LODI CITY COUNCIL

Hutchins Street Square
125 S. Hutchins Street, Lodi

AGENDA – SPECIAL MEETING

Date: March 11, 2009

Time: 6:30 p.m.

For information regarding this agenda please contact:
Randi Johl
City Clerk
Telephone: (209) 333-6702

NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

A. Roll call

B. Public Hearings

Res. B-1 Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised Environmental Impact Report Regarding the Lodi Shopping Center Project Located at 2640 West Kettleman Lane (CD)

NOTE: This item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31

C. Adjournment

Pursuant to Section 54956.2(a) of the Government Code of the State of California, this agenda was posted at a place freely accessible to the public 24 hours in advance of the scheduled meeting.

Randi Johl
City Clerk

NOTICE: Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before* (in the case of a Closed Session item) *or during consideration of the item.

AGENDA ITEM B-01

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Conduct Public Hearing to Consider Two Appeals of the Planning Commission's Decision to Not Certify the Final Revised Environmental Impact Report (FREIR) Regarding the Lodi Shopping Center Project, Located at 2640 West Kettleman Lane

MEETING DATE: March 11, 2009

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Conduct a public hearing and consider the two appeals of the Planning Commission's decision to not certify the Final Revised Environmental Impact Report (FREIR) for the Lodi Shopping Center project.

BACKGROUND INFORMATION: On October 8, 2008, the Planning Commission held a noticed public hearing on the Lodi Shopping Center project, located at 2640 West Kettleman Lane. The Planning Commission decided to not certify the FREIR. On December 10, 2008, the City Council held a noticed public hearing to consider two appeals of the Planning Commission's decision to not certify the FREIR. The City Council reversed the decision of the Planning Commission and certified the FREIR.

On January 6, 2009, the City received a notice to cure an alleged Brown Act violation arising out of its December 10, 2008 public hearing on the FREIR. At its meeting on February 4, 2009, the City Council adopted a Resolution rescinding the certification of the FREIR for the Lodi Shopping Center project and reset the public hearing. Consistent with Government Code section 54960.1, the action was made to avoid litigation, and it is not a concession or evidence of a Brown Act violation. Even so, all written comments received and oral comments made at the meeting have been incorporated into the record. The Minutes from that meeting are included as an attachment to this report.

Lodi First recently questioned a parcel map recorded by Applicants on February 18, 2005, contending that Council must terminate all approvals on the project and pursue a Notice of Violation under the Subdivision Map Act. However, the three lot parcel map (the "Questioned Map") referenced by Lodi First is a legal phased portion of the Tentative Parcel Map approved by the Lodi City Council on February 16, 2005. The Subdivision Map Act authorizes the filing of phased maps noting: "multiple final maps relating to an approved …tentative map…may be filed…" (Government Code Section 66456.1) As indicated on the approved 12-unit tentative parcel map, applicant's intended to follow the phased map process noting "THIS MAP MAY BE PHASED." The Questioned Map continues the chain noting that the viewer should "Refer to Tentative Map File 003-P-001." Indeed the Questioned Map reflects nearly the identical parcel lines for the three

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APPROVED: _____
Blair King, City Manager

lots it creates as referenced on the approved 12 unit tentative parcel map. Lodi First points out that the Questioned Map was signed by Public Works Director Richard Prima on February 14, 2005, 2 days before Council approval of the tentative map. However, the Map was not, and would not have been, released to applicants prior to Council Approval. As noted above, the Map Act only requires that the phased map be filed after the approval of the tentative map. Nothing prohibits staff from processing its portions of the approvals in advance of, and contingent on, the Council action. Accordingly, Staff finds no violation of the Subdivision Map Act upon which to delay these proceedings.

Moreover, the issue is mooted by the Superior Court's order directing the City to set aside the approvals associated with the Project. Judge Humphreys ordered the City to vacate, among other things, "City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03 P 001." Council did so via Resolution 2006-81. Because the Questioned Map was filed in reliance on the approved (and subsequently vacated) tentative map, the Questioned Map was necessarily disapproved as well. To clarify the state of the record with the County Recorder, staff has recorded a "Notice of Rescission of Parcel Map Approval" to provide record notice that the Questioned Map is no longer valid.

As indicated above, staff does not find that a violation of the Subdivision Map Act has occurred. Even were a violation to have occurred, Lodi First's citations reveal that Council could not terminate these proceedings. Government Code Section 66499.34 provides that "No local agency shall …grant any approval to develop any real property which has been divided… in violation of [the Subdivision Map Act] **if** it finds that the development of such real property is contrary to the public health or the public safety. (emphasis added) However because of the court order prohibiting further action, all public health and safety concerns will necessarily be resolved, through the current application process before the property can be developed (either through a refusal to certify the EIR and refusal to grant the project approvals; or through certification of the EIR and the grant of conditioned approvals). Staff sees no facts supporting a finding that further approvals would be contrary to public health or safety.

In summary, the map was legal upon its recording, was later rendered invalid based on the Court action, and notice of its invalidity has been recorded with the San Joaquin County Recorder. Moreover, all questions regarding the map will be resolved through this process, either 1) through the failure to certify the EIR, denial of the project approvals and (preexisting) recording of the Notice of Rescission of Approvals or 2) through the certification of the EIR, granting of conditional approvals and recording of a new valid map.

With Lodi First's preliminary challenge resolved Staff turns to the purpose of this agenda item: to conduct another public hearing to consider the two appeals of the Planning Commission's decision to not certify the FREIR. The appeals have been filed by Sheppard Mullin Richter & Hampton LLP on behalf of Wal-Mart Stores, Inc. (the proposed anchor tenant) and Remy Thomas Moose and Manley, LLP, on behalf of Browman Development Company (the applicant). Both of the appeals seek review of the Planning Commission's action on October 8, 2008 declining to certify the FREIR that was prepared for the project. Since both appeals are for the benefit of the project proponents and make the same arguments, they will be treated concurrently in this staff report.

The original Final Environmental Impact Report and the associated Lodi Shopping Center project came to the Planning Commission on December 8, 2004. At the conclusion of that meeting, the Planning Commission certified the Final Environmental Impact Report (FEIR) and approved a Use Permit to allow the construction of the Lodi Shopping Center, the sale of alcoholic beverages at the Wal-Mart Supercenter, and a Tentative Map to create 12 parcels.

Two appeals were filed concerning the Planning Commission's certification of the FEIR and approval of the project. The City Council considered the appeals, and, on February 3, 2005, it certified the FEIR for the Lodi Shopping Center project. On February 16, 2005, the City Council

approved the Use Permit for the construction of the Lodi Shopping Center, allowed the sale of alcoholic beverages at the Wal-Mart Supercenter, and approved the Tentative Map to create 12 parcels. The Council added to the Planning Commission's condition regarding the existing Wal-Mart building by allowing various options and expansions.

The City Council's approval of the Lodi Shopping Center was challenged in court on environmental grounds. On December 19, 2005, the San Joaquin County Superior Court found the FEIR to be deficient with respect to cumulative urban decay impacts and energy impacts. The Court found the balance of the environmental document consistent with CEQA. The Court ordered the City to void the project approvals, pending correction of the deficiencies in the FEIR. The Court also ordered the City to vacate approval of the following Planning Commission and City Council resolutions approving the project:

a) Planning Commission Resolution PC 04-64 certifying the EIR 03-01 adopted on December 8, 2004;

b) Planning Commission Resolution PC 04-65 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on December 8, 2004;

c) City Council Resolution 2005-26 certifying the EIR 03-01 adopted on February 3, 2005; and

d) City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on February 16, 2005.

On May 3, 2006, the City Council adopted Resolution 2006-81 rescinding the above listed Planning Commission and City Council Resolutions relating to the Lodi Shopping Center. The City Council also adopted Resolution 2006-82, authorizing agreements with two consulting firms to prepare revisions to the sections of the Lodi Shopping Center EIR that were found deficient by the Superior Court.

PROJECT DESCRIPTION:

Revisions to the Lodi Shopping Center EIR:

In the case of Lodi First v. City of Lodi, San Joaquin Superior Court Case No. CV025999 ("Lodi First"), the Court ordered revisions to the discussions of cumulative urban decay impacts and energy impacts. In all other respects, the Court found the EIR to be legally sufficient under the California Environmental Quality Act (CEQA). However, the City decided to make revisions to three additional areas of the EIR, including the statement of project objectives, the discussion of agricultural resources, and the discussion of project alternatives. These areas of additional analysis were the subject of a lawsuit entitled Citizens for Open Government v. City of Lodi, San Joaquin Superior Court Case No. CV026002 ("C.O.G."). The C.O.G. case was resolved after the court's decision in Lodi First by a stipulated order of dismissal, preserving to the C.O.G. plaintiffs the right to continue to assert certain previously made claims as to the adequacy of the environmental analysis. The FREIR includes only the above five (5) sections which were revised or augmented. Since the remainder of the original EIR is not subject to further review, the original EIR, as amended by the Revisions to the EIR document, cures the deficiencies identified by the Court.

The Revisions to the EIR were subject to the full administrative and public review. A Notice of Preparation ("NOP") was prepared describing the legal context, a project description, and a brief overview of the topics to be covered in the Revisions document. The NOP was made available to the State Clearinghouse in the Office of Planning and Research for State agencies, was sent to non-state agencies, and was posted and made available to the public to solicit input on the five (5) sections that were revised in the FREIR. After a period of analysis and formulation, the Draft Revised Environmental Impact Report (DREIR) was prepared. The City filed a Notice of

Completion (NOC) with the State Clearinghouse and posted, published, and distributed the Notice of Availability of the DREIR. This began the public and agency review period for the document. The length of the public review period was 52 days. During the review period, the Planning Commission held a public hearing on November 14, 2007, to receive oral and written comments on the DREIR. The City prepared formal written responses to all the comments received as well as an addendum section indicating further revisions made to the document. The revisions, comments on the DREIR, and responses to comments constitute the FREIR for the Lodi Shopping Center Project and are presented for certification.

Summary of Specific Impacts and their Mitigations:

A. Urban Decay Impacts

CEQA requires an EIR to disclose and analyze the direct and the reasonably foreseeable indirect environmental impacts of a proposed project if those impacts are significant. Economic and social impacts of proposed projects, therefore, are outside CEQA's purview. When there is evidence, however, that economic and social effects caused by a project, such as a shopping center, could result in a reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the City is obligated to assess this indirect environmental impact. An impact which is speculative or unlikely to occur is not reasonably foreseeable. The FREIR analyzed the potential for urban decay due to the cumulative economic effects of competing retail projects. This analysis was prepared by the economic consulting firm of Bay Area Economics (BAE). The FREIR analyzed the regional effects of Wal-Mart Supercenters as well as the effects of the commercial area of the Reynolds Ranch development project.

The BAE study found that existing retail centers in Lodi may be subject to a reduction in sales due to competition from new retailers within the proposed project. The study also found that it is possible that one or more businesses can close and the affected properties could be subject to long-term vacancies under cumulative conditions. However, while such closures and vacancies are possible, they are not reasonably foreseeable. The BAE study concluded that if closures and long-term vacancies were to occur, they would not result in total neglect or abandonment thereby leading to urban decay or physical deterioration. As explained in the FREIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. No urban decay or physical deterioration is reasonably foreseen to occur, and that is the test under CEQA for an environmental impact. In the CEQA context, substantial evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Consequently, it cannot be stated with any probability that any negative physical change may occur. Since economic effects are not to be treated as significant effects, no mitigation is required (see CEQA Guidelines Title 14, Chapter 3, Article 9, contents of Environmental Impact Reports Section 15131, Economic and Social Effects).

Even without an identified urban decay impact, the City has committed to aggressive code enforcement measures to ensure the abatement of any nuisance within the City and to prevent the physical deterioration of communities. In this vein, in August of 2008, the City added another member to its Community Improvement Division by hiring a new Supervising Community Improvement Officer.

The FREIR analyzed the Reynolds Ranch project at approximately 640,000 square feet. As a result of the City Council's most recent approval of the Reynolds Ranch project at 750,000 square feet, the City asked Matt Kowta, a Principal with BAE, to review the previously prepared study and the potential impacts of the additional area. The memorandum from BAE is included as an attachment to the Planning Commission staff report. In summary, the conclusion is that "This

review process has shown that even if BAE had assumed that Reynolds Ranch was to be developed with 750,000 square feet of retail space when preparing the October 2007 analysis, the conclusions and findings would not have been significantly different than they are at present." Thus, the additional space does not change the impact conclusions of the REIR. Additionally, the recent Reynolds Ranch EIR Addendum, which analyzed the impacts of the larger project, did not find any additional economic or urban decay impacts as a result of the increased project size.

Based on this information, the FREIR concluded that while it is possible that the proposed project, in combination with the Reynolds Ranch project, may result in one or more business closures, it is not reasonably foreseeable that such closures would lead to total neglect or abandonment of the business leading to urban decay. Should there be a business closure, the potential for physical deterioration will depend largely on the commitment of the property owner to maintain the property. Should the owner fail to maintain the property, City code enforcement staff would pursue active and aggressive enforcement as previously directed by City Council. Accordingly and as further explained in the FREIR, even assuming a reasonable worst-case scenario that results in one or more business closures, urban decay impacts of the Lodi Shopping Center, when combined with the economic effects of projects such as Reynolds Ranch, would result in a less-than-significant cumulative urban decay impact.

B. Energy

The FREIR also addressed energy impacts. The analysis found no significant energy consumption impacts or impacts on energy supplies and infrastructure. Therefore, no mitigation measures are required.

C. Agricultural Resources.

The original EIR found an impact from the conversion of approximately 40 acres of prime agricultural use to urban uses to be a significant and unavoidable impact because there is no feasible mitigation that would reduce this impact to a less-than-significant impact except for an outright prohibition of all development on prime agricultural lands.

The FREIR confirms the significant and unavoidable impact on agricultural resources, but requires the project applicant to obtain a permanent agricultural conservation easement over a single parcel of land of at least 40 acres of prime farmland. The easement shall be located in San Joaquin County, excluding the Delta Primary Zone as currently defined by State law, and shall be in current agricultural use or be put into agricultural production.

D. Project Objectives and Alternatives.

The remaining revisions to the EIR modified the project objectives and changed the alternative project location that was analyzed. The original alternative location was the Reynolds Ranch project site. As this site is subject to an active development application, a new site at the northeast quadrant of Highway 12 and Thornton Road was evaluated.

The above sections were the focus of the revisions to the EIR for the Lodi Shopping Center. Modified impacts, mitigation measures, findings, and statements of overriding considerations have been prepared and are included in the proposed resolution of certification.

Planning Commission Meeting October 8, 2008:

As noted, on October 8, 2008, the Planning Commission held a public hearing to consider the FREIR, as well as the request for a Use Permit for the project in a C-S Community Shopping Zone, approval to sell alcoholic beverages within the Wal-Mart store, a Tentative Map to subdivide the property and Site Plan and Architectural review approval for the site and building plans for Wal-Mart.

The Planning Commission heard testimony from 38 people. A copy of the Planning Commission minutes are attached which provide an overview of the various points raised. Following the public hearing, the Commission discussed its issues with the project. A few Commissioners were uncomfortable with the conclusions of the revised environmental document and believed that additional information would be necessary in order for them to certify the revised environmental impact report. The main area of concern was the adequacy of the urban decay analysis. To a lesser extent, the potential energy impacts of the project were questioned. Finally, two Commissioners expressed interest in receiving information concerning the project's impacts on greenhouse gas impacts. After concluding its discussion on the adequacy of the FREIR, the Commission ultimately declined to certify the FREIR.

As indicated in the background section of this memorandum, the economic analysis was prepared by BAE. BAE has been in business since 1986 with over 20 professionals in four offices across the country. In that time, they have provided services in a variety of areas including real estate feasibility studies, strategic planning, revitalization, public-private transactions, public financing, fiscal and economic impacts analyses, and development advisory services. They are experts in the field. CEQA case law allows the City to defer to the environmental conclusions reached by the experts that prepared or contributed to the EIR, even though other experts may disagree with the underlying data, analysis, or conclusions.

Due to the Planning Commission's action on the environmental document, no action was taken on the applicant's other requests. Should the City Council decide to certify the FREIR, the Planning Commission must hold a subsequent hearing to review and make a determination on the project approvals.

FISCAL IMPACT: None

FUNDING AVAILABLE: None

Konradt Bartlam
Community Development Director

Attachments: Draft Resolution
Sheppard Mullin Richter & Hampton Appeal dated October 10, 2008
Remy Thomas Moose and Manley Appeal dated October 13, 2008
City Council Minutes from December 10, 2008
Planning Commission Minutes from October 8, 2008
Planning Commission packet from October 8, 2008

Environmental Impact Report previously given to City Council and Staff.

To access Environmental documents please visit the City of Lodi web page: http://www.lodi.gov/com_dev/EIRs.html

City Council Resolutions

RESOLUTION NO. 2009-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
DENYING CERTIFICATION OF THE FINAL REVISED
ENVIRONMENTAL IMPACT REPORT (EIR-03-01) FOR THE
LODI SHOPPING CENTER;
STATE CLEARINGHOUSE NO. 2003042113

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

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

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

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

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

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

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

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

WHEREAS, that certification and approval was appealed to the Lodi City Council; and,

WHEREAS, the Lodi City Council, on appeal, reviewed and certified the FEIR prepared for the project (Resolution No. 2005-26, February 3, 2005); and,

WHEREAS, the Lodi City Council rescinded the certification of the FEIR on May 3, 2006, pursuant to Superior Court Order of December 19, 2005, which order directed revisions to be made to the EIR; and,

WHEREAS, in response to the Court Order, the City prepared a Notice of Preparation (NOP) of the Revisions to the Environmental Impact Report (REIR) and distributed it to reviewing agencies on September 25, 2006; and,

WHEREAS, the Draft Revisions to the Environmental Impact Report (DREIR) was released and circulated on October 17, 2007, for public comment and review; and,

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on November 14, 2007. Public comments on the DREIR were received at this hearing; and,

WHEREAS, a Final Revisions to the EIR (FREIR), which includes the DREIR, as revised, and responses to all public comments on the DREIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on August 26, 2008; and,

WHEREAS, on October 8, 2008, the Planning Commission of the City of Lodi held a hearing on the adequacy of the FREIR, and the Planning Commission declined to certify the FREIR; and,

WHEREAS, Wal-Mart Stores, Inc. and Browman Development Company have each filed timely appeals of the Planning Commission's denial of the FREIR to the City Council; and,

WHEREAS, the City Council of the City of Lodi, after ten (10) days published notice held a public hearing on March 11, 2009 to consider the appeal of the Planning Commission's decision to certify the FREIR.

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

1. The foregoing recitals are true and correct and incorporated herein by reference.

2. For the reasons stated on the record at the March 11, 2009 City Council hearing, the City Council of the City of Lodi denies certification of the FREIR.

Dated: March 11, 2009
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I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a special meeting held March 11, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-____

RESOLUTION NO. 2009-____

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

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

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

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

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

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

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

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

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

WHEREAS, that certification and approval was appealed to the Lodi City Council; and,

WHEREAS, the Lodi City Council, on appeal, reviewed and certified the FEIR prepared for the project (Resolution No. 2005-26, February 3, 2005); and,

WHEREAS, the Lodi City Council rescinded the certification of the FEIR and approval of the project on May 3, 2006, pursuant to Superior Court Order of December 19, 2005, which order directed revisions to be made to the EIR; and,

WHEREAS, in response to the Court Order, the City prepared a Notice of Preparation (NOP) for the Revisions to the Environmental Impact Report (REIR) and distributed it to reviewing agencies on September 25, 2006; and,

WHEREAS, the Draft Revisions to the Environmental Impact Report (DREIR) was released and circulated on October 17, 2007, for public comment and review; and,

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on November 14, 2007. Public comments on the DREIR were received at this hearing; and,

WHEREAS, a Final Revisions to the EIR (FREIR), which includes the DREIR, as revised, and responses to all public comments on the DREIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on August 26, 2008; and,

WHEREAS, on October 8, 2008 the Planning Commission of the City of Lodi held a hearing on the adequacy of the FREIR, and the Planning Commission declined to certify the FREIR; and,

WHEREAS, Wal-Mart Stores, Inc. and Browman Development Company have each filed timely appeals of the Planning Commission's denial of the FREIR to the City Council; and,

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

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

1. The foregoing recitals are true and correct and incorporated herein by reference.

2. THAT THE CITY COUNCIL hereby finds that full and fair public hearings have been held on the FREIR and the City Council having considered all comments received thereon, said FREIR is hereby determined to be adequate and complete; and said FREIR is hereby incorporated herein by reference.

3. THAT THE CITY COUNCIL hereby determines, in connection with the proposed project identified in the FREIR, which includes a Use Permit and Tentative Map for the Lodi Shopping Center, that the Final Revisions to the Environmental Impact Report (FREIR) has been prepared in compliance with the California Environmental Quality Act (CEQA) and the state and local environmental guidelines and regulations, that it has independently reviewed and analyzed the information contained therein, including the written comments received during the Draft REIR review period and the oral comments received at the public hearings, and that the Final REIR represents the independent judgment of the City of Lodi as Lead Agency for the project.

4. THAT THE CITY COUNCIL does hereby find and recognize that the Final REIR contains additions, clarifications, modifications and other information in its responses to comments on the DREIR and also incorporates text changes to the Draft REIR based on information obtained from the City since the Draft REIR was issued. The City Council does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of the CEQA because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the DREIR have been proposed

that would either lessen a significant environmental impact of the project or result in a new, substantial environmental impact; no feasible alternatives considerably different from those analyzed in the DREIR have been proposed that would lessen the significant environmental impacts of the project; and the DREIR was adequate. Accordingly, the City Council hereby finds and determines that recirculation of the Final REIR for further public review and comment is not warranted. (CEQA Guidelines Section 15088.5).

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

I. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. Impact: The project would convert approximately 40 acres of prime agricultural land to urban uses. While the severity of this impact can be reduced somewhat, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)

2. Mitigation: The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.

3. Finding: The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the loss of prime farmland resulting form the project, but it would not reduce the impact to a less-than-significant level. There are no feasible mitigation measures available that would avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that

do not consist of prime agricultural soils. This impact, therefore, remains significant and unavoidable.

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

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

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

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

   The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for loss of farmland

since it cannot itself replace land lost to development. The City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has attempted to reduce the impact for the loss of prime agricultural land at the project site through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

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

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

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

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

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

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

   All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will

be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

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

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

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

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

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

C. STORMWATER BASIN BANK INSTABILITY

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

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

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

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

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

D. SOIL CONSOLIDATION AND COLLAPSE

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

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

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

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

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

E. EXPANSIVE SOILS

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

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

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

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

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

F. SOIL CORROSIVITY

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

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

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

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

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

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

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

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

   - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
   - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
   - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
   - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
   - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
   - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
   - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.

- Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.

- Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.

- Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.

- Collect construction waste daily and deposit in covered dumpsters.

- After construction is completed, clean all drainage culverts of accumulated sediment and debris.

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

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

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

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

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

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

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

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

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

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

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

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

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

2. Mitigation: In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.

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

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

   The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently $6,165 per acre (2008). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently $12,329 per acre (2008). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. The applicant's duty to mitigate the loss of agricultural land at a 1:1 ratio will further mitigate the loss of foraging habitat. These facts support the City's finding of less-than-significant after mitigation.

B. IMPACTS TO BURROWING OWLS AND RAPTORS

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

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

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

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

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

   While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. As specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

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

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

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

dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.

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

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

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

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

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

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

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

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

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

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

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

2. Mitigation: Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road,

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

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

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

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

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

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

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

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

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

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

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

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

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

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

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

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

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

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

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

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

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

While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed

the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

F. PUBLIC TRANSIT SERVICE

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

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

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

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

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

G. PUBLIC TRANSIT STOP

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

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

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

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

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

H. PEDESTRIAN FACILITIES

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

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

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

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

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

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

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

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

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

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

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

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

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

B. NOISE FROM STORMWATER BASIN PUMP

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

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

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

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

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

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

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

C. CONSTRUCTION NOISE

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

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

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

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

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

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

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

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

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

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

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

   Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources

and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

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

2. Mitigation: Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM_{10} emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District). (See Original Draft EIR, p.120).

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

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

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

B. REGIONAL AIR QUALITY

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

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

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

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

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

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

C. RESTAURANT ODORS

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

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

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

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

   While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-

site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

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

2. Mitigation: The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.

3. Finding: It is the City's current practice to require development projects to acquire off-site conservation easements to off-set the loss of prime farmland. The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the cumulative loss of prime farmland resulting from development projects, but it would not reduce the impact to a less-than-significant level. As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

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

   As discussed in the Draft REIR and Final REIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through requirements

that an off-site agricultural conservation easement be acquired by project applicants. The City has also generally minimized the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

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

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself replace land lost to development. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has applied feasible mitigation measures for loss of prime agricultural land at the cumulative project sites through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. Statement of Overriding Considerations: The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will cause vital municipal infrastructure improvements to be implemented in the project vicinity, and development impact fees paid by the

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

B. REGIONAL AIR QUALITY IMPACTS

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

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

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

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

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

5. Statement of Overriding Considerations: The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding

Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund its pro-rata share of public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

IMPACTS ANALYZED IN THE REIR FOUND TO BE LESS LESS-THAN-SIGNIFICANT.

CEQA does not require that findings be made on impacts found to be less-than-significant (See CEQA Guideline § 15091 (requiring findings on impacts found to be significant)). Nonetheless, set forth below is a summary of the City's conclusions on new items analyzed in the REIR for which impacts were found to be *less-than-significant*.

I. LAND USE AND PLANNING – SOCIOECONOMIC/URBAN DECAY IMPACTS

Urban decay is the product of an economic chain reaction that results in the closures of retail businesses as a result of a project, such as a shopping center, which in turn leads to physical deterioration of the surrounding neighborhood and businesses. (See Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal.App.4th 1184 (2004)). An EIR need only disclose and analyze the direct and reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (Guidelines, §§ 15126.2, 15064(d)(3)). An impact "which is speculative or unlikely to occur is not reasonably foreseeable." (CEQA Guidelines, § 15064(d)(3)). Mere economic and social impacts of proposed projects are outside CEQA's purview. However, when there is evidence that economic and social effects caused by a project, such as a shopping center, could result in a reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the CEQA lead agency is obligated to assess this indirect environmental impact. (See Anderson First Coalition v. City of Anderson, 130 Cal. App. 4th 1137 (2005). As summarized below, urban decay impacts of the Project are found to be *less-than-significant.*

A. POTENTIAL FOR URBAN DECAY DUE TO SOCIOECONOMIC IMPACTS

1. Impact: The Project would include new retailers who would compete with existing retailers in the City of Lodi; however, there is insufficient evidence to suggest that this increased competition would result in business closures, and consequently would not indirectly result in substantial physical deterioration of properties, or urban decay (Less-than-Significant Impact).

2. Mitigation: None Required.

3. Findings: The above impact is less than significant.

4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Report dated October 1, 2008, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the economic effects of the project on local supermarkets general merchandise outlets, and businesses in Downtown Lodi. As explained further in the REIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. While there may be some decline in sales of competing supermarkets, supermarket store closures are not reasonably foreseeable. Sales are expected to decline for general merchandise stores such as Target and Kmart. The Kmart store is at risk of closure. However, the owners of the Kmart site indicate that they feel they could find new tenants should Kmart close and cease operation, thus minimizing the prospect of long term vacancies or total neglect leading to urban decay. Furthermore, the City Council has directed diligent code enforcement, which will assist in the prevention of urban decay. The City is entitled to rely on the effectiveness of its Code Enforcement program to prevent code violations. (See City Municipal Code Section 1.10.010 et seq.; Cal. Health and Safety Code Sections 17980-17992). Downtown Lodi has shifted its retail mix to specialty stores, entertainment, and restaurants which are less directly competitive with the proposed project and therefore not anticipated to realize urban decay because of the Project. With respect to the closure of the existing Wal-Mart store in conjunction with the project, conditions would be imposed on the project requiring, prior to the issuance of a building permit, either re-tenanting by a retailer, sale to a retailer, or demolition of the structure to minimize the possibility of urban decay resulting from its closure.

   In summary, even if the project were to result in the failure of one or more existing competing businesses, any resulting vacancy would not necessarily lead to urban decay. Other contributing factors would need to occur to result in urban decay, such as the failure of surrounding businesses, combined with little or no effort on the part of property owners to maintain or improve their properties to a condition suitable for leasing. To reach a condition recognized as a physical impact under CEQA would require total neglect or abandonment of these properties by their owners for an extended period such that substantial physical deterioration or urban decay would ensue. Such a conclusion is not reasonably foreseeable. Moreover, the City Council has directed staff to pursue diligent code enforcement, and such an urban decay impact is not supported by substantial evidence in the record. Accordingly, this impact is found to be *less-than-significant*.

B. POTENTIAL FOR URBAN DECAY DUE TO CUMULATIVE ECONOMIC EFFECTS OF COMPETING RETAIL PROJECTS

1. Impact: When the effects of the project are combined with those of the other approved, pending, or probable future retail project in the project trade area (e.g., Reynolds Ranch), there is a likelihood existing retail centers in Lodi would be subject to reduction in sales. Consequently, it is possible, but not reasonably foreseeable, that one or more business closures could result, and that the affected

properties could be subject to long-term vacancies under cumulative conditions, but not total neglect or abandonment. Moreover, aggressive enforcement action by the City of Lodi under existing municipal code and state law provisions relating to nuisance abatement is expected to prevent conditions which would result in substantial physical deterioration of potentially affected properties. Therefore, no urban decay is expected to occur under cumulative conditions. (Less-than-Significant Cumulative Impact)

2. Mitigation: None Required.

3. Findings: The above impact is less than cumulatively significant.

4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Report dated October 1, 2008, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the proposed Reynolds Ranch development and other existing retail within the City, including, the Target Center (which includes a Target and a Safeway), the Cherokee Retail Center (which includes a Kmart and OSH store), the Sunwest Plaza (which includes the existing Wal-Mart and a Food 4 Less Supermarket), Vineyard Shopping Center (which includes a Mervyns and Ace Hardware), Vintner's Square Center (which includes a Lowe's), retail at Lodi and Hutchins (which includes the former Albertsons, which is now an S-Mart, and a Rite Aid), Westgate Shopping Center (which includes a Raley's), Lakewood Mall (which includes local-serving tenants) the Lockeford Payless IGA/True Value Hardware, the Downtown Lodi retail, as well as retail outside the Lodi Shopping Center Trade Area. The REIR also considered the then planned Wal-Mart supercenters in Stockton (as well as the existing store in Stockton on Hammer Lane) and Galt. The Stockton and Galt stores are not expected to have a cumulative economic impact within the Trade Area defined for the proposed project because the Trade Areas are not expected to overlap to any great degree. This is especially true considering Stockton's Ordinance No. 018-07 C.S. (August 14, 2007).

   While it is possible that the project, in combination with the Reynolds Ranch project, will result one or more business closures, it is not reasonably foreseeable that such closures would lead to total neglect or abandonment of the business or urban decay. Should there be a business closure, the potential for physical deterioration will depend largely on the commitment of the property owner to maintain the property. Should the owner fail to maintain the property, City code enforcement staff would pursue active and aggressive enforcement as previously directed by City Council.

   As discussed previously, Downtown has shifted to a specialty niche market, concentrated on entertainment and dining as well as unique, locally owned shops. Under cumulative conditions, the impacts to Downtown many include a reduction in sales and some additional limitation on Downtown's ability to expand its niche, particularly if Reynolds Ranch included boutique-style stores and restaurants. However, no closures of downtown business, including the downtown Long's Drugstore, are anticipated to occur under cumulative conditions with the assumed general tenant mix for the Reynolds Ranch project.

Thus, in the absence of anticipated store closures, there is no potential for urban decay in the Downtown under cumulative conditions.

Accordingly and as further explained in the REIR, even assuming a reasonable worst-case scenario that results in one or more business closure, urban decay impacts of the Lodi Shopping Center, when combined with the economic effects of projects such as Reynolds Ranch, would result in a *less-than-significant cumulative urban decay impact*.

II. ENERGY

Appendix F to the CEQA Guidelines provides than an EIR should consider potentially significant energy implications. (See also Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.4(a)(1) (energy mitigation measures should be discussed when relevant)). As summarized below, energy impacts of the Project are found to be *less-than-significant.*

A. ENERGY CONSUMPTION

1. Impact: The project would increase energy consumption in the construction and operational phases of the project. However, energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy. (Less-than-Significant Impact)

2. Mitigation: None Required.

3. Findings: The above impact is less than significant.

4. Facts in Support of Findings: The operation of the project would result in the consumption of about 162 billion BTU of electricity, natural gas, and transportation fuel per year. This is over 500 times more energy than the estimated 0.3 billion BTU in annual energy inputs that would be applied in an agricultural operation on the site. The energy consumed by the project operation would represent 1.9 percent of the total annual energy consumption in the City of Lodi of about 8,634 billion BTU, and about 0.002 percent of statewide energy consumption. However, there are a number of energy conservation measures beyond those required by Title 24 of the California Code of Regulations, which will be incorporated into the design, construction, and operational aspects of the project, as discussed in the REIR, which would result in a considerable reduction in project energy consumption, particularly electricity. These measures include the use of skylights, energy-efficient HVAC units, solar-reflective roofing materials, energy-efficient lighting systems, and the reclamation of the “heat of rejection” from refrigeration equipment to generate hot water.

   Fuel energy consumed during construction would be temporary and would not present a significant demand upon energy resources. Some incidental energy conservation would occur during construction through implementation of the noise mitigation measures identified in the Draft EIR such as fuel savings from the prohibition of unnecessary idling of vehicles and equipment. The incremental increase in the use of energy bound in construction materials would not

substantially increase demand for energy compared to overall local and regional demand for construction materials.

The project demand for electricity would be approximately 4.42 gigawatt-hours per year during the operational phase; however, compared to the total electrical demand for the City of approximately 470 gigawatt-hours during 2005, the project would represent less than one percent of the total electrical demand in the City. The project demand for natural gas would be approximately 12.6 million cubic feet per year during the operational phase; however, compared with the total natural gas year demand for the City of approximately 3,892 million cubic feet during 2005, the project would represent about 0.3 percent of total gas demand.

The project would not result in a significant impact to energy resources since it would result in the consumption of relatively small amounts of energy, compared to statewide and local consumption rates, in both the construction and operational phases, and because the energy conservation measures incorporated into the design and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy.

B. IMPACT ON ENERGY SUPPLIES AND INFRASTRUCTURE

1. Impact: The increased demand for energy resulting from the project would not be substantial enough to require new or expanded sources of supply or the construction of new or expanded energy delivery systems or infrastructure capacity. (Less-than-Significant Impact)

2. Mitigation: None Required.

3. Findings: The above impact is less than cumulatively significant.

4. Facts in Support of Findings: The energy requirements associated with the project would not exceed the energy supplies available to the project or exceed the ability of the various energy infrastructures to provide adequate supplies of energy to the project, during normal and peak demand periods, for the foreseeable future. As such, no new energy supplies would need to be developed to serve the project, and no system improvements would be needed to the energy delivery infrastructure to serve the project. Therefore, the impact of the project upon energy supplies and energy delivery infrastructure would be less than significant.

ADDITIONAL CONSIDERATIONS – GLOBAL WARMING

The issue of global warming has been raised in the processing of the REIR. At the time the initial EIR was prepared and certified in 2005, no commenter raised the issue of climate change despite there being general awareness of the issue within the scientific and environmental communities. At that time, CEQA also did not require an analysis of global warming impacts. Assembly Bill 32 ("AB 32"), known as the California Global Warming Solutions Act, Cal. Health & Safety Code §§ 38500 et seq., was passed in September 2006 and became effective on January 1, 2007. AB 32 sets a statewide goal to decrease greenhouse gas emissions to 1990 levels by the year 2020, and it directs the California Air Resources Board to develop regulations on greenhouse gas emissions

verification and monitoring. Senate Bill 97 ("SB 97"), enacting Public Resources Code section 21083.05, was passed in August of 2007, and became effective January 1, 2008. SB 97 directs the Governor's Office of Planning and Research to prepare, develop, and transmit to the Resources Agency guidelines for feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions, by July 1, 2009. It further directs that the Resources Agency certify or adopt those guidelines by January 1, 2010.

Both AB 32 and SB 97 were passed after the certification of the initial EIR, which occurred in February 2005. However, the issue of global warming is not a new concept, and it was known at the time the original EIR was certified in 2005. Comments concerning global warming impacts could have been, but were not, made on the initial EIR certified in 2005. Since no comments were made on the topic of global warming at the time the original EIR was circulated for public review, and because the Court did not order analysis of global warming impacts, the City is not required to analyze global warming impacts in this EIR. Additionally, AB 32 and SB 97 are not the type of new information contemplated by Public Resources Code section 21166 and CEQA Guidelines section 15162 that would require revisions to an EIR.

The City finds that it is not required to conduct an analysis of global warming in the FREIR, in part, because it is outside the scope of the FREIR prepared on remained and in response to the Superior Court's decision.. Nonetheless, the City notes that evidence and materials submitted by the applicant indicate that global warming impacts would be less than significant in any event and speculative on a cumulative level of analysis.

FINDINGS CONCERNING ALTERNATIVES

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

I. NO PROJECT ALTERNATIVE

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

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

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

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the development impact fees paid by the applicant which would help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries, or the objective of meeting unmet retail demand from existing and future residents of Lodi. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City. For the reasons mentioned above, because the No Project alternative would not meet the project objectives, and because the No Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

II. REDUCED PROJECT SIZE ALTERNATIVE

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

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

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

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

visually prominent western gateway into the City and for these reasons is not a feasible alternative. For the reasons mentioned above, because the Reduced Project alternative would not meet the project objectives, and because the Reduced Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

III. ALTERNATIVE PROJECT LOCATION

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

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

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

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

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was

not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

CEQA Guidelines Section 15126.6(e)(2) requires that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected because it would not entirely fulfill the project objective of developing the proposed project site with a regional shopping center in conformance with the City of Lodi General Plan and zoning regulations, and because it would be substantially less effective than the proposed project in fulfilling the project objective of meeting unmet retail demand from existing and future residents of Lodi. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, and providing a pro-rata share of vital municipal infrastructure.

In conclusion, there are no alternatives to the project which could feasibly attain most of the basic objectives of the project, but also avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

MITIGATION MONITORING PROGRAM

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

STATEMENT OF OVERRIDING CONSIDERATIONS

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

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts which are included in the record, the City Council has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. While mitigation measures have been identified which will reduce these impacts, they cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

B. Overriding Considerations

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

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

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

2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center project.

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

4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures

prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.

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

6. Project Features Numerous Energy Conserving Measures. The project proposes to include energy efficient and sustainable features as part of the project designs, including, for example, automated control system for heating/air conditioning, lighting controls, energy efficient lighting, and light colored roof materials to reflect heat.

In making the statement of overriding consideration in support of the findings of fact and this project, the City Council has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

CONCLUSION

The Final Revisions to the Environmental Impact Report for the Lodi Shopping Center project was completed in compliance with CEQA, has been reviewed and considered by the City Council, and represents the City Council's independent judgment and analysis.

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

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the City Council of the City of Lodi that the Final Revised Environmental Impact Report (EIR-03-01) relating to the Lodi Shopping Center project; State Clearinghouse No. 2003042113 is hereby certified, and the City Council hereby adopts the findings, statements of overriding considerations and other matters set forth in this resolution.

Dated: March 11, 2009

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I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a special meeting held March 11, 2009 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-____