dispatcher call on the radio to Officer Dennis Lewis within whose beat the altercation was occurring. Because Lieutenant Thornesberry was close to the scene, he drove over. In monitoring the radio call, Lieutenant Thornesberry stated that the dispatcher mentioned two males and one loan female were fighting. Lieutenant Thornesberry was alone, and upon arriving at the scene, noted suspects on the lawn of a property, and so radioed dispatch that the fight was still in progress and requested backup assistance.

Nearby the scene is a Jack in the Box fast food restaurant which caters heavily to teenagers on Saturday evenings. Also, West Lodi Avenue was within a few houses and this is heavily traveled (cruised) by teenagers. And because of these facts, Lieutenant Thornesberry wanted a backup. He mentioned there were a few teenagers standing near the scene when he arrived.

Upon looking over at the scene, Mary Ellen Hayes was lying on her back, William Kinter was on the ground on top of her with another unidentified male on the ground beside them.

Lieutenant Thornesberry walked over to the situs and the unidentified male kneeling beside Hayes and Kinter stood up and walked away. Lieutenant Thornesberry never did identify this individual.

What were they doing?

It appeared that Hayes and Kinter were oblivious to Lieutenant Thornesberry's presence. Lieutenant Thornesberry tapped Kinter on the shoulder several times before getting his attention. While Hayes and Kinter were still on the ground, Officer Dennis Lewis arrived at the scene. Officer Lewis was also operating in a one-man patrol car.

William Kinter got to his feet and so did Mary Ellen Hayes. At this point, Lieutenant Thornesberry was considering Hayes as a victim and wanting to get her name and address, etc., and then she could have left the area. However, without saying anything she started to take off toward a crowd of teenagers that had assembled. The spectators had consisted of approximately half a dozen teenagers when Lieutenant Thornesberry had first arrived, and this had built up considerably.

Lieutenant Thornesberry realized that if Hayes had walked into the crowd she would have never been identified, and he did not wish this to happen. It appears Lieutenant Thornesberry was able to get Hayes over to Officer Lewis' patrol car without any real problems.

In the meanwhile, Lieutenant Thornesberry told Officer Lewis to hold Kinter under arrest. William Kinter tried to walk away from the scene, but Officer Lewis held onto him and they both walked toward the patrol cars. It was at this juncture and [redacted] Just before this occurred, regular Officer Sil Sinigaglia and reserve Officer Gary Gage arrived, and noted that Lieutenant Thornesberry, Officer Lewis, suspects Hayes and Kinter were standing together, having a heated conversation.

Upon William Kinter striking Officer Lewis, Officer Sinigaglia responded to assist. Reserve Officer Gage went to the side of the house in front of which the incident had occurred in order to try and locate the third person. Upon Lieutenant Thornesberry hearing the commotion and seeing the size of Bill Kinter, he attempted to hurry suspect Hayes into the back of the police car.

was she resisting @ this point?

At this time he had no intention of using handcuffs. Lieutenant Thornesberry was able to get suspect Hayes into the rear seat of the car but immediately she bounced out again. While this situation was in progress, regular Officer Terry Miller and reserve Officer Lloyd Gums arrived at the scene. Officer Miller and reserve Officer Gums immediately went to assist with the subduing of William Kinter who was on the ground at this time. how did he get there? How long was struggle

Because of the struggle and the strength of suspect Kinter, Officers Lewis and Sinigaglia were tired. About this time Officer Sinigaglia heard a loud shrill and yell, and noted that Lieutenant Thornesberry was having difficulty with suspect Hayes. He immediately left in order to assist. Because suspect Hayes had started to strike Lieutenant Thornesberry when getting out of the car, he placed her under arrest and attempted to put handcuffs on her.

what trouble? what did he see?

how long was struggle - how fierce was it? only 1 officer involved when we talk about diagram

Eventually Lieutenant Thornesberry got suspect Hayes into the car, and Officer Sinigaglia opened the opposite door to assist. Suspect Hayes was not only fighting, but also swearing at the officers. It was pointed out that the Lodi Police Department's policy is to handcuff all suspects when transporting them.

At some period during the arrest Officer Ray Punta arrived after hearing a call on the radio by Officer Lewis to locate the third party. He was alone and upon arriving at the scene just noted a crowd but did not see the suspects. He went to look for the third suspect in his patrol car, and when he was unable to locate this individual, returned to the scene. He then got out and noted that suspect Kinter had been handcuffed and suspect Hayes was screaming. where was she

how big

where was he

He noted Lieutenant Thornesberry on one side of the police car and Officer Sinigaglia on the other. Apparently suspect Hayes was screaming rape, f-ing pigs, and I'm going to sue. Because Hayes was fighting furiously and yelling and screaming, Officer Punta wanted to help subdue her so that she could be cuffed. However, there was no room in the rear seat to do so, and as there was a screen in the patrol car, he could not assist from the front.

However, eventually Lieutenant Thornesberry and Officer Sinigaglia were able to place handcuffs on suspect Hayes. both? - I thought one was on each side of car.

Although it was difficult to handcuff suspect Kinter, once this was done he no longer resisted. He stood up and got into the police car and in fact, became quite affable. all this time he's on the ground?

Officer Lewis drove suspect Kinter to the Lodi Police Station where he was booked.

There was no further problems with suspect Kinter.

Officer Lewis, along with reserve Officer Gage, transported suspect Hayes to the Lodi Police Department where she was held.

what were visible injuries

Punta & Gage transported her to Peterson Hall, the juvenile facility. As per Officer Punta's report, they would not accept suspect Hayes unless she had received medical treatment. She was taken to the County Hospital who would not treat her unless the parents' consent was first obtained. At the County Hospital Officer Punta kept one handcuff on suspect Hayes so that she could not escape. At this time she was still being smart-mouthed but not physically resisting. Apparently after an hour at the County Hospital, suspect Hayes finally settled down.

Officer Punta stated that suspect Hayes had been drinking, but he did not feel she was intoxicated. Any B.A.?

Apparently suspect Hayes was taken to Peterson Hall three times in all, and the counselor on duty had called Mr. and Mrs. Hayes relative to obtaining medical attention for suspect Hayes. This was refused, and Officer Punta so noted on suspect Hayes' booking document. any reason given?

He recalls a Mary Gantz was working intake at Peterson Hall that evening, but could not recall the name of the counselor on duty who would have called Mr. and Mrs. Hayes.

As you will note from the reports, suspect Hayes' parents came to Peterson Hall in order to take their daughter home. Suspect Hayes was cited but not detained over night.

Approximately a week after this incident, suspect Hayes was noted by a police officer loitering and was requested to move. Apparently suspect Hayes was alone at this time.

The Lodi Police Dept. received a call from Mrs. Hayes in reference to this incident, and she was claiming harrassment.

Some time after this incident occurred, Officer Punta received a prowler call in the area of where the Kinter's lived. However, he did not connect the incident at hand with the location of the prowler. Naturally, Officer Punta was using a bright light in order to try and locate the alleged prowler. Apparently the light was shown into the home of Mr. Kinter.

Lieutenant Thornesberry received an harrassment call about the situation, but once explaining what Officer Punta was doing in the neighborhood, Mr. Kinter became apologetic.

can we talk to him?

Lieutenant Thornesberry has spoken to suspect Hayes' probation officer Bruce Kirby about the incident. Apparently when Mrs. Hayes was discussing the situation, suspect Hayes walked out of the room stating that her mother was making a big fuss about nothing.

Apparently suspect Hayes has no prior police record, but suspect Kinter does. for what

In regard to suspect Hayes claiming she was struck with a billy club, we were informed that these measure 12-18 inches and generally are made of plastic. The Lodi Police Dept. are not allowed to carry billy clubs but have what are called batons or nightsticks which measure 24 inches and are made of plastic or aluminum. Lieutenant Thornesberry does not carry a nightstick and Officer Sinigaglia could not have used his in the back seat of a police car, as there was insufficient room.

We would also like to point out that Officer Lewis had no physical contact with suspect Hayes.

Lieutenant Thornesberry did state that he had a flashlight which was knocked out of his hand in the melee and he had to go looking for same following the incident. He located it under a police car. Did he well strike Hayes w/ it?

When Officer Lewis and reserve Officer Gage were transporting suspect Hayes to Lodi P. D. she mentioned being upset over a girlfriend who was going to commit suicide and this made her depressed, and suspect Kinter was trying to stop her mood.

Apparently suspect Kinter related the same facts. It was noted that he also had been drinking but was not considered to be drunk. He was booked at Peterson Hall by Officer Miller and reserve Officer Gums.

Suspect Hayes would have been searched at L.P.D. by matrons one of whom was a Sheryl Dick who is now a Deputy Marshall in Stockton.

Officer Lewis spoke to Mr. and Mrs. Hayes both on the telephone and in person. what was said, attitude etc?

Apparently when they had called in person that evening, they had wanted to talk with suspect Hayes, who at this time was still hysterical and did not wish to go with her parents. Suspect Hayes stated that she had just found out she was adopted and that Mr. and Mrs. Hayes did not want or love her.

is this true?

Because of suspect Hayes' state of mind, Officer Lewis felt that it was best that Mr. and Mrs. Hayes did not see her at that time.

It was later when Officer Lewis had gone off duty and Officer Punta had taken over that suspect Hayes went home with her parents.

I tried to obtain information from the various officers which would supplement the police reports. If there are any discrepencies or areas upon which you feel the officers could elaborate, please so notify this office and additional contacts by telephone can be made.

CLAIMANT MARY ELLEN HAYES

In the telephone book we noted that Patty's Ceramics were located at 722 W. Lodi Avenue and upon calling at the address, noted that it was for lease. For this reason we journeyed to claimant's home. Obviously Mary Ellen Hayes opened the door stating that her parents were at work, and we were given an address of 14 N. Main Street in Lodi.

We noted that Mary Ellen Hayes, although not a large female, gave one the feeling that she could be quite aggressive if need be. She had dark hair, was not unattractive, but had a hard look about her.

We contacted Mr. and Mrs. Hayes who are definitely diamonds in the rough. From these individuals it is easy to believe that claimant was capable of the language stated in the police reports. If claimant is adopted and there is no blood relationship, we can only assume she has developed an aggressive nature because of her mother. She was the one who we initially contacted and immediately started her tirades about the Lodi Police Department, their past abuses which include the matter at hand. During the conversation, Mr. Hayes responded to the front of the store and was calm about the situation, but nevertheless appeared indignant that this incident had occurred and would not allow this writer to speak with his daughter.

Both wished for the matter to be handled by an attorney. As Mrs. Hayes continued with her tirades, we were trying to calm her and finally Mr. Hayes came to the front of the store and indicated to her that she had said all that was necessary and it was time to return to work. I wholeheartedly agreed with him.

Neither Mr. or Mrs. Hayes would make good appearing witnesses, and in a trial I feel sure that Mrs. Hayes could quite easily be induced into behaving in a manner that would be detrimental to her daughter's case.

CLAIMANT WILLIAM KINTER

We attempted to contact claimant's father, Don Kinter who happened to be out for the evening when we stopped by. We left a message with a daughter stating we would contact him by telephone.

However, Mr. Kinter called this office on two occasions and we were successful in talking to him on the second time he tried. I identified myself to Mr. Kinter and the purpose of my visit. Mr. Kinter immediately stated that we do not have anything to worry about and later went on to say that he had only filed with the City of Lodi in order to satisfy claimant Hayes. This verified my feeling that Mrs. Hayes in her aggressiveness, had obtained forms from the City of Lodi and more or less forced Mr. Kinter into filing.

However, Mr. Kinter did not wish his son to be interviewed at this time because of the criminal charges still pending. I can certainly sympathize with him in this regard. However, Mr. Kinter stated that once the criminal charges have been resolved, he would have no objections to this writer securing a statement from his son.

I certainly feel we should take advantage of this option if it is still valid after the criminal charges have been disposed of. Yes!

WITNESSES

Michael Rogers resides with his parents at 474 Pioneer Drive, Lodi, CA, telephone 369-1215. As I did not feel witness' testimony would be favorable to the Lodi Police Dept., I did not take a statement but the content of his testimony is as follows.

He was attending a party along with claimants Kinter and Hayes. He did not know exactly where the party was located, only that it was on Lodi Avenue behind an Arco station approximately a block and a half away from the situs.

Two female friends of claimant Hayes with the given names of Christine and Trudy apparently were going to fight, and claimant Hayes got involved in the situation which became very upsetting to her. Apparently claimant Hayes has a propensity for becoming involved in other persons' problems and getting emotional about same.

Apparently Christine and claimant Hayes started to cry at the party, and Mike Rogers said that Hayes started to get weird and eventually went out of control.

Claimant Kinter had attended the party with claimant Hayes and upon seeing her run out of the party in an emotional state, followed her. Mike Rogers went along with claimant Kinter.

Initially they caught up with claimant Hayes in an alley (name unknown) and attempted to calm her down. She ran away and they caught her again. Again, she squirmed away kicking and screaming, and finally was brought down on the lawn in front of a residence. A neighbor came out and witness Rogers stated that claimant Hayes was upset because of an emotional problem involving a girlfriend.

were they giving appearance of a fight?

Apparently claimant Hayes was lying on her back and claimant Kinter more or less on top of her. Witness Rogers was alongside. While in this position he just happened to look up and noted a police officer standing above him. Witness Rodgers got up and told the officer that claimant Hayes was upset because of an emotional problem involving another girlfriend.

At this juncture Rogers walked away, leaving claimants and the officer at the situs. He did not look back when walking away and therefore did not know what transpired at this point.

He stated that the party was attended by teenagers and that claimant Hayes' brother had been at the party, left for a period of time and then came back. Apparently he had no involvement in the incident whatsoever. This confirms the statement made to you by Mrs. Hayes.

Witness states there was beer consumed at the party and recalls claimants drinking beer. However, he felt that claimant Hayes was more or less sipping beer from claimant Kinter's glass. Witness stated he could not state how much beer either of the claimants had consumed.

Prior to claimants and witness arriving at the situs, he recalls witness Ellis driving up in a pickup truck. Apparently they were in an alley area at this time. Ellis knew Kinter and presumably this is why he stopped. Witness called to witness Ellis to help get claimant Hayes into the truck so that they could get her away from the area because she was screaming so much. However, she was able to struggle away from them and therefore was never put into the vehicle.

Witness states that he had been contacted by an investigator for claimant Kinter relative to the criminal matter. He had been served a subpoena and called to testify.

He mentioned that claimant Kinter is 6'4" tall and weighs 218 lbs.

Witness Rodgers is obviously the third party noted by Lieutenant Thornesberry at the scene. However, he was never identified by the Lodi Police Department and to our knowledge has not been interviewed since.

WITNESS #2

Peter Ellis, resides 215 Mulberry Circle, Lodi, CA, telephone (209) 334-1584, with his parents.

We did not secure a statement from witness Ellis due to the fact that his testimony is adverse and he has a tendency to present it in that manner.

He confirms driving to the scene area in a pickup truck along with two friends, Darren Combee and Tracy Judson. Initially he had noted both claimants standing in an alley with Kinter trying to hold onto Hayes. As claimant Hayes appeared to look like a friend of witness and she was crying, he drove around the block and into the alley. He then recognized claimant Hayes as someone he knew and claimant Kinter as someone he had met once. He also confirms that witness Rodgers was present, but he did not know this individual.

Upon stopping, witness Ellis spoke to witness Rogers asking what was wrong. Apparently witness Rogers did not know what the problem was but claimant Hayes was upset about something and that he wanted to put claimant Hayes into the truck bed along with claimant Kinter in order to take her home.

Before they were able to do this claimant took off running toward the Jack-in-the-Box. Claimant Kinter and witness Rogers started to run after claimant Hayes and witness Ellis drove down the alley and in front of the house where he noted all three down on the lawn. He states that claimant Hayes just went and laid down on the lawn by herself and that Bill Kinter was just sitting on top of her to try and keep her still. Witness Rodgers was standing around making comments.

Witness Ellis then noted the Lodi police arrive and at this time he was standing on the sidewalk. He was thinking of helping to pick claimant Hayes up at this time. He recounts that the Lodi police officers responded fairly rapidly, one first, then a second, and within three minutes two more.

Witness Ellis describes claimant Kinter as getting up on his own, that there was some conversation, but he could not recall what this was. He stated that claimant Hayes was still screaming, even when the second police officer showed up. They talked for about a minute and it seemed as though the conversation finished and claimant Kinter started to walk away.

one seems to contradict the other

He then describes one of the police officers as saying to claimant Kinter, "we have enough to hold him on" and the officer then grabbed claimant Kinter from behind. He mentioned that all of the police officers had arrived by this time.

He describes two police officers as picking up claimant Hayes and that she was screaming and struggling, and an officer stated to throw claimant Hayes into the car. He states that the police were calling her names and pulling her hair and hitting her head. She states that she bounced all over. However, witness Ellis admits that basically the police wanted to get claimant Hayes into the car, but she was struggling. He has no idea why they were trying to do this. But she was shouting but he could not recall what.

He then describes one police officer on one side of the patrol car and one on the other, and they sort of pulled her into the car. He states that one of the police had claimant Hayes' arms behind her, and he thinks that maybe she was handcuffed.

Witness Ellis states that when claimant Kinter was grabbed by one of the officers, he turned around as if in surprise, and knocked two officers away. Others immediately responded and witness Ellis describes claimant Kinter as being put up against the patrol car and poled him to the ground. He describes at least two officers with nightsticks out and others with flashlights.

When on the ground, claimant's arms were placed behind his back and he was handcuffed. Mr. Ellis states that claimant Kinter was still yelling at the police officers that if they wanted to fight, to take the handcuffs off him and do so without sticks. He states that the officers when subduing claimant Kinter, had hit him with their fists, and were using the sticks but not in the usual swinging manner. Apparently after claimant Kinter was handcuffed he was still struggling and physically pushed into a patrol car. this doesn't track w/ police stmt

Witness feels that his passengers remained in the pickup truck while the melee was in progress. Mr. Ellis could not state if a crowd gathered or not. He does recall asking a police officer if he could leave and was told to stick around. He did so for five or ten minutes and was then told he could leave. He was not questioned.

was yeseight?

Witness Ellis states that the only reason he asked the police if he could leave was due to the fact that approximately four months before he had been playing in an alley with his brothers when the Lodi Police Dept. arrived on the scene and pulled guns on them.

bias against P.D.

Witness Ellis states that he was subpoenaed once and appeared in court, but did not testify.

WITNESS #3

Darren Combee, resides with his mother at 836 N. Cluff, Lodi, CA, telephone 333-1042. We did not take a statement from witness Combee as part of his testimony could be adverse.

He confirms being a passenger in the pickup truck driven by witness Ellis and that initially when driving by Lee Avenue, thought they saw someone that they knew.

How?

He confirms that the pickup truck was stopped and that claimant Kinter and witness Rogers were trying to calm down claimant Hayes. Witness knew claimant Kinter but did not know claimant Hayes.

Later witness learned that something had happened to a friend of claimant's and that she was upset. They moved around the block and the next time claimant and witness Rogers were seen, they were down on a lawn in front of a house. Witness describes a neighbor as putting on the house lights and looking out. Apparently claimant Hayes was yelling and screaming at this time.

Witness stayed in the pickup truck but confirms Peter Ellis got out. He also states that Tracy Judson got out of the pickup truck and went over to the situs and tried to calm claimant Hayes. When she was unable to do so, she returned to the pickup truck and got back in. Tracy Judson was only out of the truck for a very short period of time.

Being what

He then describes a patrol car arriving in which there were two officers. At this time claimant Kinter was on top of claimant Hayes and the police officers ran over. He then describes claimant Kinter as getting up and claimant Hayes being helped up. He then states four more police officers arrived. Two of the officers took claimant over to a patrol car, and she became hysterical and was struggling.

Apparently the police were having difficulty in trying to control claimant Hayes. He saw her in the police car eventually, but could not state how they got her inside. He could not state whether she was handcuffed or not. He could not recall any of the conversation, only that claimant Hayes was screaming.

He describes claimant Kinter as talking to the police, and his attitude appeared to be forget it, and started to walk away. At this juncture a police officer grabbed claimant Kinter from behind by the shoulders.

Claimant Kinter turned around and swung a punch at the police officer. He could not state whether the officer was hit or not. Immediately about six police officers converged on claimant Kinter and then there was a struggle. Eventually claimant Kinter was brought to the ground and during this melee, witness Combee saw three black nightsticks. He could not state if they were used or not. However, witness noted blood on the right side of claimant Kinter's face along the lower jaw bone.

He could not state if claimant Kinter was handcuffed or not. He does recall that once claimant Kinter was back up on his feet, he had resigned himself to the fact that there were more police officers than he could handle, and he was no longer aggressive.

Witness Ellis then went over and asked the police if they wanted a witness. He was told no. At this time he thinks that claimant Kinter was in the police car. When witness Ellis was told he was not needed as a witness, he left the scene.

Later, witness Combee heard from claimant Kinter that the owner of the house in front of which the struggle occurred had called the Lodi Police Dept. stating that claimant Hayes was being raped. Witness Combee thought that probably the police officers had felt a rapist was getting away when claimant Kinter went to leave the situs.

PITCHESSMOTION

We made contact with Captain Williams of the Lodi Police Department in regard to this motion. We had been given to understand at my meeting with the police officers that motions had been made to obtain information on Officers Lewis and Sinigaglia and Lieutenant Thornesberry. However, Captain Williams stated that he only received an order to forward information on Lieutenant Thornesberry. He gave me a copy of the Discovery under Pitchess which had been forwarded to the court.

In this regard, Lieutenant Thornesberry told this writer that he had been a backup in a family dispute involving husband, wife, baby and grandmother. Apparently the situation was calm and the wife, baby and grandmother went to leave. When they were getting into the car the wife turned and went for the husband. They then went to arrest the wife and the husband who was drunk got Lieutenant Thornesberry around the neck. The grandmother started pulling on his arm and all went down to the ground. In the fall, the grandmother wound up underneath and sustained a broken hip.

have
is
been

It was the husband who said he had been beaten with a club as both husband and wife were arrested.

Later, they pled guilty and the complaint was dropped.

However, the matter was investigated by the Internal Affairs Dept. of the Lodi Police Department, and Lieutenant Thornesberry was exonerated. Even though there were no Pitchess Motions received on officers Lewis and Sinigaglia, we were informed by Captain Lewis that there is nothing derogatory to report in their files.

MEDICAL

We obtained a copy of a report completed by Dr. Dietz of Lodi Memorial Hospital. The form is self-explanatory, but what is upsetting is the fact that Dr. Dietz found it necessary to complete a suspected child abuse report. This appears to be totally irrelevant in this instant case.

ADDITIONAL WITNESSES

An investigation was conducted by the Lodi Police Department regarding the matter at hand.

Witnesses listed were Richard Hoff, 228 S. Hutchins, Lilly Robinson 232 S. Hutchins, Lodi, CA, telephone(209)369-0512, Patrick and Edward Bender, 207 S. Hutchins in Lodi and occupants of 215 S. Hutchins in Lodi.

All of these witnesses are favorable to the Lodi Police Dept. If you wish contacts to be made with witnesses, please so notify this office and we will proceed accordingly. Yes!

GENERAL REMARKS

It is obvious that the Lodi Police Department responded to a situation which was more domestic than anything else. However, they did not know this at the time. Obviously, claimant Hayes was very upset and had not calmed down when the Lodi police arrived. I feel she was not thinking at this time, and just decided to get away as she had done previously with claimant Kinter and witness Rogers.

Naturally the Police Department could not allow claimant Hayes to leave without her being identified or interviewed. However, she was still emotional and when the police attempted to detain her for questioning she started resisting and had to be subdued.

Claimant Hayes' parents stated they were surprised that a small young female could resist male police officers, but probably they had not seen her in action. After all, claimant Hayes was strong enough to elude claimant Kinter, who was quite large. As Lieutenant Thornesberry pointed out, he did not wish to strike claimant Hayes with his fist, merely restrain her.

It is not known why claimant Kinter decided to walk away from the officers, which initiated the physical contact and the subsequent altercation. Possibly he was angry and upset at this time and lost control quickly and without thinking.

However, in my opinion there appears to be little doubt that claimants Hayes and Kinter were responsible for igniting the situation, and therefore if this matter went to a jury, it would simply be a question of whether the police used unnecessary force.

I feel one facet of this case that is unfavorable to our position is the fact that seven officers arrived at the scene to investigate an altercation involving three young people.

Yes!

At the present time we intend to maintain an open file, feeling that a contact should be made with Mr. Kinter when the case involving his son has been resolved. If we are able to secure a report from claimant Kinter we will do so. Naturally we will use our discretion relative to securing statements.

If you wish this writer to contact the additional witnesses who are residents of the neighborhood, please so notify this office and we will proceed accordingly.

Our further reports will follow.

Very truly yours,

S.L. Layton

SLL:jr
Enc

will need to confirm the size of crowd gathering &/or frequency of teen problems

9/7 CC 4C
CC 30

S. L. Layton Company *Insurance Adjusters*

Reply to: P.O. Box 31126 • 4226 22nd Street • San Francisco, California 94131 • (415) 821-3910
S.F. CA 94131

February 13, 1983

REVIEW

FEB 17 1983

BENSON

1-3565-83

R.L. Kautz & Co.
No. 8 Union Square Blvd.
Suite 102
Union City, CA 94587

Attn: Connie Dedmon

Re: Mary Ellen Hayes v. City of Lodi
D/L: 9/4/82

Dear Connie:

This will acknowledge receipt of the assignment via your letter dated January 17, 1983.

As per your instructions, we made the following contacts.

A meeting was arranged by Lieutenant A. Thornesberry at the Lodi Police Dept. Present were Lieutenant Thornsberry, regular police officers Dennis Lewis, Sil Sinigaglia, Terry Miller, Ray Punta, plus reserve officers Gary Sage, Lloyd Gums, and this writer.

We took the events in sequence, obtaining the following information.

Lieutenant Thornesberry was on patrol and happened to be approximately two miles away from an altercation. He heard the Lodi Police Dept. dispatcher call on the radio to Officer Dennis Lewis within whose beat the altercation was occurring. Because Lieutenant Thornesberry was close to the scene, he drove over. In monitoring the radio call, Lieutenant Thornesberry stated that the [redacted] Lieutenant Thornesberry was alone, and upon arriving at the scene, noted suspects on the lawn of a property, and so radioed dispatch that the fight was still in progress and requested backup assistance.

Nearby the scene is a Jack in the Box fast food restaurant which caters heavily to teenagers on Saturday evenings. Also, West Lodi Avenue was within a few houses and this is heavily traveled (cruised) by teenagers. And because of these facts, Lieutenant Thornesberry wanted a backup. He mentioned there were a few teenagers standing near the scene when he arrived.

Upon looking over at the scene, [redacted]

Lieutenant Thornesberry walked over to the situs and the unidentified male kneeling beside Hayes and Kinter stood up and walked away. Lieutenant Thornesberry never did identify this individual.

What were they doing?

It appeared that Hayes and Kinter were oblivious to Lieutenant Thornesberry's presence. Lieutenant Thornesberry tapped Kinter on the shoulder several times before getting his attention. While Hayes and Kinter were still on the ground, Officer Dennis Lewis arrived at the scene. Officer Lewis was also operating in a one-man patrol car.

William Kinter got to his feet and so did Mary Ellen Hayes. At this point, Lieutenant Thornesberry was considering Hayes as a victim and wanting to get her name and address, etc., and then she could have left the area. However, without saying anything she started to take off toward a crowd of teenagers that had assembled. The spectators had consisted of approximately half a dozen teenagers when Lieutenant Thornesberry had first arrived, and this had built up considerably.

Lieutenant Thornesberry realized that if Hayes had walked into the crowd she would have never been identified, and he did not wish this to happen. It appears Lieutenant Thornesberry was able to get Hayes over to Officer Lewis' patrol car without any real problems.

In the meanwhile, Lieutenant Thornesberry told Officer Lewis to hold Kinter under arrest. William Kinter tried to walk away from the scene, but Officer Lewis held onto him and they both walked toward the patrol cars. It was at this juncture and [redacted]. Just before this occurred, regular Officer Sil Sinigaglia and reserve Officer Gary Gage arrived, and noted that Lieutenant Thornesberry, Officer Lewis, suspects Hayes and Kinter were standing together having a heated conversation.

Upon William Kinter striking Officer Lewis, Officer Sinigaglia responded to assist. Reserve Officer Gage went to the side of the house in front of which the incident had occurred in order to try and locate the third person. Upon Lieutenant Thornesberry hearing the commotion and seeing the size of Bill Kinter, he attempted to hurry suspect Hayes into the back of the police car.

was she resisting @ this point?

At this time he had no intention of using handcuffs. Lieutenant Thornesberry was [redacted] but immediately she bounced out again. While this situation was in progress, regular Officer Terry Miller and reserve Officer Lloyd Gums arrived at the scene. Officer Miller and reserve Officer Gums immediately went to assist with the subduing of [redacted]. how did it get this? How long was struggle

Because of the struggle and the strength of suspect Kinter, Officers Lewis and Sinigaglia were tired. About this time Officer Sinigaglia heard a loud shrill and yell, and noted that Lieutenant Thornesberry was having difficulty with suspect Hayes. He immediately left in order to assist. Because suspect Hayes had started to strike Lieutenant Thornesberry when getting out of the car, he placed her under arrest and attempted to put handcuffs on her.

what trouble? what did he see?

how long was struggle - how fierce was it? only 1 officer involved when was battery dialogue

[redacted] Lieutenant Thornesberry got suspect Hayes into the car, and Officer Sinigaglia opened the opposite door to assist. Suspect Hayes was not only fighting, but also swearing at the officers. It was pointed out that the Lodi Police Department's policy is to handcuff all suspects when transporting them.

At some period during the arrest Officer Ray Punta arrived after hearing a call on the radio by Officer Lewis to locate the third party. He was alone and upon arriving at the scene just [redacted] but did not see the suspects. He went to look for the third suspect in his patrol car, and when he was unable to locate this individual, returned to the scene. He then got out and noted that suspect Kinter had been handcuffed and suspect Hayes was screaming. where was she

how big

where was he

He noted Lieutenant Thornesberry on one side of the police car and Officer Sinigaglia on the other. Apparently suspect Hayes was screaming rape, f-ing pigs, and I'm going to sue. Because Hayes was fighting furiously and yelling and screaming, Officer Punta wanted to help subdue her so that she could be cuffed. However, there was no room in the rear seat to do so, and as there was a screen in the patrol car, he could not assist from the front.

However, eventually Lieutenant Thornesberry and Officer Sinigaglia were able to place handcuffs on suspect Hayes. both? - I thought one was on each side of car.

Although it was difficult to handcuff suspect Kinter, once this was done he no longer resisted. [redacted] and got into the police car and in fact, became quite affable. all this time lay on the ground?

Officer Lewis drove suspect Kinter to the Lodi Police Station where he was booked.

There was no further problems with suspect Kinter.

Officer Lewis, along with reserve Officer Gage, transported suspect Hayes to the Lodi Police Department where she was held.

what were visible injuries

Punta & Gage transported her to Peterson Hall, the juvenile facility. As per Officer Punta's report, they would not accept suspect Hayes [redacted]. She was taken to the County Hospital who would not treat her unless the parents' consent was first obtained. At the County Hospital Officer Punta kept one handcuff on suspect Hayes so that she could not escape. At this time she was still being smart-mouthed but not physically resisting. Apparently after an hour at the County Hospital, suspect Hayes finally settled down.

Officer Punta stated that suspect Hayes had been drinking, but he did not feel she was intoxicated. Any B.A.?

Apparently suspect Hayes was taken to Peterson Hall three times in all, and the counselor on duty had called Mr. and Mrs. Hayes relative to obtaining medical attention for suspect Hayes. This was refused, and Officer Punta so noted on suspect Hayes' booking document. any reason given?

He recalls a Mary Gantz was working intake at Peterson Hall that evening, but could not recall the name of the counselor on duty who would have called Mr. and Mrs. Hayes.

As you will note from the reports, suspect Hayes' parents came to Peterson Hall in order to take their daughter home. Suspect Hayes was cited but not detained over night.

Approximately a week after this incident, suspect Hayes was noted by a police officer loitering and was requested to move. Apparently suspect Hayes was alone at this time.

The Lodi Police Dept. received a call from Mrs. Hayes in reference to this incident, and she was claiming harrassment.

Some time after this incident occurred, Officer Punta received a prowler call in the area of where the Kinter's lived. However, he did not connect the incident at hand with the location of the prowler. Naturally, Officer Punta was using a bright light in order to try and locate the alleged prowler. Apparently the light was shown into the home of Mr. Kinter.

Lieutenant Thornesberry received an harrassment call about the situation, but once explaining what Officer Punta was doing in the neighborhood, Mr. Kinter became apologetic.

can we talk to him?

Lieutenant Thornesberry has spoken to suspect Hayes' probation officer [redacted] about the incident. Apparently when Mrs. Hayes was discussing the situation, suspect Hayes walked out of the room stating that her mother was making a big fuss about nothing.

Apparently suspect Hayes has no prior police record, but suspect Kinter does. for what

In regard to suspect Hayes claiming she was struck with a billy club, we were informed that these measure 12-18 inches and generally are made of plastic. The Lodi Police Dept. are not allowed to carry billy clubs but have what are called batons or nightsticks which measure 24 inches and are made of plastic or aluminum. [redacted] on the back seat of a police car, as there was insufficient [redacted]

We would also like to point out that Officer Lewis had no physical contact with suspect Hayes.

Lieutenant Thornesberry did state that he had a flashlight which was knocked out of his hand in the melee and he had to go looking for same following the incident. He located it under a police car. Did he use strike Hayes w/ it?

When Officer Lewis and reserve Officer Gage were transporting suspect Hayes to Lodi P. D. she mentioned being upset over a girlfriend who was going to commit suicide and this made her depressed, and suspect Kinter was trying to stop her mood.

Apparently suspect Kinter related the same facts. It was noted that he also had been drinking but was not considered to be drunk. He was booked at Peterson Hall by Officer Miller and reserve Officer Gums.

Suspect Hayes would have been searched at L.P.D. by matrons one of whom was a Sheryl Dick who is now a Deputy Marshall in Stockton.

[redacted] what was said, attitude etc?

Apparently when they had called in person that evening, they had wanted to talk with suspect Hayes, who at this time was still hysterical and did not wish to go with her parents. Suspect Hayes stated that she had just found out she was adopted and that Mr. and Mrs. Hayes did not want or love her.

is this true?

Because of suspect Hayes' state of mind, Officer Lewis felt that it was best that Mr. and Mrs. Hayes did not see her at that time.

It was later when Officer Lewis had gone off duty and Officer Punta had taken over that suspect Hayes went home with her parents.

I tried to obtain information from the various officers which would supplement the police reports. If there are any discrepencies or areas upon which you feel the officers could elaborate, please so notify this office and additional contacts by telephone can be made.

CLAIMANT MARY ELLEN HAYES

In the telephone book we noted that Patty's Ceramics were located at 722 W. Lodi Avenue and upon calling at the address, noted that it was for lease. For this reason we journeyed to claimant's home. Obviously Mary Ellen Hayes opened the door stating that her parents were at work, and we were given an address of 14 N. Main Street in Lodi.

We noted that Mary Ellen Hayes, although not a large female, gave one the feeling that she could be quite aggressive if need be. She had dark hair, was not unattractive, but had a hard look about her.

We contacted Mr. and Mrs. Hayes who are definitely diamonds in the rough. From these individuals, it is easy to believe that claimant was capable of the language stated in the police reports. If claimant is adopted and there is no blood relationship, we can only assume she has developed an aggressive nature because of her mother. She was the one who we initially contacted and immediately started her tirades about the Lodi Police Department, their past abuses which include the matter at hand. During the conversation, Mr. Hayes responded to the front of the store and was calm about the situation, but nevertheless appeared indignant that this incident had occurred and would not allow this writer to speak with his daughter.

Both wished for the matter to be handled by an attorney. As Mrs. Hayes continued with her tirades, we were trying to calm her and finally Mr. Hayes came to the front of the store and indicated to her that she had said all that was necessary and it was time to return to work. I wholeheartedly agreed with him.

Neither Mr. or Mrs. Hayes would make good appearing witnesses, and in a trial I feel sure that Mrs. Hayes could quite easily be induced into behaving in a manner that would be detrimental to her daughter's case.

CLAIMANT WILLIAM KINTER

We attempted to contact claimant's father, Don Kinter who happened to be out for the evening when we stopped by. We left a message with a daughter stating we would contact him by telephone.

However, Mr. Kinter called this office on two occasions and we were successful in talking to him on the second time he tried. I identified myself to Mr. Kinter and the purpose of my visit. [redacted] This verified my feeling that Mrs. Hayes in her aggressiveness, had obtained forms from the City of Lodi and more or less forced Mr. Kinter into filing.

However, Mr. Kinter did not wish his son to be interviewed at this time because of the criminal charges still pending. I can certainly sympathize with him in this regard. However, [redacted]

I certainly feel we should take advantage of this option if it is still valid after the criminal charges have been disposed of. Yes!

WITNESSES

Michael Rogers resides with his parents at 474 Pioneer Drive, Lodi, CA, telephone 369-1215. As I did not feel witness' testimony would be favorable to the Lodi Police Dept., I did not take a statement but the content of his testimony is as follows.

He was attending a party along with claimants Kinter and Hayes. He did not know exactly where the party was located, only that it was on Lodi Avenue behind an Arco station approximately a block and a half away from the situs.

Two female friends of claimant Hayes with the given names of Christine and Trudy apparently were going to fight, and claimant Hayes got involved in the situation which became very upsetting to her. Apparently claimant Hayes has a propensity for becoming involved in other persons' problems and getting emotional about same.

Apparently Christine and claimant Hayes started to cry at the party, and Mike Rogers said that Hayes started to get weird and eventually went out of control.

Claimant Kinter had attended the party with claimant Hayes and upon seeing her run out of the party in an emotional state, followed her. Mike Rogers went along with claimant Kinter.

Initially they caught up with claimant Hayes in an alley (name unknown) and attempted to calm her down. She ran away and they caught her again. Again, [redacted] A neighbor came out and witness Rogers stated that claimant Hayes was upset because of an emotional problem involving a girlfriend.

were they giving appearance of a fight?

Apparently claimant Hayes was lying on her back and claimant Kinter more or less on top of her. Witness Rogers was alongside. While in this position he just happened to look up and noted a police officer standing above him. Witness Rodgers got up and told the officer that claimant Hayes was upset because of an emotional problem involving another girlfriend.

At this juncture Rogers walked away, leaving claimants and the officer at the situs. He did not look back when walking away and therefore did not know what transpired at this point.

He stated that the party was attended by teenagers and that claimant Hayes' brother had been at the party, left for a period of time and then came back. Apparently [redacted] This confirms the statement made to you by Mrs. Hayes.

Witness states there was beer consumed at the party and recalls claimants drinking beer. However, he felt that claimant Hayes was more or less sipping beer from claimant Kinter's glass. Witness stated he could not state how much beer either of the claimants had consumed.

Prior to claimants and witness arriving at the situs, he recalls witness Ellis driving up in a pickup truck. Apparently they were in an alley area at this time. Ellis knew Kinter and presumably this is why he stopped. Witness called to witness Ellis to help get claimant Hayes into the truck so that they could get her away from the area because she was screaming so much. However, she was [redacted] from them and therefore was never put into the vehicle.

Witness states that he had been contacted by an investigator for claimant Kinter relative to the criminal matter. He had been served a subpoena and called to testify.

He mentioned that claimant [redacted]

Witness Rodgers is obviously the third party noted by Lieutenant Thornesberry at the scene. However, he was never identified by the Lodi Police Department and to our knowledge has not been interviewed since.

WITNESS #2

Peter Ellis, resides 215 Mulberry Circle, Lodi, CA, telephone (209) 334-1584, with his parents.

We did not secure a statement from witness Ellis due to the fact that his testimony is adverse and he has a tendency to present it in that manner.

He confirms driving to the scene area in a pickup truck along with two friends, a [redacted] Initially he had noted both claimants standing in an alley with [redacted] As claimant Hayes appeared to look like a friend of witness and she was crying, he drove around the block and into the alley. He then recognized claimant Hayes as someone he knew and claimant Kinter as someone he had met once. He also confirms that witness Rodgers was present, but he did not know this individual.

Upon stopping, witness Ellis spoke to witness Rogers asking what was wrong. Apparently witness Rogers did not know what the problem was but claimant Hayes was upset about something and that he wanted to put claimant Hayes into the truck bed along with claimant Kinter in order to take her home.

Before they were able to do this claimant took off running toward the Jack-in-the-Box. Claimant Kinter and witness Rogers started to run after claimant Hayes and witness Ellis drove down the alley and in front of the house where he [redacted] He states that [redacted] witness Rodgers was standing around making comments.

Witness Ellis then noted the Lodi police arrive and at this time he was standing on the sidewalk. He was thinking of helping to pick claimant Hayes up at this time. He recounts that the Lodi police officers responded fairly rapidly, one first, then a second, and within three minutes two more.

Witness Ellis describes claimant Kinter as getting up on his own, that there was some conversation, but he could not recall what this was. He stated that [redacted], even when the second police officer showed up. They talked for about a minute and it seemed as though the conversation finished and claimant Kinter started to walk away.

one seems to contradict the other

He then describes one of the police officers as saying to claimant Kinter, "we have enough to hold him on" and the officer then grabbed claimant Kinter from behind. He mentioned that all of the police officers had arrived by this time.

He describes two police officers as picking up claimant Hayes and that she was screaming and struggling, and an officer stated to throw claimant Hayes into the car. He states that the police were calling her names and pulling her hair and hitting her head. She states that she bounced all over. However, witness Ellis admits that [redacted] he has no idea why they were trying to do this. But she was shouting but he could not recall what.

He then describes one police officer on one side of the patrol car and one on the other, and they sort of pulled her into the car. He states that one of the police had claimant Hayes' arms behind her, and he thinks that maybe she was handcuffed.

Witness Ellis states that when claimant [redacted] was grabbed by one of the officers, he turned around as if in surprise, and [redacted] Others immediately responded and witness Ellis describes claimant Kinter as being put up against the patrol car and poled him to the ground. He describes at least [redacted]

When on the ground, claimant's arms were placed behind his back and he was handcuffed. Mr. Ellis states that claimant Kinter was still yelling at the police officers that if they wanted to fight, to take the handcuffs off him and do so without sticks. He states that the officers when subduing claimant Kinter, had hit him with their fists, and were using the sticks but not in the usual swinging manner. Apparently [redacted] this doesn't add up police stmt

Witness feels that his passengers remained in the pickup truck while the melee was in progress. Mr. Ellis could not state if a crowd gathered or not. He does recall asking a police officer if he could leave and was told to stick around. He did so for five or ten minutes and was then told he could leave. He was not questioned.

how's his eyesight?

Witness Ellis states that the only reason he asked the police if he could leave was due to the fact that approximately four months before he had been playing in an alley with his brothers when the Lodi Police Dept. arrived on the scene and pulled guns on them.

biased against P.D.

Witness Ellis states that he was subpoenaed once and appeared in court, but did not testify.

WITNESS #3

Darren Combee, resides with his mother at 836 N. Cluff, Lodi, CA, telephone 333-1042. We did not take a statement from witness Combee as part of his testimony could be adverse.

He confirms being a passenger in the pickup truck driven by witness Ellis and that initially when driving by Lee Avenue, thought they saw someone that they knew.

how?

He confirms that the pickup truck was stopped and that claimant Kinter and witness Rogers were trying to calm down claimant Hayes. Witness knew claimant Kinter but did not know claimant Hayes.

Later witness learned that something had happened to a friend of claimant's and that she was upset. They moved around the block and the next time claimant and witness Rogers were seen, they were down on a lawn in front of a house. Witness describes a neighbor as putting on the house lights and looking out. Apparently claimant Hayes was yelling and screaming at this time.

Witness stayed in the pickup truck but confirms Peter Ellis got out. He also states that Tracy Judson got out of the pickup truck and went over to the situs and tried to calm claimant Hayes. When she was unable to do so, she returned to the pickup truck and got back in. Tracy Judson was only out of the truck for a very short period of time.

He then describes a patrol car arriving in which there were two officers. At this time claimant Kinter was on top of claimant Hayes and the police officers ran over. He then describes claimant Kinter as getting up and claimant Hayes being helped up. He then states four more police officers arrived. Two of the officers took claimant over to a patrol car, and she became hysterical and was struggling.

doing what

Apparently the police were having difficulty in trying to control claimant Hayes. He saw her in the police car eventually, but could not state how they got her inside. He could not state whether she was handcuffed or not. He could not recall any of the conversation, only that claimant Hayes was screaming.

He describes claimant Kinter as talking to the police, and his attitude appeared to be forget it, and started to walk away. At this juncture a police officer grabbed claimant Kinter from behind by the shoulders.

Claimant [redacted] He could not state whether the officer was hit or not. Immediately about six police officers converged on claimant Kinter and then there was a struggle. Eventually claimant Kinter was brought to the ground and during this melee, witness Combee saw three black nightsticks. He could not state if they were used or not. However, witness noted blood on the right side of claimant Kinter's face along the lower jaw bone.

He could not state if claimant Kinter was handcuffed or not. [redacted]

Witness Ellis then went over and asked the police if they wanted a witness. He was told no. At this time he thinks that claimant Kinter was in the police car. When witness Ellis was told he was not needed as a witness, he left the scene.

Later, witness Combee heard from claimant Kinter that the owner of the house in front of which the struggle occurred had called the Lodi Police Dept. stating that claimant Hayes was being raped. Witness Combee thought that probably the police officers had felt a rapist was getting away when claimant Kinter went to leave the situs.

PITCHESSMOTION

We made contact with Captain Williams of the Lodi Police Department in regard to this motion. We had been given to understand at my meeting with the police officers that motions had been made to obtain information on Officers Lewis and Sinigaglia and Lieutenant Thornesberry. However, Captain Williams stated that he only received an order to forward information on Lieutenant Thornesberry. He gave me a copy of the Discovery under Pitchess which had been forwarded to the court.

e have this claim

In this regard, Lieutenant Thornesberry told this writer that he had been a backup in a family dispute involving husband, wife, baby and grandmother. Apparently the situation was calm and the wife, baby and grandmother went to leave. When they were getting into the car the wife turned and went for the husband. They then went to arrest the wife and the husband who was drunk got Lieutenant Thornesberry around the neck. The grandmother started pulling on his arm and all went down to the ground. In the fall, the grandmother wound up underneath and sustained a broken hip.

It was the husband who said he had been beaten with a club as both husband and wife were arrested.

Later, they pled guilty and the complaint was dropped.

However, the matter was investigated by the Internal Affairs Dept. of the Lodi Police Department, and Lieutenant [redacted] Even though there were no Pitchess Motions received on officers Lewis and Sinigaglia, we were informed by Captain Lewis that there is [redacted]

MEDICAL

We obtained a copy of a report completed by Dr. Dietz of Lodi Memorial Hospital. The form is self-explanatory, but what is upsetting is the fact that [redacted]. This appears to be totally irrelevant in this instant case.

ADDITIONAL WITNESSES

An investigation was conducted by the Lodi Police Department regarding the matter at hand.

Witnesses listed were Richard Hoff, 228 S. Hutchins, Lilly Robinson 232 S. Hutchins, Lodi, CA, telephone(209)369-0512, Patrick and Edward Bender, 207 S. Hutchins in Lodi and occupants of 215 S. Hutchins in Lodi.

All of these witnesses are favorable to the Lodi Police Dept. If you wish contacts to be made with witnesses, please so notify this office and we will proceed accordingly. Yes!

GENERAL REMARKS

It is obvious that the Lodi Police Department responded to a situation which was more domestic than anything else. However, they did not know this at the time. Obviously, claimant Hayes was very upset and had not calmed down when the Lodi police arrived. I feel she was not thinking at this time, and just decided to get away as she had done previously with claimant Kinter and witness Rogers.

Naturally the Police Department could not allow claimant Hayes to leave without her being identified or interviewed. However, she was still emotional and when the police attempted to detain her for questioning she started resisting and had to be subdued.

Claimant Hayes' parents stated they were surprised that a small young female could resist male police officers, but probably they had not seen her in action. After all, claimant Hayes was strong enough to elude claimant Kinter, who was quite large. As Lieutenant Thornesberry pointed out, he did not wish to strike claimant Hayes with his fist, merely restrain her.

It is not known why claimant Kinter decided to walk away from the officers, which initiated the physical contact and the subsequent altercation. Possibly he was angry and upset at this time and lost control quickly and without thinking.

However, in my opinion there appears to be little doubt that claimants Hayes and Kinter were responsible for igniting the situation, and therefore if this matter went to a jury, it would simply be a question of whether the police used unnecessary force.

I feel one facet of this case that is unfavorable to our position is the fact that seven officers arrived at the scene to investigate an altercation involving three young people.

Yes!

At the present time we intend to maintain an open file, feeling that a contact should be made with Mr. Kinter when the case involving his son has been resolved. If we are able to secure a report from claimant Kinter we will do so. Naturally we will use our discretion relative to securing statements.

If you wish this writer to contact the additional witnesses who are residents of the neighborhood, please so notify this office and we will proceed accordingly.

Our further reports will follow.

Very truly yours,

S.L. Layton

SLL:jr
Enc

will need to confirm the size of crowd gathering +/or frequency of this problem

S. L. Layton Company *Insurance Adjusters*

Reply to: P.O. Box 31126 • 4226 22nd Street • San Francisco, California 94131 • (415) 821-3910
S.F. CA 94131

April 8, 1983 1-3565-83

John P. Caudle, Attorney at Law
100 Webster Street
Suite 300
Oakland, CA 94607

Re: Mary Ellen Hayes v. City of Lodi
D/L: 9/4/82

Dear Mr. Caudle:

As per Ms. Dedmon's letter dated February 22, 1983, we spoke to Bruce Kirby who stated that claimant Hayes had initially been placed on an informal probation and he was the officer in charge.

When interviewing Ms. Hayes, she stated the facts as follows.

She was attending a party and had consumed two beers, and became upset over a girlfriend and left. She was followed by claimant Kinter whom she attempted to evade, being overwrought at this time.

She confirms the police being on the scene and being told to get into the police car which she refused to do. Ms. Hayes is stating that she was never informed by the police officer that she was under arrest, and this is why she did not initially get into the police car. The officer then told claimant that she had to get into the car, and when she was trying to do so claims the officer hit her with a baton.

Mr. Kirby confirms that he spoke to both Mr. and Mrs. Hayes, describing claimant's father as passive, and her mother as bitter against the Lodi Police Dept. and in this instant case, was incensed that police officers would handle a juvenile female in the manner they did.

While claimant Hayes was on informal probation, Mr. Kirby received a telephone call from her high school principal, requesting his help. Apparently claimant wished to run away from home with her companion, this was after finding out she had been adopted.

Subsequently, claimant went to stay with an adult boyfriend overnight.

During this period, Mr. Kirby learned from claimant Hayes that there were fights between her and her mother and Ms. Hayes stated that Mrs. Hayes was very hostile toward her.

Because of this incident, claimant Hayes' informal probation was revoked and formal charges were filed. Naturally at the hearing claimant Hayes changed her story relative to the relationship with her mother.

Mr. Kirby did not have his file with him when speaking to this writer, but confirms there was a report sent to Mr. Bowers in which was mentioned that claimant Hayes had out of control tendencies. Because claimant Hayes is a juvenile, it is not known whether in the future this writer would be able to review Mr. Kirby's report, but if this matter continues, we can contact Mr. Bowers in this regard.

Mr. Kirby stated that no probation officer was assigned to claimant Kinter, due to the fact that the charges were still pending. A Mr. Harris represented the probation department in court but was not claimant Kinter's probation officer.

We learned that claimant Kinter had two prior felonies, an auto theft and a burglary and was assigned to the probation department. This dated back to 1980. We also learned that during this period he had been suspended from high school for non-attendance. He also served 60 days in juvenile hall.

As of this writing, we have not attempted to secure additional background information on claimant Kinter, but could attempt to do so at a later date if necessary. It must be borne in mind that we are dealing with juveniles, and therefore the type of information I am attempting to assemble is privileged.

We spoke to Sheryl Dick relative to claimant Hayes' appearance and demeanor after she arrived at the Lodi Police Department.

Sheryl Dick recalls claimant Hayes, stating that she was small in stature, had dark hair and was very, very drunk. Claimant was hysterical, screaming, and carrying on like a wild person. Claimant was screaming about a friend with the given name of Chris who was going to commit suicide. Sheryl Dick felt that claimant was almost uncontrollable and had to be physically restrained in order to prevent claimant from hurting herself.

It is assumed by Ms. Dick that claimant was wearing handcuffs at the time of booking, as this is usual procedure. She learned that claimant had been combattive when the Lodi police officers were arresting claimant.

Claimant also mentioned that at the time of her arrest, claimant Kinter, her boyfriend, was trying to restrain her rather than beating her up. Ms. Dick described claimant as being dirty and scuffed up from being on the ground, but did not notice any cuts or bleeding. Ms. Dick stated that if there were obvious injuries she would have administered first aid.

Ms. Dick gave claimant a pat-down search, and recalls Ms. Hayes was wearing Levis and a top.

Claimant Hayes continued to talk about her best friend Chris, and because Ms. Dick had a daughter with this given name, she questioned her quite thoroughly. However, it was not until a subsequent contact that Ms. Dick learned the Chris who supposedly was going to commit suicide was Ms. Dick's daughter.

Claimant was left in the juvenile cell while Ms. Dick went to do paperwork. When Ms. Dick returned to the cell, she noted claimant sticking her head into the toilet bowl and saying she was trying to end it all. She mentioned having trouble with her parents, that they did not want her, and she wanted out. Ms. Dick stated that she took claimant Hayes' head out of the toilet bowl several times because claimant Hayes kept dunking it. Ms. Dick realized that claimant was not really trying to commit suicide, simply putting on a show.

Ms. Dick called in a supervisor who took a look at claimant and advised Ms. Dick not to do anything. Ms. Dick then describes claimant as laying across the toilet and hitting her head on the wall. During this whole process, Ms. Dick was attempting to reason with claimant, mentioning there were germs in the toilet bowl, etc.

It appears claimant was still in the juvenile cell when Ms. Dick went off duty. At this time claimant's hair was still disheveled, her face was dirty, eyes red from crying. Apparently there was an odor of alcohol about claimant's person, and as mentioned earlier, Ms. Dick did feel claimant was drunk.

Some time after the incident at hand, Ms. Dick picked claimant up in her car in order to drive Ms. Hayes and her daughter Chris to a mutual friend's. Claimant did not recognize Ms. Dick but the incident in question was talked about. Ms. Dick mentioned the incident involving the toilet bowl and claimant stated she could not recall same. She also mentioned at this time that she was having trouble with her parents, that they were cruel and abusive and that she hated them. It was also mentioned at this time that claimant had learned she was adopted.

Ms. Dick's impression was that Mr. and Mrs. Hayes were not actually abusive, just restrictive.

Chris Dick told her mother that on the evening that the incident occurred, claimant was already intoxicated when Chris Dick arrived at the party. At no time did Chris Dick state she was going to commit suicide, but admits getting annoyed with a boyfriend. She also confirmed that claimant Hayes was a friend but not a close one.

However, Ms. Dick stated that her daughter being a teenager, has a tendency to support her peers.

We contacted Jerry Wilson who was on duty when dispatch at the Lodi Police Dept. received the call relative to the incident involving Hayes and Kinter. Ms. Wilson was aware that police officers had been dispatched to the scene. She then heard via the radio that the Lodi police was on route to the City Jail with a female prisoner.

When claimant Hayes arrived, she was screaming and crying and immediately put into a booking cell. Claimant was alone and still in handcuffs at this time. Ms. Wilson describes claimant as acting like a spoiled brat.

Ms. Wilson thought that Officer Craig Miller, along with a reserve officer, had brought claimant Hayes into the booking area.

Claimant Hayes went into the booking cell first, followed by Ms. Wilson and Officer Miller. Claimant was screaming that she wanted the cuffs off and then jumped up onto a bench and yelled to get Officer Miller out of the cell. Ms. Wilson held claimant's hand and said that Officer Miller was in the cell to protect her, not to touch her. Apparently there was some conversation back and forth in this regard. Eventually, Sheryl Dick came into the booking cell and claimant calmed down and the handcuffs were taken off her and a patting down search was made. At this time Officer Miller had left the booking cell.

During this period Claimant Hayes confirmed she had been running and screaming to get help, and mentioned the only reason for doing so was that her sister was going to commit suicide. Ms. Wilson asked where claimant Hayes' sister was, and she mentioned at the apartment and so Ms. Wilson offered to send an officer to assist. Ms. Hayes then said that the person was not her sister, just a best friend and like a sister.

When questioned further, claimant Hayes did not know the best friend's last name, and at this juncture Ms. Wilson stopped taking claimant seriously.

Ms. Wilson confirms that claimant Hayes kept repeating that her sister was going to kill herself, then changing it to her best friend was going to kill herself. Claimant also stated that she did not know why she had been arrested.

At the time claimant Hayes was disheveled, her eyes were red because she had been crying, she was uncoordinated, and obviously under the influence of something. Ms. Wilson did not note any blood about claimant's person, and to her knowledge there were no complaints of injuries. Ms. Wilson stated that claimant Hayes may have registered some type of complaint about the handcuffs.

Ms. Wilson stated that claimant was being over-emotional like a person trying to get attention. During the conversation Ms. Wilson cannot recall claimant Hayes mentioning her parents. Ms. Wilson stated that at first claimant seemed surprised at being arrested, but later probably realized she had fought with the police officer and that was the reason he had done so. Ms. Wilson never found out exactly what had happened.

Ms. Wilson could not recall if she had started the paperwork but had obtained claimant's name and other information. Ms. Wilson is stating that she was the matron that went off duty and that Sheryl Dick was the one who took over. As you will note, there is some confusion in this regard between Ms. Dick and Ms. Wilson. However, I feel it is not a crucial point.

Ms. Wilson stated that she had never met claimant Hayes prior to the time of the incident.

We secured a recorded statement from Edwin Bender, age 54, resides 207 S. Hutchins, Lodi, CA, is married to Patricia Bender, they have no minor children and he is employed as a printer by San Juaquin Packaging in Stockton. We have not had the statement transcribed to date and will not do so unless advised to the contrary.

Briefly, Mr. Bender states that both he and his wife were in their kitchen when they heard screaming coming from outside. At first they did not pay much attention to the situation, due to the fact that they live near Jack-in-the-Box and on weekends there is quite a lot of noise from teenagers. Mr. Bender stated that you hear peeling of tires, etc., this type of noise. However, after the screaming kept up for a period

of time, Mr. and Mrs. Bender thought that the situation might be serious. Both walked outside their home and noted a vehicle parked across the street and realized there was scuffling going on behind same.

Because of the parked vehicle, Mr. and Mrs. Bender could not observe claimants. Mr. Bender suggested his wife call the Lodi Police Department and she went inside to do so. However, Mrs. Bender learned that the call had already been made. While Mrs. Bender was in the house the Lodi police arrived. Mr. Bender recalls seeing one officer and thought that there might have been two. Then other cars arrived within 30 seconds apart, and he felt there were three police cars and at least three officers.

He saw a male individual run down by the parking lot, but did not identify this person. He described claimant Hayes as resisting to a degree and heard a police officer say, get in there. He then saw two officers with claimant Kinter. He describes claimant Kinter's hands as being behind his back.

The first suspect he saw was claimant Hayes, and this was at the police car and he imagined she was under arrest. He did not feel there was any conversation and only noted one officer with her. Witness Bender stated he did not observe any nightsticks but did observe a flashlight. He stated there was no evidence of force.

He did not notice claimant Kinter until two police officers brought him across the street to a patrol car. As Mr. Bender pointed out, the vehicle parked at the street was blocking his view.

He describes three or four persons being at the scene when the police arrived and that the crowd did not seem to increase. Mr. Bender stated that teenagers gather at the Jack-in-the-Box fast food restaurant and cruise Lodi Avenue. He stated that South Hutchins where he lives is a natural turn-around for them.

He states there have been debates in the City Council about restricting parking in the area.

Mr. Bender did not feel that the neighborhood was a problem area, just confirming that there is quite a bit of noise on Friday and Saturday nights. He did not talk to anybody at the situs and knows of no other witnesses. Mr. Bender is assuming that claimant Hayes was down on the lawn with claimant Kinter on top of her.

However, as mentioned earlier, he did not observe this.

I feel Mr. Bender is somewhat negative, due to the fact that he could not be very specific. He confirmed being subpoenaed but has not testified in the actions against Hayes and Kinter.

We called Lilly Robinson relative to her giving a statement. Mrs. Robinson sounded quite elderly and was very uncooperative, stating that she had already given a statement to the police, and did not see any reason for giving another one. During the conversation she mentioned that her husband was seriously ill in the hospital and that she was upset and did not wish to be bothered.

Though we attempted to pursuade her to give a statement, she would not do so. We had asked Mrs. Robinson if it would be convenient to stop by one evening and she stated no. We did arrange to call her in a few weeks, hoping that she may be in a better frame of mind at that time.

We made contact with Maryanne Gantz who is employed at Peterson Juvenile Hall. She would not discuss the situation with this writer, and we were referred to her supervisor, Jack Schepcoff.

We explained to Mr. Schepcoff that we represented the City of Lodi in this matter and wished to talk to Ms. Gantz and the counselor on duty at Peterson Hall when claimant was transported over.

Mr. Schepcoff stated that we would have to obtain permission from a Leonard Gibson, the superintendent, and requested I have the City of Lodi write a letter. He did identify the counselor as a Jess Hampton.

We had a letter compiled and signed by Mr. Stein, forwarded to Leonard Gibson. We are attaching the letter in order to complete your file.

We have heard nothing further regarding these contacts and have not followed up as of this writing.

During my investigation, I have been in contact with Mike Bower who is handling this case for the DA's office. He has been most cooperative, but at the time of our last contact, the criminal cases were still pending.

Mr. Bower had taken recorded statements from the police officers, and indicated that he had other information contained in the file. I feel if this case continues, we should attempt to

review Mr. Bower's file which in all probability, could save work.

When last in the City of Lodi, we spoke to Captain Williams relative to the matter at hand. He indicated that attorneys were discussing the case at this time, attempting to compromise the situation by reducing or dropping the charges against Hayes and Kinter in exchange for the withdrawing of their civil claims.

Because of this fact we did not wish to pursue the investigation further, as if the compromise is achieved, it will not be necessary.

I intend to maintain contact with Captain Williams in order to determine the status.

If the civil suits are not withdrawn, I will then continue with the investigation.

Our further reports will follow.

Very truly yours,

S.L. Layton

SLL:jr
Enc
cc: R.L. Kautz & Co.