

# CITY OF LODI

## CITY COUNCIL

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D. STEPHEN SCHWABAUER,  
City Attorney

Tuesday, August 26, 2008

Subject: Lodi Shopping Center Revised Environmental Impact Report (EIR)  
Response to Comments Document (Final Revised EIR)

To Whom It May Concern:

The Response to Comments Document for the Lodi Shopping Center Revised Environmental Impact Report (Final Revised EIR) is ready for viewing at the following:

- City of Lodi, Community Development Department, City Hall, 221 W. Pine St., Lodi, CA 95240.
- City of Lodi, Lodi Public Library, 201 W. Locust St., Lodi, CA 95240.
- City of Lodi, Website, [http://www.lodi.gov/com\\_dev/EIRs.html](http://www.lodi.gov/com_dev/EIRs.html)
- The City is also providing computer disks available to be picked up at City Hall.

The Planning Commission consideration for this matter is scheduled as a public hearing at the meeting on Wednesday, September 24, 2008 at Carnegie Forum, 305 W. Pine Street, at 7:00pm.

Please contact the Community Development Department at the number above if you have any questions.

Sincerely,

Kari Chadwick  
Community Development Department, Secretary

**FINAL**

**REVISIONS TO THE ENVIRONMENTAL IMPACT REPORT**

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**LODI SHOPPING CENTER**

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STATE CLEARINGHOUSE NO. 2003042113

*Prepared for*

**CITY OF LODI**

*Prepared by*



**MARCH 2008**

**REIR ADDENDUM  
COMMENTS RECEIVED ON DRAFT REIR  
RESPONSES TO COMMENTS**

**FINAL**

**REVISIONS TO THE ENVIRONMENTAL IMPACT REPORT**

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**LODI SHOPPING CENTER**

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**STATE CLEARINGHOUSE NO. 2003042113**

*Prepared for*

**CITY OF LODI**  
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**USE PERMIT FILE NO. U02-12**

*Prepared by*

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**RANCHO CORDOVA, CALIFORNIA 95670**

**MARCH 2008**



## **PREFACE**

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This document, together with the Draft Revisions to the Environmental Impact Report (DREIR) for the Lodi Shopping Center project, constitutes the Final Revisions to the Environment Impact Report (FREIR) for the proposed project. The Revisions to the Environmental Impact Report (REIR) was prepared in response to an order of the Superior Court of California, San Joaquin County, Stockton Branch, issued on December 19, 2005. The Court ordered that the EIR for the Lodi Shopping Center be revised to include 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), as set forth at California Public Resources Code, Division 13, commencing at Section 21000 and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000. In addition, the City of Lodi has voluntarily revised three sections of the EIR: the statement of project objectives, the discussion of agricultural resources, and the discussion of project alternatives. No other sections or portions of the original EIR have been revised.

Consequently, the scope of review for the REIR is limited to sections on cumulative urban decay, energy, statement of project objectives, agricultural resources, and project alternatives.

The REIR is an informational document prepared by the Lead Agency that must be considered by the decision-makers before approving the proposed project (CEQA Guidelines Section 15090). CEQA Guidelines Section 15132 specify that a Final EIR shall consist of the following:

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

The Draft Revisions to the EIR document, which is hereby incorporated into this document by reference, includes only those portions of the original EIR which are subject to revision or augmentation. Since the remainder of the original EIR is not subject to further review and was found by the court as adequate, it is the City's intention to recertify the original EIR, as amended by this Final Revisions to the EIR document to cure the deficiencies identified by the Court.

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

According to the CEQA Guidelines section 15091, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant environmental effects of the project, unless the public agency makes one or more written findings for each of those significant effects. According to the State Public Resources Code section 21081, no public agency shall approve or carry out a project for which an environmental impact report has been certified

which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless *both* of the following occur:

- a) The public agency makes one or more of the following findings with respect to each significant effect:
  - 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
  - 2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been required or can and should be adopted by that other agency.
  - 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

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

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

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### APPENDICES

A. ATTACHMENTS TO COMMENT LETTER FROM DONALD B. MOONEY (COMMENT LETTER #5)

Attachment 1 – Memorandum from EPS Re: “Lodi Shopping Center Economic Impact/Urban Decay Analysis Peer Review,” December 7, 2007.

Attachment 2 – International Panel on Climate Change, *Summary for Policymakers of the Synthesis Report of the IPCC Fourth Assessment Report*, Draft 16 November 2007.

Attachment 3 – California Energy Commission, *Our Changing Climate: Assessing the Risks to California – A Summary Report from the California Climate Change Center*, July 2006.

Attachment 4 – Office of the Governor of the State of California, *Executive Order S-3-05*, June 1, 2005.

Attachment 5 – Center for Biological Diversity, *The California Environmental Quality Act – On the Front Lines of California’s Fight Against Global Warming*, September 2007.

## APPENDICES (CONT'D)

- Attachment 6 – One page excerpt from *Final Environmental Impact Report – 2030 San Diego Regional Transportation Plan*, page 4.7-22.
- Attachment 7 – Union of Concerned Scientists, *Digging Up Trouble – The Health Risks of Construction Pollution in California*, 2006.
- Attachment 8 – Donald B. Mooney et al., *Petitioner’s Opening Merits Brief – Citizens for Open Government v. City of Lodi et al.*, September 7, 2005.
- B. ATTACHMENT TO COMMENT LETTER FROM ANN CERNEY (COMMENT LETTER #21)
- Attachment 1 – Memorandum from EPS Re: “Lodi Shopping Center Economic Impact/Urban Decay Analysis Peer Review,” December 7, 2007.
- C. MINUTES OF LODI PLANNING COMMISSION REGULAR COMMISSION MEETING, WEDNESDAY, NOVEMBER 14, 2007
- D. TRANSCRIPT OF PUBLIC HEARING – LODI PLANNING COMMISSION REGULAR COMMISSION MEETING, WEDNESDAY, NOVEMBER 14, 2007 – ITEM 4 – PUBLIC COMMENTS ON THE REVISIONS TO THE ENVIRONMENTAL IMPACT REPORT FOR THE LODI SHOPPING CENTER
- E. *AMERICAN CANYON COMMUNITY UNITED FOR RESPONSIBLE GROWTH VS. CITY OF AMERICAN CANYON*, COUNTY OF NAPA SUPERIOR COURT, CASE NO. 26-27462, MAY 22, 2007.
- F. *HIGHLAND SPRINGS CONFERENCE AND TRAINING CENTER VS. CITY OF BANNING*, COUNTY OF RIVERSIDE SUPERIOR COURT, CASE NO. RIC 460950, JANUARY 29, 2008.
- G. CITY OF STOCKTON, *ORDINANCE NO. 018-07 C.S., AN ORDINANCE AMENDING CHAPTER 16 OF THE STOCKTON MUNICIPAL CODE BY AMENDING TABLE 2-2 AND SECTIONS 16-230.090.C, 16-230.100, 16-230.110.E, AND 16-230.020 REGULATING AND LIMITING WAREHOUSE RETAIL STORES WITH REGARD TO DISCOUNT SUPERSTORES*, ADOPTED AUGUST 14, 2007.

## **I. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS RECEIVING THE DREIR OR NOTICE OF AVAILABILITY (NOA)**

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### ***State Agencies***

California Department of Transportation (Caltrans), District 10  
California Highway Patrol (CHP)  
Office of Planning and Research, State Clearinghouse  
California Resources Agency  
California Department of Conservation  
California Department of Fish and Game (DFG)  
California Department of Public Health (CDPH)  
California Department of Water Resources (DWR)  
California Air Resources Board (CARB)  
California Public Utilities Commission (CPUC)  
State Water Resources Control Board (SWRCB)  
Native American Heritage Commission (NAHC)

### ***Regional Agencies***

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

### ***Local Agencies, Districts and Utilities***

City of Lodi Mayor and City Council  
City of Lodi Planning Commission  
City of Lodi Code Enforcement Division  
City of Lodi Police Department  
City of Lodi Fire Department  
City of Lodi Public Works Department  
Lodi Unified School District  
San Joaquin Council of Governments  
San Joaquin County Administration Office  
San Joaquin County Community Development Department  
San Joaquin County LAFCO  
City of Stockton Community Development Department  
San Joaquin Mosquito and Vector Abatement District  
Pacific Gas & Electric

### ***Local Organizations and Individuals***

Donald B. Mooney, Citizens for Open Government  
Lodi News Sentinel  
Lodi Southwest Associates  
Ann M. Cerney

## II. LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS COMMENTING ON THE DREIR

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Presented below is a list of agencies, organizations, and individuals who submitted written comments on the DREIR. This is followed by a list of individuals and Planning Commissioners who presented oral comments at the public hearing on the DREIR held by the Planning Commission on November 14, 2007.

### Written Comments on the DREIR Received From

1. California Department of Transportation (Caltrans)
2. California Department of Water Resources (DWR)
3. California Highway Patrol (CHP)
4. SJCOG, Inc.
5. Law Offices of Donald B. Mooney
6. James & Alice Adkins
7. Ken Allen
8. Alex Aliferis
9. Mark Anaforian
10. Ms. Gerri Arrigale
11. Debra Bacon
12. William D. Baker
13. Mr. & Mrs. John Ballantine
14. Jesse Barnett
15. Jeanette Bedford
16. Deborah Blankenberg
17. Lynnette L. Brewer
18. Stephen Brock
19. Brenda Burghardt
20. Ann M. Cerney (1)
21. Ann M. Cerney (2)
22. Mr. & Mrs. Constantine M. Copulos
23. Jamie Cunningham
24. Marge Degenstein
25. Christy Deschamp
26. Marilyn Domingo
27. Leo B. Duncan
28. Helen Ellis
29. Leo Emigh
30. Robert Evans
31. Betsy Fiske (1)
32. Betsy Fiske (2)
33. Etheleen Fiske (1)
34. Etheleen Fiske (2)
35. Carla Fletcher

(Continued on next page.)

Written Comments on the DREIR Received From (Cont'd)

36. Elizabeth Galbreath
37. Gerry and Jane Gandt
38. Laura E. Gonzales
39. Linda, Joe & Bryce Hammons
40. Terrie Hedden
41. Daffney Hillis
42. Amy Kaida
43. Brian Kortuem
44. Michael Kost
45. La Jean Kuethe
46. Jane Lea
47. Susan Leasure
48. Pamala Levy
49. Betty Libert (1)
50. Betty Libert (2)
51. James Libert
52. Jim Locke
53. Guillermo Lopez
54. Olen & Suzanne McCombs
55. Jolynn McDonald
56. Darlene & Gerald Reich
57. Matt Rempfer
58. Janie Ross
59. Tamara Ross
60. Mark A. Rubbeiro
61. Rob Sandnoval
62. Dennis W. Sattler
63. Deane C. Savage (1)
64. Deane C. Savage (2)
65. Marcia L. Savage
66. Jerry & Shirley Schmierer
67. Lucille Schnabel
68. Bruce & Connie Schweigerdt
69. Lloyd Scott
70. Bill Selling
71. Maxine Shear
72. Lester C. Smith
73. Sandra Smith
74. Y. Doris Takao
75. Shelley Toy
76. Barbara & Minh Transon
77. Joe and Olivia Trifiro
78. Pat and Paul Underhill
79. Norman Walker, Jr.
80. Patti Wallace
81. Ken Warburton
82. Charles Wasmuth

(Continued on next page.)

Written Comments on the DREIR Received From (Cont'd)

- 83. Helen S. Weeks
- 84. Karl M. Wellsbacher, Jr.
- 85. Ron Werner
- 86. John Wixon
- 87. Mrs. Cleda & Cyril Wright
- 88. Robert Yabumoto
- 89. Valeta Young

Comments on DREIR Presented at the Planning Commission Hearing of November 14, 2007

- PC1. Planning Commission Chair Mattheis
- PC2. Planning Commissioner Hennecke
- PC3. Planning Commission Vice-Chair Kiser
- PC4. Ann Cerney
- PC5. Donald Mooney, Citizens for Open Government
- PC6. Michael Folkner, Wal-Mart Store Manager
- PC7. Norma J. Smith
- PC7. Janet Moore
- PC9. Dennis Warton
- PC10. Harold Jaxell
- PC11. Lorinda Genaro
- PC12. Kenneth Lopes
- PC13. Roger Oster

### **III. RESPONSES TO WRITTEN COMMENTS RECEIVED ON THE DREIR**

This section summarizes each of the comments contained in the letters received during the public review period advertised for the DREIR, and responses to those comments. The summary of each comment is followed by a response to that comment. The full comments are contained in copies of comment letters which are included in Section VI of this document. Each comment in Section IV has been assigned a numeric code which has been added to the margins of the comment letters. The numeric codes used in this section correspond to the numeric codes applied to the comment letters in Section IV.

#### **1. RESPONSES TO COMMENTS FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DATED OCTOBER 25, 2007**

##### **Summary of Comment 1-1:**

The Caltrans letter notifies the City that an encroachment permit from Caltrans will be required for any work in the Highway 12 right-of-way, and that such work must be preceded by a completed and approved environmental document.

##### **Response 1-1:**

Comment noted. The Lodi Shopping Center EIR, as revised by the Revisions to the EIR (REIR) provides full environmental review for project-related improvements in the right-of-way adjacent to Highway 12. No ground disturbing activities have occurred in the adjacent state right-of-way in conjunction with the project. Prior to undertaking any such ground disturbing activities, the project applicant will be required to obtain any necessary encroachment permits.

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#### **2. RESPONSES TO COMMENTS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES (DWR), DATED OCTOBER 29, 2007**

##### **Summary of Comment 2-1:**

The letter from DWR notifies the City that the project site may be located in a state-designated floodway, and if it is, an encroachment permit from the State Reclamation Board will be required.

##### **Response 2-1:**

Comment noted. The State-designated floodway for the Mokelumne River is generally confined to the bottomlands along the river and in some areas extends outward for approximately 1,000 feet from the river channel. The project site is approximately 2.5 miles from the nearest reach of the Mokelumne River and is not within or near the floodway of the river.

**3. RESPONSES TO COMMENTS FROM THE CALIFORNIA HIGHWAY PATROL (CHP), DATED OCTOBER 26, 2007**

**Summary of Comment 3-1:**

CHP Workload and Resources. The California Highway Patrol is concerned that the project will result in increased traffic along West Kettleman Lane/State Route 12, State Route 99, and Interstate 5. Even with mitigation plans to reduce traffic impacts on local traffic, the project will create challenges for daily commuters and will impact the Stockton CHP's ability to effectively manage traffic without an increase in resources. The CHP would like to work on a long-range development plan with the City and County.

**Response 3-1:**

Comments noted. Please note that the subject of public services was not included in the court-mandated scope of revisions for the Lodi Shopping Center EIR, nor did the City volunteer to revise this section. As such, the subject of public services is not included in the REIR, and is beyond the scope of this document. Traffic and public services were adequately addressed in the original EIR and no comments were received from the CHP on the original Lodi Shopping Center EIR. Additionally, impacts to services are not, in themselves, considered to be CEQA impacts unless they result in physical expansion of facilities which in turn may result in significant physical impacts to the environment.

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**4. RESPONSES TO COMMENTS FROM SJCOG, INC., DATED DECEMBER 4, 2007.**

**Summary of Comment 4-1:**

Biological Mitigation. The letter from SJCOG, Inc. states that the 'Draft EIR' be revised to include mitigation measures required under the San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP). These actions include preconstruction surveys by a SJMSCP biologist, submittal of signed Incidental Take Minimization Measures, and payment of fees.

**Response 4-1:**

Comments noted. Please note that the subject of biological resources was not included in the court-mandated scope of revisions for the Lodi Shopping Center EIR, and the City has not voluntarily made any revisions to the Biological Resources section of the EIR. As such, the subject of biological resources is not part of the REIR, and is beyond the scope of this document. No comments were received from the SJCOG on the original Lodi Shopping Center EIR. It should be noted that the original EIR on the Lodi Shopping Center includes an extensive description of the SJMSCP on page 59. The original DEIR includes a detailed mitigation for potential loss of protected species, including pre-construction surveys, any mitigation as directed under the SJMSCP, and payment of applicable in-lieu fees. As such, there are no deficiencies in the original DEIR with respect to SJMSCP. Since the City of Lodi is a signatory to the SJMSCP, the SJCOG has independent authority and jurisdiction to impose its program requirements and

does not require the Lodi Shopping Center EIR to establish a nexus for the mitigation actions as required under the SJMSCP.

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**5. RESPONSES TO COMMENTS FROM THE LAW OFFICES OF DONALD B. MOONEY,  
DATED DECEMBER 7, 2007**

**Summary of Comment 5-1:**

Summary of Project and Litigation. These introductory paragraphs contain an overview of the project and details of the litigation process related to the original Lodi Shopping Center EIR.

**Response 5-1:**

These paragraphs include an overview of the project and the Superior Court decision on the original EIR. Since these paragraphs do not contain any specific comments on the Draft Revisions to the EIR document (DREIR), no further response is required.

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**Summary of Comment 5-2:**

City's Expansion of DREIR Scope. This comment states that the City voluntarily expanded the scope of the revisions beyond the mandate of the Superior Court. Therefore, according to the commenter, the City must now address the merits of all comments raised. [Note: This paragraph also includes a comment regarding additional alternatives to be included in the DREIR. The response to that comment is contained in Response 5-31 which addresses the more detailed comment on this same issue.]

**Response 5-2:**

The EIR for the Lodi Shopping Center was originally certified by the City Council in early 2005 and later litigated in the Superior Court for the County of San Joaquin. There, in an action commenced by Lodi First, the Court ordered that the EIR be revised to include discussion of cumulative urban decay impacts and energy impacts. Separately, the City volunteered to revise the statement of project objectives, the section on agricultural resources, and the discussion of project alternatives. The City was not compelled to make these changes as the Court found that the EIR was legally sufficient in all other aspects.

The commenter challenges these changes and writes, in pertinent part: “[b]ecause the City has expanded the scope of the revisions to the EIR beyond the mandate of the Superior Court, it cannot pick and choose; it must address the merits of all comments raised,” whether or not applicable sections in the EIR were also changed. In the Air Quality section of his letter, the commenter further states, “While the air quality analysis was not directly part of the Superior Court’s remand, the City lost the ability to arbitrarily limit the scope of the DREIR when it expanded that scope beyond the remand topics.” These statements are contrary to legal principals articulated in case law.

The Court in *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2004) 126 Cal. App. 4th 1180 held that the scope of an agency's obligation to analyze a project's environmental impacts on remand, following the issuance of a peremptory writ of mandate, is limited in scope by the doctrine of *res judicata* or claim preclusion, provided that the project has not substantially changed. There have been no changes, substantial or otherwise to the project here. Moreover, the EIR was available for public review in its entirety before being certified by the City Council in 2005 and the public had an opportunity to comment on all sections of the EIR during that time. Therefore, the permissible extent of review is limited to those sections in the EIR for the Lodi Shopping Center which have either actually been revised, and/or ordered by the Court to be revised. Other claims relating to the original EIR are barred by the doctrine of *res judicata* or claim preclusion and/or the applicable statute of limitations.

In conclusion, comment letters on the DREIR may only address revisions to the original 2005 EIR which were either Court ordered or volunteered by the City. Other aspects of the DREIR which were not found to be deficient by the Court nor revised are not subject to further public review. Likewise, and based on the same legal principals, the commenter's discussion of Air Quality, a section that was not revised in the DREIR and which was found to be legally sufficient pursuant to CEQA standards, will not be re-examined in the DREIR.

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### **Summary of Comment 5-3:**

Overview of CEQA Requirements. These paragraphs outline some basic requirements of CEQA with respect to the content of EIRs, particularly the requirement to identify feasible alternatives and mitigation measures and to inform the public and decision-makers of potential, significant environmental impacts.

### **Response 5-3:**

These paragraphs contain a general discussion of CEQA, but do not include specific comments on the DREIR. Therefore, no response is required.

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### **Summary of Comment 5-4:**

Building Closures/Urban Decay. This comment references the attached comment memo prepared by Economic & Planning Systems (EPS) (Attachment 1) and states that the memo challenges the EIR's finding that the project, together with the recently approved Reynolds Ranch retail project, will not result in business closures leading to urban decay.

### **Response 5-4:**

DREIR identifies several businesses that are vulnerable to closure under cumulative conditions with the Lodi Shopping Center project and the approved Reynolds Ranch retail project. However, since there is no information that is not speculative available on the proposed tenant mix for the Reynolds Ranch retail area, the discussion of potential business closures was based on broad assumptions of probable tenant mix, and therefore was itself qualitative and somewhat speculative using the available information and data. However, when all factors were considered, including the City's stated willingness and ability to prevent physical deterioration of vacant retail space through code enforcement, the DREIR concluded that it was unlikely that urban

decay conditions would arise under cumulative conditions, assuming a reasonable worst-case tenant mix for Reynolds Ranch. The reader is referred to Response 5-6 below for further discussion of the code enforcement issue.

Please note that BAE's specific responses to the points raised in the EPS comment memo are discussed below under "Attachment 1" which follows directly after Response 5-37.

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#### **Summary of Comment 5-5:**

**Retail Spending.** The commenter asserts that the economic impacts of the project, both individually and cumulatively, would be almost an exclusive reshuffling of existing retail dollars within Lodi. This, the commenter states, undermines the City's economic justification for the project and stands in direct conflict with the City's investment of time and money into revitalizing the downtown. [Note: This comment encapsulates the more detailed comment by EPS on the same subject, as discussed in Comment EPS-2.]

#### **Response 5-5:**

The DREIR explains that while there is shifting of sales from existing outlets (primarily from the existing Wal-Mart), the project is estimated to capture additional sales, as well as provide shopping options for expected population growth in the Trade Area. [For detailed discussion of this issue, the reader is referred to Response EPS-2 below.]

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#### **Summary of Comment 5-6:**

**Code Enforcement.** The commenter questions the ability of the City to rely on "heightened" enforcement of its nuisance ordinance to forestall urban decay impacts. The commenter states that the City's "emphatic direction" to its staff nearly two years ago has apparently not resulted in any change or alterations to existing conditions of decay in the downtown. The commenter further provides that since the City has not been successful in abating existing decayed conditions downtown, the claims that it will do so for this project are "hollow representations" of future actions that cannot serve as mitigation.

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#### **Response 5-6:**

The City regularly brings abatement orders against landowners of nuisance properties, and the record has been one of compliance and success. The City's Code Enforcement staff has been reorganized from the Community Development Department to the Police Department which will allow greater effectiveness in day-to-day code enforcement. This reorganization is also designed to make it easier for Police Department volunteers to assist in code enforcement activities by reporting violations to Code Enforcement staff. These changes are intended to bring more focused attention to identifying problem properties before they become physically deteriorated and a nuisance to the community.

The physical deterioration of some downtown buildings that has occurred over a long period of time is not evidence that the City will not be able to abate future cases of building deterioration

which could hypothetically arise as a result of cumulative conditions after the proposed project and the Reynolds Ranch project are completed. First, the downtown buildings which are physically deteriorated are all old structures some of which are functionally obsolete or have major structural problems which cannot be readily corrected. Because of their historic value, it is not appropriate to demolish these buildings for the sake of creating the appearance of having corrected the problem. Instead, the City recognizes that these buildings are valuable community assets that provide irreplaceable character to downtown and will be key to its full revival. Since the City recognizes the intrinsic value of these buildings to the future of the City, and also recognizes that major effort and expense is required for their rehabilitation, it is willing to be patient and work with building owners in order to bring about incremental improvements to the buildings downtown. .

Secondly, the REIR finds that any building vacancies which could potentially occur under cumulative conditions would occur in the older outlying commercial centers, not in the downtown which would generally not be subject to direct competition from the new retailers at the project or Reynolds Ranch. Since these older commercial centers are structurally up-to-date and well-maintained under current conditions, it would not be so onerous to keep them in a condition suitable for re-tenanting should they become vacant. With the new reorganization of the Code Enforcement staff, the City would have the capability to monitor any such vacancies and be ready to take action at the first indication of neglect.

In support of the City's position that it is fully capable of correcting nuisance property conditions as they arise, Joseph Wood, Manager of the City of Lodi Community Improvement Division, has prepared the following description of the abatement process that would be followed:

In the case where one of the major tenants in a shopping center were to vacate and the overall condition of the property were to deteriorate, for example, we would likely issue a Notice of Violation and Intent to Abate to address property maintenance issues. In the event that the property owner failed to abate the violation, we have a rotating list of contractors that we would use to carry out the abatement to correct the violation. We would in turn bill the property owner for the abatement and administrative costs, while also issuing Administrative Citations to assess penalties.

The abatement process would also trigger the recordation of a lien to recover any costs incurred. We would then continue to monitor the property and call out any condition noted upon the property or buildings that constitutes a nuisance. Again, if the owner failed to respond to voluntarily correct the violation, we would abate the violation and assess the costs to the property owner, along with additional fines/penalties.

In cases of persistent non-compliance, the owner's failure to comply with our orders would be documented throughout in order to build up sufficient evidence to support further action, such as Receivership or other appropriate legal action. (Joseph Wood, January 22, 2008.)

In summary, the City has code enforcement authority which will abate actions against any commercial retail buildings which could potentially become vacant as result of competition from the Lodi Shopping Center project and/or the Reynolds Ranch project. For further discussion, the reader is referred to pages 37 and 38 of the DREIR, which contain a detailed summary of the various provisions in the City's Municipal Code and State law which provide the legal authority for abatement of nuisance properties in the City of Lodi.

### **Summary of Comment 5-7:**

**Cumulative Impacts to Downtown.** The commenter states that cumulative impacts analysis, particularly with respect to the Reynolds Ranch development, fails to address the additive effects on the downtown core. This is especially true where (1) the City has conducted no analysis of urban decay impacts arising from its approval of Reynolds Ranch project (in either its old or double-sized versions), and (2) both the Supercenter and the Reynolds Ranch project contain drug stores that will compete directly with the downtown Long's Drugstore. The City must assess the impact of the closure of the largest retailer downtown on the remaining downtown retailers.

### **Response 5-7:**

Contrary to the commenter's assertion, the DREIR (at page 50) contains an analysis of the cumulative economic impacts on the downtown resulting from the combined competitive effects of the Lodi Shopping Center and other past projects (i.e., approved but not yet constructed), present projects and probable future projects, which in this case includes only the Reynolds Ranch by way of commercial retail projects. The DREIR discussion of cumulative impacts has been refined to more clearly explain the analysis. (See Section V. *REVISIONS TO THE TEXT OF THE DREIR.*)

The commenter also states that the City has not conducted an urban decay analysis of the Reynolds Ranch project, either in its old or double-sized versions. The cumulative urban decay analysis, which considers the combined effects of the Lodi Shopping Center and the double-sized version of the Reynolds Ranch (as a "probable future project"), can be found on pages 51 through 53 of the DREIR. It is important to note that this is not a project-specific analysis of urban decay impacts associated with the Reynolds Ranch, as suggested in the comment, since such an analysis outside the scope of this EIR.

With respect to cumulative impacts on the downtown Long's Drugstore, it is expected that the Reynolds Ranch project would include a pharmacy of some sort, although no details on this user are available, and the timing of construction is unknown at this time. (The 640,000 square-foot retail component for Reynolds Ranch, as presented to City staff, likely would not be constructed in a single phase, so the impacts of any planned pharmacy would partly depend on when it is planned for opening.) Although the addition of a pharmacy at Reynolds Ranch would increase competitive pressure on the downtown Long's Drugstore, the level of impact is uncertain because no information is available on Long's sales performance (i.e., Long's would not disclose sales data, and the City of Lodi would not disclose individual store sales tax data per confidentiality rules), and because it is unknown whether the local Long's would receive corporate support during a temporary downturn in sales. In light of all of the unknowns surrounding the factors influencing cumulative impacts to the downtown Long's Drugstore, it would be speculative to conclude that this store is likely to close under the cumulative conditions with the Lodi Shopping Center and Reynolds Ranch and such a conclusion cannot be reached with certainty based on the available information and data.

Based on the above information and analysis in the DREIR, the commenter's assertion that the "City must assess the impact of closure of the largest retailer downtown on the remaining downtown retailers" is based on a speculative assumption of closure unsupported by reliable evidence to support the claim that this particular store is at risk of closure. However, even if one assumed the closure of this store, it would have little effect on other businesses downtown which have evolved to consist largely of specialty retail, restaurant, and entertainment uses that are not dependent on the pharmacy's convenience-oriented customer base for support.

**Summary of Comment 5-8:**

Vacant Wal-Mart. The commenter states that the City failed to consider the additional impacts associated with re-tenanting the existing Wal-Mart. The commenter contends that since this will add to the overall commercial space created by the project, it must be included in the analysis.

**Response 5-8:**

It is incorrect that the re-tenanting of the existing Wal-Mart is not considered in the DREIR. In reaching the finding that urban decay is not a likely outcome from the Proposed Project, the DREIR considers the potential impacts of the closure of the existing Wal-Mart. On page 61 of the BAE report (in Appendix B of the DREIR), it states as follows:

“Vacant space would include the existing Wal-Mart with over 120,000 square feet, and other stores that might close as a result of the project, possibly including a supermarket and Kmart. In the face of the slow increase in overall demand not absorbed by the planned project, there may be difficulties in re-tenanting some of this space. As discussed above, the current Wal-Mart property may be demolished if it is not re-tenanting fairly quickly. However, if it is re-tenanting, this could conceivably absorb demand that might otherwise be absorbed by other closures resulting from the Proposed Project, although the Wal-Mart site, because of its location, is likely to attract a different type of retailer than, for instance, the Kmart location.

Assuming Wal-Mart and any other stores at risk of closure would compete for the same type of tenants, the effect of a market preference for the Wal-Mart site would be that the other stores would remain vacant longer. However, this does not affect the overall inventory of vacant retail space, only the order in which it is reabsorbed into the market. As discussed in the DREIR, none of these potential closures are expected to result in conditions leading to urban decay. The vacancy created by the relocation of the existing Wal-Mart, and the City’s previous condition of approval for ensuring that a prolonged vacancy of that space would not occur, are also discussed on pages 43 and 44 of the DREIR.

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**Summary of Comment 5-9:**

Agricultural Conservation Easement. The commenter states that the value of the agricultural conservation easement mitigation is undermined by allowing it to include more than one parcel, and by allowing a reduction of 50 percent in the size of the easement if it is located an area desired by City. The commenter continues “[i]t is of little surprise, therefore, that the City concludes this measure will only ‘somewhat’ mitigate the impacts to agriculture and significant effects remain.”

**Response 5-9:**

With respect to the minimum parcel size question, the mitigation measure regarding minimum parcel size has been further refined for the required agricultural easements. As set forth in Section V. *REVISIONS TO THE TEXT OF THE DREIR*, the minimum required parcel size is defined as 40 acres. It is noted that the minimum sized parcel which is considered viable for viticulture is 20 acres (Mark Chandler, Executive Director, Lodi-Woodbridge Winegrape Commission, Personal Communication with Randy Hatch, City of Lodi Community Development Director, January 4, 2008).

Regarding the reduction of the required size of the easement by up to 50 percent for easements located in areas desired by the City, this incentive has been removed from Mitigation Measure B1 (see Section V. *REVISIONS TO THE TEXT OF THE DREIR*).

Regarding the comment “[i]t is of little surprise, therefore, that the City concludes this measure will only ‘somewhat’ mitigate the impacts to agriculture and significant effects remain,” the commenter implies that the significant impact remains due to some inadequacy in the mitigation measure. On the contrary, it is axiomatic that there is no mitigation measure that could replace prime agricultural soil once it has been permanently removed and covered with urban development. Although feasible mitigation measures are identified to reduce the impact, as required under CEQA, the impact cannot be reduced to less-than-significant levels. The comment further implies that a flawless conservation easement program would fully mitigate the impact, which is not accurate because off-site easements, by their nature, only provide partial mitigation for conversion of prime farmland.

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### **Summary of Comment 5-10:**

**Agricultural Mitigation.** These paragraphs include proposed modifications to the details of City’s agricultural mitigation program. These include the following:

- 1) Increase the mitigation ratio of off-site easement area to loss farmland from a ratio of 1:1 as proposed, to 2:1;
- 2) Limit the number parcels that can be acquired in order to avoid fragmentation of easement lands;
- 3) Define the areas “desired by the City” for conservation;
- 4) Require that conservation easements be acquired in a designated greenbelt area, which would also eliminate the need to offer a reduced replacement ratio as an incentive.
- 5) Explore options to minimize the loss of acreage (see comments on DREIR’s alternatives analysis);
- 6) Explore potential options to replace the lost acreage by “direct mitigation.”

### **Response 5-10:**

These comments consist of opinions as to the manner in which conservation easements should be implemented as mitigation for the conversion of farmland, and are duly noted. Although none of these suggestions are required under CEQA, for informational purposes, each suggestion is addressed in turn below:

- 1) **Increase mitigation ratio to 2:1** – The EIR acknowledges that agricultural easements are not mitigation in the true sense of the word. They do not lessen the impact to the loss of the farmland that is at issue in this particular project. As such, no ratio, no matter how high will achieve a mitigation effect, and no particular ratio can be ultimately justified as the scientifically correct one. For that reason, a statement of overriding considerations is necessary for the loss of farmland. The ratio is therefore a matter of local concern for the council to establish. The standard for California communities is the 1 for 1 ratio and is appropriate in this case. In addition to the City of Lodi, the following agencies in the

surrounding area apply the 1:1 mitigation ratio: cities of Stockton and Elk Grove, counties of San Joaquin and Stanislaus, Tri-Valley Conservancy (Livermore/Alameda County).

- 2) Limit number of parcels that can be acquired – As discussed in Response 5-11, the City acknowledges the fragmentation problem that could be created without establishing a minimum parcel size for the conservation easements and has revised Mitigation Measure B1 to define minimum parcel size as 40 acres.
- 3) Define areas “desired by the City” for conservation – The incentive for a lower mitigation ratio for acquisition of easements with areas desired by the City has been removed from Mitigation Measure B1. Therefore, there is no need to define areas “desired by the City.” Also, the conservation easement must be located in San Joaquin County.
- 4) Require conservation easements to be acquired in a designated greenbelt area and eliminate the lower replacement ratio for such area – The location of acceptable parcels for easement acquisition is entirely subject to the discretion of the City. Implementation of the mitigation measures suggested by the commenter is not required by CEQA.
- 5) Explore options to minimize loss of acreage – The Reduced Project Size Alternative, which is discussed on pages 97 through 100 of the DREIR, would cover 24 acres instead of the 40 acres for the proposed project (representing a 40 percent reduction). This alternative would avoid the conversion of about 16 acres of prime agricultural land, compared with the proposed project. However, the conversion of the remaining 24 acres of farmland would still result in a significant and unavoidable impact to agricultural resources. While this project alternative was not found to be infeasible, it was not selected because it would not be as effective as the proposed project in fulfilling most of the basic objectives of the project. It should also be noted that even with a reduced project with 16 acres left undeveloped, this unbuilt portion of the site would still be designated for commercial retail development under the existing City General Plan and Zoning Ordinance. As such, any preservation of this farmland would be temporary and would not result in the permanent protection of this farmland. Even if a conservation easement was hypothetically placed on these 16 acres, most of the surrounding lands have been approved for residential development, leaving this as a remnant island of undeveloped land. Lacking a connection to other farmland and being disconnected from agricultural infrastructure, as well as being operationally constricted due to surrounding urban uses, it is highly unlikely that such a small isolated parcel could be viably farmed.
- 6) Explore potential options for direct mitigation – By “direct mitigation” it is assumed that the commenter means the creation of an equivalent acreage of new prime farmland elsewhere to offsite the prime farmland lost at the project site. While it may be possible to create new prime farmland by converting wetland areas to agriculture, as occurred in the past in the Delta and elsewhere, this practice is now seen as ecologically damaging and of questionable legality under the federal Clean Water Act. In certain areas of California’s wine grape growing regions, it has also become common to plant new vineyards on hillside areas which were not previously cultivated due to insufficient fertility or soil depth for row crops. However, these practices can result in significant erosion and surface water quality impacts. Moreover, the farmlands thus created are not prime farmlands and thus would not constitute like-for-like replacement for loss of prime agricultural soils. In some areas of California, such as the Coachella and Imperial valleys, former desert areas have been converted to agricultural land. However, these new farmlands require substantial application of scarce water resources under adverse climatic conditions and are not likely to be sustainable over the

long term. Many of these desert farmers are permanently fallowing their land and selling their increasingly valuable water rights and allocations to urban water purveyors, thus reversing the trend in new farmland creation in these desert areas. Moreover, such lands are not considered prime farmland and creation of such farmland would not constitute in-kind replacement for prime agricultural soils. Although other parts of the world are currently experiencing massive deforestation to produce new farmlands of marginal fertility and utility, in California there are no known cases in recent times where new farmland has been created on previously uncultivated prime agricultural soils. Further, it is highly unlikely that there are areas of prime agricultural soils in California that have not already been put into cultivation on land that is not otherwise ecologically constrained for agricultural use. While there may be some prime farmlands which may have been cultivated in the past but have been fallow for long periods and for various reasons, the reutilization of such lands would not constitute creation of new prime agricultural soils but rather the resumption of cultivation on prime agricultural land that already exists. Since they have not been irreversibly converted to other land uses, such fallow farmlands are suitable for agriculture with minimal improvement, and thus their reutilization cannot be considered creation of new farmland. In summary, there are no known means for direct creation of prime farmland which could serve as true replacement acreage for the loss of prime agricultural soils at the project site.

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#### **Summary of Comment 5-11:**

Cumulative Agricultural Impacts. The commenter asserts that the analysis of cumulative agricultural impacts is “woefully inadequate” and that the one-paragraph treatment of this issue is “conclusory.”

#### **Response 5-11:**

Virtually all of the soils in the Lodi area are rated as prime farmlands. Therefore, any large scale conversion of those lands at the urban fringe would represent a significant impact to agricultural resources that cannot be mitigated to less-than-significant levels. While the conversion of smaller, infill parcels would also result in the permanent conversion of prime soils, these conversions would not meet the threshold of significance under the Department of Conservation’s analysis model for determining the significance of such conversions. These facts are indisputable and they provide sufficient evidence for making a determination of significant and unavoidable cumulative impact relative to agricultural resources. There is no requirement that the DREIR evaluate the project-specific agricultural impacts of every approved and pending project, especially when there is a sufficient basis for making a determination based on a more general analysis, as was performed in the EIR. In fact, the CEQA Guidelines provide that the discussion of cumulative impacts be less detailed than the analysis of project-specific impacts. The facts surrounding the issue of agricultural impacts are relatively uncomplicated, which allows for a more succinct analysis than is possible for most other environmental subjects. The commenter confuses this succinct analysis for conclusory analysis, when in fact it is well reasoned and complete.

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#### **Summary of Comment 5-12:**

Cumulative Project List. The commenter states that the City must disclose a project list or acceptable planning substitute as the basis for the cumulative analysis.

**Response 5-12:**

The list of pending and approved projects which form the basis of the cumulative impact analysis is contained in Table 12 on page 140 of the original EIR. It should be noted that the DREIR constitutes only the revisions to the original EIR, as discussed on page 1 of the DREIR, and is not intended as a stand alone environmental document. The original EIR is provided on a CD in the back of all copies of the DREIR, and is also available to the public and interested parties upon request.

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**Summary of Comment 5-13:**

Energy/Global Climate Change. The commenter asserts that the Energy section of the DREIR should have included an analysis of global warming, and that the significance criteria applied in the energy analysis were chosen to avoid having to address global warming issues.

**Response 5-13:**

Although the subject of energy impact is somewhat related to the issue of global climate change, they are in fact two distinct and separate subjects. The CEQA statute and Guidelines provide guidance regarding significance thresholds and methodology for analyzing energy impacts. This guidance is solely focused on the issues of avoiding inefficient and wasteful energy use and on evaluating the adequacy of the energy infrastructure to meet project demands. At the time the EIR was prepared, CEQA did not direct the analysis of secondary effects of energy consumption on global climate. This is consistent with emerging professional guidance (particularly in the White Paper by the Association of Environmental Professionals [AEP] entitled “Alternative Approaches to Analyzing Greenhouse Gas Emissions and Global Climate Change in CEQA Documents,” Final – June 29, 2007) on the preparation of global warming analyses (in new EIRs where some lead agencies are voluntarily providing such analysis), which indicates that global climate change should be addressed as stand alone subjects, or alternatively as part of the air quality analyses since some quantitative methodologies rely on air quality computer models developed by the California Air Resources Board for CO<sub>2</sub> output. There has been no suggestion or recommendation based on comments on the original EIR that the subject of global climate change be addressed in the same EIR section as the analysis of energy impacts. The DREIR discussion of the regulatory context for energy does include brief descriptions of initiatives, such as AB 32, that primarily address global climate change. However, these initiatives are described in the energy section because they have an incidental, but not insubstantial, effect in terms of facilitating energy conservation. It is also important to note that AB 32 – California Global Warming Solutions Act, was passed in September 2006 and became effective on January 1, 2007, well after the certification of the initial EIR in February 2005.

Since the concept of global warming is not new, it could have been raised in comments on the original EIR. Since no comments were made pertinent to AB 32 or global warming at the time the original EIR was circulated for public review, the commenter is precluded from raising that issue now for the first time now based on claim preclusion/res judicata and statute of limitations. The scope of public comment is limited to those sections of the original EIR that were mandated to be revised by the Court and/or those sections the City volunteered to revise. At the time the original EIR was reviewed and certified by the City Council, there was no legal requirement to

include a discussion of global warming. (*See Highland Springs Conf. v. City of Banning* (2008) Case No. 460950, attached hereto in Appendix E.)

Finally, AB 32 is not the type of new information contemplated by Public Resources Code section 21166. (*American Canyon Community United For Responsible Growth v. City of American Canyon and City of American Canyon v. Lake Street Ventures "American Canyon"* (Case No. 26-27462), attached hereto in Appendix E.) There, the Court held that "CEQA Guidelines section 15162, which augments section 21166 [of the Public Resources Code], clarifies that the "new information" must show something about the particular project's effects, i.e., that the project will have one or more significant effects not discussed in the previous negative declaration. New legislation requiring creation of state regulations certainly does not pertain to this particular Project or its effects. Thus, the court concludes that AB 32 is not the kind of "new information" contemplated by section 21166." (The Court acknowledged that such forthcoming regulations may in turn result in the need for environmental review in the future but AB 32 did not, itself, require such CEQA analysis.) Here, nothing about the project itself has changed since the certification of the original EIR. In conclusion, an analysis of global warming or AB 32 is not required for this REIR.

In other words, no discussion of global climate change and project greenhouse gas emissions was included in the DREIR because it was not included among the issues for which the Superior Court directed the City of Lodi to prepare new or revised discussions. It was not included in the original EIR because the issue of global climate change had not yet received the universal recognition and urgency that it has since taken on, and there were no comments on the original DEIR requesting that global climate change be addressed. While there has been much political, legal, and professional activity and discussion concerning global climate change, to date there have been no amendments to the CEQA Statute or Guidelines which mandate inclusion of discussions of global climate change in EIRs. Importantly, no consensus has developed on how to conduct such an analysis, or the significance levels that should be applied in such an analysis. These issues have proven resistant to easy resolution despite massive and determined efforts to reach commonly accepted approaches and standards. It is worth noting that the only state legislation which addresses global climate change in the context of CEQA is Senate Bill 97, which was enacted in August 2007. SB 97 (Public Resources Code section 21083.05) directs the Governor's Office of Planning and Research (OPR) 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 directs the Resources Agency to certify or adopt those guidelines by January 1, 2010.

Once the analytical methodologies, thresholds of significance, and appropriate levels of mitigation for individual development projects are established, it may be possible for new EIRs to address this issue in a consistent and meaningful way. However, as indicated by the recent court decisions cited above, EIRs that have already been completed will not be required to be supplemented with new analyses on global climate change.

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#### **Summary of Comment 5-14:**

Energy Impacts. The commenter reviews the significance criteria for energy impacts and implies that they are inadequate because they fail to take into account the "massive energy consumption increases" associated with the project. The comment also implies that compliance with the Title 24 energy-efficiency requirements is an insufficient benchmark for the measurement of energy impacts.

**Response 5-14:**

The comment implies that the EIR should have concluded that the energy impacts are significant because the project would consume many times more energy than the previous agricultural cultivation of the site. However, none of significance thresholds under CEQA, for any type of impact, are concerned merely with the magnitude of a project or the magnitude of the changes that would result from the project, per se. The fundamental principal in CEQA is whether those changes would in turn result in significant impacts. The additions of traffic, stormwater flows, noise, air pollutants, demand for services, energy consumption, or any other changes that result from a project do not, in and of themselves, result in significant impacts. The determination of whether such changes result in significant impacts depends upon whether established significance thresholds are exceeded or not. In the case of energy consumption, the CEQA-based significance criteria are: 1) whether the project's use of energy is wasteful or inefficient, and 2) whether the energy infrastructure has sufficient capacity to serve the project. The first criterion is best summarized in Appendix F of the CEQA Guidelines, which states:

“In order to assure that energy impacts are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.”

With respect to the California Energy Code (Title 24), it should be noted that California is known to have the most stringent energy saving building requirements in the country. (See [http://greenbuildings.berkeley.edu/pdfs/bp2006\\_ucla.pdf](http://greenbuildings.berkeley.edu/pdfs/bp2006_ucla.pdf) [Green Building Research Center, UC-Berkeley, *Best Practices Case Studies 2006*, “UCLA La Kretz Hall,” accessed March 17, 2008], <http://www.facilitiesnet.com/bom/article.asp?id=6274> [Operating Building Management, “*Finding Incentives for Cool Roofs*,” March 2007], <http://www.douglaslightingcontrol.com/state-energy-codes.htm> [Douglas Lighting Controls, “*State Energy Codes*,” accessed March 17, 2008]) (See DREIR page 75 for a description of Title 24 energy efficiency requirements for new buildings.) Title 24 is also continuously updated to reflect advances in energy-efficient building materials and techniques. In fact, one of the tests for significance of energy impacts contained in Appendix F of the CEQA Guidelines is “[t]he degree to which the project complies with existing energy standards.” In addition, the commenter ignores the description of numerous energy conservation features planned for the project, as described on page 81 of the DREIR, which go well beyond the energy-efficiency requirements of Title 24.

The commenter implies that reliance on mitigation requirements imposed by other levels of government is simply inadequate under CEQA. There are numerous instances where the operation of existing regulations and requirements is sufficient to mitigate the potential impacts of a project. The courts have determined that compliance with a regulatory measure that avoids significant environmental impacts is a reasonable and sufficient mitigation measure (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, See also *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, See also *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4<sup>th</sup> 1). The best example is hazardous materials impacts, where a panoply of laws, regulations, and programs at all levels of government operate to effectively mitigate or avoid the potential health risks due to hazardous materials. There are also many instances where mitigation is beyond the jurisdiction and control of the lead agency. One example is the federal government's fuel efficiency standards for vehicles, and there are numerous other examples, many of which are described under ‘Regulatory

Setting' in the energy section. Also, as mentioned in the preceding paragraph, Title 24 provides the same function for energy efficiency in new building construction, and is recognized as such in the CEQA Guidelines. While Title 24 standards must be complied with here, they set a high bar for minimum energy conservation standards in building construction.

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**Summary of Comment 5-15:**

Cumulative Energy Impacts. The commenter implies that the DREIR's analysis of cumulative energy impacts is inadequate because it is too brief.

**Response 5-15:**

This comment suggests that the quoted conclusion stands in isolation. However, the conclusion is supported by the reasoned analysis that precedes it, both in the discussion of cumulative impacts and in the previous 20 pages of discussion and analysis which it refers back to. (See DREIR, pp. 65-85.)

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**Summary of Comment 5-16:**

Energy/Global Climate Change. The commenter again asserts that the energy analysis in the DREIR is deficient because it does not address global climate change.

**Response 5-16:**

CEQA does not require an impacts analysis of global climate change in this EIR, as discussed in Response 5-13 above. Additionally, there is no substantial evidence to support a conclusion that this project would have a significant impact to global climate change.

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**Summary of Comment 5-17:**

Energy Use/Greenhouse Gas Emissions. This comment states that the DREIR fails to disclose all sources of energy use/greenhouse gas emissions associated with the project, including but not limited to inventory manufacture, inventory distribution, fugitive emissions, waste disposal, and water supply and delivery.

**Response 5-17:**

As to a description of sources of greenhouse gas emissions associated with the project, such a description is not required since it is associated with the subject of global climate change, for which an impacts analysis from review in the DREIR is discussed at length in Response 5-13 above.

As to a description of sources of energy use, the DREIR discusses all of the direct energy inputs associated with project construction and operations. CEQA does not require that an EIR on a land development project consider the indirect off-site energy consumption related to manufacturing of products or procurement and delivery of water supplies that may be delivered to

the project site, the collection of waste, or the numerous other activities which are indirectly connected to the project. It is reasonable to expect that water resource facilities, manufacturing plants, and waste disposal facilities would undergo their own environmental review in which these energy impacts would be addressed.

The fugitive emissions associated with the project are addressed in the air quality section of the original EIR. There is no requirement that this EIR address emissions in the context of global climate change, as discussed in Response 5-13 above.

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**Summary of Comment 5-18:**

Greenhouse Gas Emissions. In addition to again pointing out that the DREIR should disclose greenhouse gas emissions, it also notes that there are many tools available to estimate greenhouse gas emissions from land use projects.

**Response 5-18:**

Comment noted. CEQA does not require that this EIR address emissions in the context of global climate change, as discussed in Response 5-13 above.

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**Summary of Comment 5-19:**

Energy/Global Climate Change. The commenter asserts that the DREIR standards of significance for assessing energy impacts are meaningless in terms of assessing climate change impacts, and that they are also inadequate for assessing energy impacts.

**Response 5-19:**

The significance criteria for energy impacts were never intended to be applied to global climate change impacts.

With respect to the adequacy of the energy impact criteria for assessing energy impacts, the available guidepost is CEQA. In the absence of any other applicable standards of significance for energy impacts, the EIR preparer looks to the CEQA Statute and Guidelines (including Appendix F of the Guidelines) for guidance. The commenter implies that the thresholds applied are meaningless without a standard of measurement. This ignores the fact that many, if not most, significance criteria applied in EIRs are not quantitative in nature. Although state, regional, and local agencies have established significance criteria for quantitative disciplines such as traffic, water quality, soil contamination, noise, and air quality, no known numeric thresholds have been established for energy impacts by the California Energy Commission or any other state, regional, or local agency.

### **Summary of Comment 5-20:**

Global Climate Change. The commenter suggests that the significance criterion for global climate change that should be applied by the City is “whether the proposed project will result in an increase in the consumption of nonrenewable energy.”

### **Response 5-20:**

Although the subjects of energy and global climate change are related, they are distinct and separate subjects with their own sets of issues and priorities. While global climate change is a world-wide crisis, the issue of energy supply and delivery is not. Thus, while that reduction in greenhouse gas emissions will result in reduced energy consumption, there is no rational basis for equating greenhouse gas reduction goals to energy conservation goals. Moreover, even if it was valid to equate energy conservation with greenhouse gas reduction, there are practical obstacles that would make the application of greenhouse gas reduction targets to specific development projects infeasible at this time. While quantified greenhouse gas rollback benchmarks are currently being prepared by the state and some counties and cities, it is unclear how they will be translated to the project-specific level in a manner which is feasible and equitable. In any event, the commenter’s implicit assumption that a mandate for state-wide reduction in greenhouse gas emissions will translate into a requirement that each future project will or should be required to emit no greenhouse gases is simplistic and unrealistic. The goal is not to reach zero emissions, but to reach a state of carbon equilibrium and stability on a global level. The infeasibility of the commenter’s suggestion for 100 percent renewable energy sources is further highlighted by the state mandate that even electric power companies will be required to rely on non-renewable sources for only 20 percent of their energy production (not counting hydro) by 2010, and some companies like PG&E and Southern California Edison will have difficulty achieving even that goal. [*San Francisco Chronicle*, February 15, 2008, page C1.] From an administrative standpoint, setting a significance threshold unreasonably low (i.e., any non-renewable energy consumption results in a significant impact) would lead to a situation where all projects large and small (even one single-family dwelling) would require an EIR and a statement of overriding considerations for energy alone. This does not comport with CEQA’s analysis threshold which is tied to only a significant impact. Therefore, it is highly unlikely and unreasonable that any lead agency would adopt such a standard for project-specific impacts.

With reference to the quoted material in Attachment 6 to the commenter’s letter, the significance criterion applied for energy use in that document was applied to a programmatic regional transportation plan and is not applicable to an individual development project. The referenced criterion states: “...the proposed 2030 RTP would have a potentially significant energy impact if...it results in an increase in total consumption of nonrenewable energy” (emphasis added). This criterion therefore applies to the totality of transportation sources of greenhouse gas emissions over 20 years throughout the entire County of San Diego, which already has a substantial baseline of nonrenewable energy consumption. Given the rapid progress being made in the areas of fuel efficiency and alternative fuels, and the inherent flexibility in achieving this overall system-wide goal across a number of transportation modes, 20 years should be sufficient time to stabilize the growth in nonrenewable energy consumption for transportation sources throughout San Diego County. It is unreasonable to suggest that an individual development project, which does not currently exist (and therefore has virtually no baseline consumption), be held to a standard of no *increase* in nonrenewable energy consumption (i.e., virtually no renewable energy consumption within a very short period of time, or, upon opening of the project a year or two hence).

### **Summary of Comment 5-21:**

Global Climate Change/Air Quality. The commenter states that the original EIR applied a similar criterion (referring to the no increase in renewable energy consumption) in its air quality analysis for non-attainment criteria pollutants.

### **Response 5-21:**

The original EIR does not state that the significance threshold for any pollutant is “any increase.” Neither the San Joaquin Valley Air Pollution Control District nor the City of Lodi applies such a standard, even for non-attainment pollutants such as ozone precursors (ROG and NO<sub>x</sub>) and PM. The most stringent standard is the significance threshold for regional pollutants such as ROG and NO<sub>x</sub>, which is 10 tons per year (the threshold for PM is 15 tons per year). Since the project emissions would substantially exceed the thresholds for all three pollutants, the project would result in a significant and unavoidable air quality impact. However, a smaller project of approximately 90,000 square feet would not exceed any of these thresholds and therefore would not have a significant air quality impact. Therefore, the commenter’s assertion that the original EIR applied a significance threshold of no new emissions is not accurate.

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### **Summary of Comment 5-22:**

Energy Efficiency. The commenter restates some of the DREIR statements regarding the cost incentive which tends to facilitate energy conservation, and characterizes these statements as “facile” and “not rational.”

### **Response 5-22:**

The commenter asserts that it is “not rational” or “facile” to suggest that the desire to reduce rising fuel costs provides a financial incentive to conserve energy in construction. While the commenter offers no evidence to justify these remarks, there is evidence to support the contrary. A good example is one of the proposed project retailers, Wal-Mart, which experiments with energy saving techniques for use in construction and store operation. [For a full description see <http://www.walmartstores.com/Aurora/index.html>]. However, Wal-Mart has indicated that its policy and practice is to not adopt a specific technique company-wide unless it can be shown to pay for itself within three years. Given the number of energy-efficient features Wal-Mart has adopted for use in all new stores including the proposed Lodi store (as described on page 82 of the DRIER), it is clear that the energy costs saved through energy conservation is an incentive for their adoption. In addition to the operational energy saving measures incorporated into every new store, Wal-Mart also employs sustainable practices in construction. For example, each new building uses 100 percent recycled structural steel, which requires 50 percent less energy to manufacture than new steel and eliminates the need to consume energy in ore mining and processing. In addition, much of the baseboards and shelving in each new store is composed of recycled plastic.

There is growing recognition among developers and retailers that sustainable construction is not prohibitively expensive, and that there is a significant cost-savings potential in green buildings. According to the Urban Land Institute (ULI), while it costs 10 percent more to construct green buildings than convention buildings, green buildings generate energy savings of up to 35 percent.

But, cost is not the only factor driving the trend toward sustainable buildings. Apart from governmental emphasis on green buildings, retailers and retail developers are beginning to see successful examples of sustainable design in other properties, and they are attracted by the public relations value of green properties. Indeed, there are early indications that retailers with LEED-certified buildings are seeing increased shopping and increased sales in those buildings. (Dees Stribling, "Green Design Goes Mainstream," *National Real Estate Investor*, May 1, 2007.) (Sasha M. Pardy, "Retail Industry Will 'Walk the Talk' of Green Building in 2008," *CoStar Green Report*, December 5, 2007.)

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### **Summary of Comment 5-23:**

Transportation Energy. This comment restates several of the DREIR statements with respect to operational energy, and implies that the project include nearly enough transportation energy saving measures, and specifically that "the project will not include any efforts to provide alternative modes of transportation aside from a bus stops and new sidewalks." The commenter also states that based on the DREIR description of operational transportation energy consumption, "[t]he City therefore concludes that all energy use will be efficient."

### **Response 5-23:**

The discussion on pages 82 and 83 of the DREIR actually states that regional commercial centers do not readily lend themselves to the use of alternative transportation modes. These types of centers are, by nature, highly dependent on private vehicle use because they contain many retailers dispersed over a relatively large site, and because the purpose of many customers in traveling to these centers is to purchase merchandise in bulk or in quantities which cannot be carried away on foot, by bicycle, or by public transportation. Nevertheless, this project includes a transit route which travels through the project instead of passing by it, and also includes two on-site bus stops in order to better facilitate access to public transportation. The project has also been designed with full internal pedestrian interconnections, as well as external pedestrian access and full bicycle access. The project will also include a range of transportation demand measures as identified in the Air Quality section of the original EIR. In light of the many features incorporated into the project to facilitate transportation alternatives that are feasible for this type of development, the commenter's claim that the energy saving measures incorporated into the project are inadequate, is not correct.

The largest reduction in energy use is actually anticipated to come through increased fuel economy in automobiles. In late 2007, Congress amended the Corporate Average Fuel Economy (CAFE) standards to mandate significant improvements in fuel efficiency (i.e., average fleetwide fuel economy of 35 miles per gallon by 2020, versus the previous standard of 27.5 mpg for passenger cars and 22.2 mpg for light trucks). (*San Francisco Chronicle*, December 14, 2007, page A3. See also <http://www.whitehouse.gov/news/releases/2007/12/20071219-1.html> and <http://www.nhtsa.dot.gov/cars/rules/cafe/overview.htm>) Consumption of vehicle fuel represents over 85 percent of the project-related energy consumption, as discussed on pages 83 and 84 of the DREIR (i.e., total annual operational energy consumption associated with the project would be 162 million BTU, of which 144 million BTU, or 89 percent, would consist of transportation fuel consumption). Therefore, the federally-mandated increases gas mileage would result in a substantial energy savings over time.

The DREIR does not state or imply that the project energy use will be “efficient.” The conclusion of the DREIR is that the project would not result in “wasteful, inefficient or unnecessary consumption of energy” which reflects the language of the applicable significance criterion from CEQA.

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**Summary of Comment 5-24:**

Cumulative Energy Impacts. The commenter avers that the cumulative energy analysis is legally deficient because it is too brief. There is also no list of cumulative projects. The commenter implies the conclusion of no significant cumulative energy impact is “absurd” in light of the large amount of energy the project will consume.

**Response 5-24:**

The cumulative energy impacts analysis is succinct and complete within its frame of reference, and is supported by the previous 20 pages of discussion and analysis to which it refers back.

The list of pending and approved projects which form the basis of the cumulative impact analysis is contained in Table 12 on page 140 of the original EIR. It should be noted that the DREIR constitutes only the revisions to the original EIR, as discussed on page 1 of the DREIR, and is not intended as a stand alone environmental document. The original EIR is provided on a CD in the back of all copies of the DREIR, and is available to the public and interested parties.

The commenter’s concerns with the significance criteria for energy are addressed previously under Responses 5-14, 5-19, 5-20, and 5-21. The commenter repeats the opinion that a determination of significance should somehow be tied to the magnitude of the increase, which is overly simplistic and an incorrect analysis method. None of significance thresholds under CEQA, for any type of impact, are concerned merely with the magnitude of a project or the magnitude of the changes that would result from it, per se. The fundamental principal in CEQA is whether those changes would in turn result in significant impacts. The determination of whether such changes result in significant impacts depends upon whether established significance thresholds are exceeded. In the case of energy consumption, the significance criteria established by CEQA are: 1) whether the project’s use of energy is “wasteful, inefficient, or unnecessary,” and 2) whether the energy infrastructure has sufficient capacity to serve the project. The project does not result in significant impacts under these criteria, either at the project-specific level or the cumulative level.

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**Summary of Comment 5-25:**

Energy/Global Climate Change. This paragraph summarizes the previous comments on global climate change, and offers several suggestions for reducing energy consumption in the project.

**Response 5-25:**

As discussed at length in Response 5-13 and elsewhere, analysis of the issues of global climate change and energy impacts should not be commingled. Although these issues are closely related

and overlap to some degree, they are very distinct and separate issues that each require individual treatment.

A discussion of global climate change was not included in the DREIR because it was not included among the issues for which the Superior Court directed the City of Lodi to prepare new or revised discussions (and the City of Lodi did not voluntarily add this analysis) and there is not a requirement under CEQA (either at the time of the initial EIR or now) to analyze global climate change impacts for this project. As discussed in Response 5-13, recent court decisions have held that there is no legal requirement that EIRs be supplemented to include a discussion of global climate change. (Please refer to Response 5-13 for a detailed discussion of these issues.)

Additionally with respect to the commenter's suggested measures to conserve energy, a close reading of the original EIR and the DREIR would show that many of the features suggested by the commenter are either proposed to be included in the project (see DREIR at page 82), or have been identified as mitigation measures in other areas (see original EIR at pages 95 and 123).

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**Summary of Comment 5-26:**

Recirculate DREIR. The commenter states: “[b]ecause the flaws associated with the DREIR’s energy analysis are so egregious, widespread and fundamental, the City should undertake a new analysis and recirculate it for public review and comment.”

**Response 5-26:**

While the commenter makes many assertions with respect to the adequacy of the energy impact analysis, there is no presentation of factual information, evidence, reasoned analysis, or valid legal argument that supports any of these assertions. The preceding responses to comments show that the DREIR analysis is adequate. Section 15088.5 of the CEQA Guidelines requires that an EIR be recirculated “when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review...but before certification.” Since no significant information has been added to the EIR, and no evidence has been presented which would warrant the addition of significant new information to the EIR, recirculation of the EIR is not required under CEQA.

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**Summary of Comment 5-27:**

Air Quality Analysis. The commenter notes that in the San Joaquin Valley Air Pollution Control District’s (SJVAPCD) response to the Notice of Preparation for the DREIR, it requested that the City prepare a Health Risk Assessment (HRA) for the project, and also notified the City that Rule 9510 (Indirect Source Review) compliance is required for the project. The commenter asserts that the DREIR should include the findings of Indirect Source Review under SJVAPCD Rule 9510.

**Response 5-27:**

The Air District’s comments in response to the NOP for the DREIR have been noted. However, it is worth mentioning that the Air District did not submit written comments on the DREIR itself. Because the Superior Court did not order a reanalysis of the project’s air quality impacts, no such

reanalysis is required in the DREIR, and the City of Lodi has not voluntarily undertaken a reanalysis of air quality. However, for informational purposes, the following responses address the issues of Rule 9510 and Health Risk Assessments.

SJVAPCD Rule 9510. The City of Lodi is aware of the Air District's Rule 9510 – Indirect Source Review (ISR). Rule 9510 became effective on March 15, 2006, which was after the original EIR on the Lodi Shopping Center was certified in February 2005. As such, there was no obligation to address Rule 9510 in the original EIR. Since the analysis of air quality impacts in the original EIR was deemed sufficient by the Superior Court, and the City of Lodi did not voluntarily undertake to have the air quality analysis revised, there is no obligation to supplement that analysis in the DREIR. Moreover, there is no language in CEQA, or in Rule 9510, or in the Air District's CEQA guidelines, which requires Rule 9510 to be addressed in EIRs. Rule 9510 involves a separate permitting and review process which results in the reduction of project emissions by on-site mitigations and/or payment of fees for off-site mitigations. Since its promulgation, discussions concerning Rule 9510 have been included in EIRs for informational purposes. However, the timelines for ISR reviews are relatively short (30 days) and applications to the Air District for Indirect Source Review are required to be submitted prior to application for the last discretionary approval from the local agency. The last discretionary approval for the Lodi Shopping Center will be approval by the Site Plan and Architectural Review Committee (SPARC). The application for SPARC approval is typically submitted after Planning Commission/City Council approval, and the required application materials consist of detailed architectural plans, elevations, exterior construction materials and colors (with samples), landscape plans, and signage plans (Randy Hatch, City of Lodi Community Development Director). Although applicants are encouraged to submit ISR applications early, they are not required to do so (Dan Barber, Supervising Air Quality Specialist, San Joaquin Valley Air Pollution Control District, Personal Communication with Bert Verrips, PMC, March 7, 2008). The level of project design detail required in an ISR application is greater than is typically available at the time a project EIR is prepared (e.g., details on specific construction and grading equipment to be used and the duration of use for each, etc.). Therefore, as a practical matter, the data prepared and specific mitigations identified through the Rule 9510 review process are typically not produced until more detailed construction information on a project is available, which usually is not until after the EIR process has ended. (Applicants typically are unwilling to risk substantial investment in preparing detailed architectural and construction plans until they obtain the right to develop. In the case of the Lodi Shopping Center, such plans would be prepared immediately after Planning Commission and/or City Council approval as part of the submittal package to SPARC.) As such, EIRs which include discussions of ISR typically do not include detailed calculations of emissions reductions or specific ISR fees, but rather discuss the general measures to be employed to meet the Rule 9510 requirements. Such a listing of general mitigation measures to reduce regional emissions associated with the project is included in the Air Quality section of the original EIR. (It is noteworthy that application of the ISR emissions reduction requirements [i.e., 33 percent for NO<sub>x</sub>] would not reduce the air quality impact of the project to less-than-significant levels, since reduction to a level below the significance threshold would require an emissions reduction of approximately 66 percent.) Finally, it is important to note that the Air District's NOP comment letter merely puts the City on notice that the project may be subject to Rule 9510. Nowhere does it state or imply that ISR must be discussed in the DREIR.

Health Risk Assessment. The discussion of toxic air emissions from diesel exhaust contained in the original EIR was adequate under the Air District's guidelines that were applicable at the time that the original EIR was certified in February 2005. In 2006, the Air District adopted a requirement that Health Risk Assessments be conducted for projects with sources of diesel

emissions, such as delivery trucks. The Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and the City of Lodi did not voluntarily undertake to revise the air quality analysis. As such, the DREIR does not contain a reanalysis of air quality impacts, and no further health risk assessment is contemplated in connection with this DREIR, and no further analysis is required under CEQA.

In this context, it is important to note that several health risk assessments have been conducted on similar shopping center projects over the past two years. The general finding has been that diesel emissions disperse and dilute rapidly with distance from the source. For example, in the case of the Redding Wal-Mart project, where the maximally exposed receptors are located directly adjacent to and downwind from the emissions source (e.g., residential rear yards located adjacent to loading docks and routes), the cancer risk was calculated to be 13 cases per million, which exceeds the Air District's significance threshold of 10 cases per million (City of Redding, *Draft EIR for the Wal-Mart Expansion Project*, July 2006, p. 4-19, and Figures 2-2 and 2-3). In other instances, such as the Bakersfield Wal-Mart (on Gosford Lane), where the nearest receptors are at least 500 feet from the emissions source, albeit downwind, the calculated risk was 5 cases per million for a new Supercenter (Michael Brandman Associates, *Local Air Quality and Health Risk Assessment of Gosford Village Shopping Center*, April 24, 2007, p. 48). In the case of another Bakersfield Wal-Mart (on Panama Lane), where the nearest receptors were 100 feet and upwind from the emissions source, the calculated risk was 7.9 cases per million (Michael Brandman Associates, *Localized Air Quality and Health Risk Assessment of the Panama Lane Shopping Center*, April 23, 2007, p. 44). In the case of the Delano Wal-Mart, where the nearest receptors were 1,500 feet and downwind from the emissions source, the calculated risk was 1.8 cases per million (San Joaquin Valley Air Pollution Control District, *CEQA Modeling Memo, from Matthew Cegielski, AQS-Technical Services, to Kurt Legleiter, Ambient Consulting, Regarding Delano Marketplace, Application No. C-7076, Project No. 1061533*, August 14, 2006). These cases illustrate that diesel emissions are dispersed and diluted rapidly over relatively short distances, and that the only instances in which the significance threshold would be exceeded is where the maximally exposed receptors are located directly adjacent to and downwind of the emissions source. In the case of the Lodi Shopping Center, the nearest existing residences would be at least 1,000 feet from the Wal-Mart loading area. Since this distance is greater than the distances separating the loading areas from the sensitive receptors in the Bakersfield Wal-Mart projects, where no significant health risks were found, it is expected that the health risk associated with the Lodi Shopping Center project would be similarly low and well below the 10 cases per million threshold. This is consistent with the findings of the original Lodi Shopping Center EIR. No further analysis is required under CEQA.

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### **Summary of Comment 5-28:**

Expanded Scope of DREIR. The commenter also states that the City lost the ability to limit the scope of the DREIR when it expanded that scope beyond the topics ordered by the Court to be review on remand.

### **Response 5-28:**

CEQA does not require a broader analysis of the project. See Response 5-2, above. Air quality impacts have been adequately addressed in the EIR, as evidenced by the Court order which required only a revised discussion of cumulative urban decay impacts and energy impacts.

**Summary of Comment 5-29:**

Particulate Emissions. The commenter states that the DREIR fails to disclose project and construction PM<sub>2.5</sub> emissions.

**Response 5-29:**

The original EIR does contain an analysis of PM<sub>2.5</sub> impacts. It should be noted, however, that the Air District has not yet adopted significance thresholds for PM<sub>2.5</sub> and is not expected to do so until approval of its PM<sub>2.5</sub> Plan by the U.S. EPA, which is expected to occur in late 2008 [see [http://www.valleyair.org/Air\\_Quality\\_Plans/AQ\\_plans\\_PM\\_status2.5.htm](http://www.valleyair.org/Air_Quality_Plans/AQ_plans_PM_status2.5.htm)]. In the meantime, the PM<sub>10</sub> threshold of 15 tons per year is typically being applied as the PM<sub>2.5</sub> threshold in EIRs on projects within the Air District's jurisdiction (Dan Barber, Supervising Air Quality Specialist, San Joaquin Valley Air Pollution Control District, Personal Communication with Bert Verrips, PMC, March 7, 2008). This is the approach that was taken in the original EIR. Based on this approach, the original EIR found that the project operational emissions of PM<sub>2.5</sub> would result in a significant and unavoidable air quality impact. With respect to construction emissions, the Air District did not require quantitative analysis of construction emissions until after Rule 9510 became effective in 2006. Therefore, the analysis of construction emissions in the original EIR (completed in 2005) was performed in accordance with the Air District requirements that were in effect at that time. The Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and the City of Lodi has not voluntarily undertaken to revise this analysis. As such, the DREIR does not contain a reanalysis of air quality impacts.

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**Summary of Comment 5-30:**

Feasible Alternatives. The commenter states that the DREIR presents no feasible alternatives to the proposed project.

**Response 5-30:**

The DREIR discusses a range of project alternatives, in Section IV.D., including: No Project Alternative, Reduced Project Size Alternative, and Alternative Project Location. Of these, only the No Project Alternative would avoid or substantially lessen the significant project impacts to air quality and agricultural resources, which cannot be mitigated through feasible mitigation measures. The impacts associated with the Alternative Project Location would be similar to those associated with the project at the proposed site and would not avoid or substantially lessen the significant and unavoidable project impacts to air quality and agricultural resources. The Reduced Project Size Alternative would result in some reduction in the level of project impacts, but would not result in the reduction of the significant project impacts to air quality or agricultural resources to less-than-significant levels.

The commenter is incorrect in asserting that the DREIR presents no feasible alternatives which would "offer environmental benefits over the proposed project." The DREIR presents the analysis of the "Reduced Project Size Alternative" which comprises only the Wal-Mart store, without any ancillary retail on outlying pads, on about 24 gross acres. The analysis does not state that this alternative is infeasible, or that it would not feasibly attain most of the basic objectives while lessening any of the significant effects of the project. On page 100 of the DREIR, it states

that “the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels.” In the subsequent discussion of the ability of this alternative to meet project objectives, it does not state that project would not feasibly attain most of the project objectives, but rather that it would be “less effective than the proposed project” in fulfilling those objectives. On page 107, the Reduced Project Size Alternative is identified as the environmentally superior alternative. However, the proposed project was selected by the City of Lodi because “there are no alternatives to the project which could feasibly attain most of the basic objectives of the project, which would also avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels” (DREIR, p. 107).

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### **Summary of Comment 5-31:**

**Additional Alternatives.** The commenter states that the DREIR does not present two additional alternatives to the proposed project, as indicated in the EIR consultant’s scope of work for preparation of the DREIR. The commenter incorporates by reference the arguments made at pages 12-18 in the Opening Merits Brief submitted to the Court by Citizens for Open Government in 2005, which is attached to the commenter’s letter as Attachment 8.

### **Response 5-31:**

The EIR scoping document states that *up to* two additional project alternatives would be presented in the DREIR. The two additional alternatives considered included: 1) a second reduced project alternative of 14 acres, in addition to the 24-acre alternative included in the original EIR; and 2) a second alternative project location. The City’s evaluation process concerning these two additional alternatives is summarized below:

#### Second Reduced Project Size Alternative

The Second Reduced Size Alternative that was considered (but ultimately not included in the REIR) was one that reflected an even deeper reduction in project size in order to eliminate one or both the significant and unavoidable impacts of the project (i.e., agricultural resources, air quality). In order to achieve a less-than-significant impact to regional air quality, such an alternative would need to result in emissions of less than 10 tons per year of each of two regional pollutants of concern (ROG and NO<sub>x</sub>), and less than 15 tons per year of PM. Of these, NO<sub>x</sub> is the critical pollutant since project emissions are greatest for NO<sub>x</sub> and thus the deepest cuts in project size would be required to bring the emissions of this pollutant below the applicable threshold. Assuming that such a project was composed solely of a Wal-Mart, the maximum floor area would need to be less than 93,000 square feet to stay below the significance threshold for NO<sub>x</sub>. (However, there would be no point including Wal-Mart in such an alternative since this would be less than half the floor area of the proposed Wal-Mart and substantially smaller than the existing Wal-Mart.) If such a project consisted solely of shopping center uses with no Wal-Mart, the maximum floor area would need to be less than 124,000 square feet. (The reason the floor area could be higher for shopping center use than for Wal-Mart is because of the higher daily trip generation rate for Wal-Mart versus general shopping center use (i.e., 56 daily trips versus 42 trips per 1,000 square feet, or 33 percent higher), which translates into a higher emissions rate per square foot.) Since the proposed project consists of a total of about 340,000 square feet, such an alternative would represent about 36 percent of the proposed project, or a reduction of 64 percent. The total land requirement for such an alternative would be about 14 acres, assuming a detention basin would be required as it is for the proposed project. It is unlikely that the conversion of 14 acres of prime agricultural land would constitute a

less-than-significant impact in this location, so there would remain a significant and unavoidable impact to agricultural resources. While such an alternative would reduce one of the remaining significant project impacts to a less-than-significant level (i.e., air quality, but not agricultural resources), the drastic reduction in project size required would not represent a meaningful alternative since it would be just over one-third the size of the proposed project. Moreover, without Wal-Mart as the primary anchor tenant, this alternative would not meet one of the basic project objectives, which is to provide for relocation and expansion of the Wal-Mart store. Since such a theoretical alternative would not be feasible or meet the basic project objectives, it was determined that there is no requirement that the discussion of such an alternative be included in the REIR.

However, it is important to note that, with the removal of the minimum 30-acre project size as project objective, the 24-acre Reduced Project Size Alternative became a “feasible” alternative for purposes of the CEQA alternatives analysis, as discussed in Response 5-30 above.

#### Second Alternative Project Location

At the time that the EIR consultant’s scoping document for the DREIR was prepared, the City was in the process of annexing the Reynolds Ranch site although no definite proposals had been submitted for the retail commercial portion of the site, which was designated in the Reynolds Ranch Master Plan as a later phase of development. Since no definite development proposals had been put forward for the regional commercial portion of the Reynolds Ranch Master Plan, it was reasonable to consider the retail commercial portion of the Reynolds Ranch site as a second alternative site for the proposed Lodi Shopping Center project. Subsequently, however, a specific development proposal was announced for the retail commercial portion of the Reynolds Ranch project. As such, the Reynolds Ranch site could no longer be considered as an alternative site for the proposed Lodi Shopping Center project. Since there are no other suitably sized parcels within the City of Lodi which are designated for commercial retail development, it was decided that the original alternative site at Flag City would be retained as the sole alternative site to be considered in the DREIR. Thus, although it may appear as if no other alternative location was considered during the process of preparing the Revisions to the EIR document, in fact the entirely new site of Reynolds Ranch was seriously considered for inclusion, although this alternative site was subsequently abandoned, as discussed above.

Please note that the responses to pages 12-18 of COG’s Opening Merits Brief appear following the responses to this comment letter, after the responses to the EPS memo.

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#### **Summary of Comment 5-32:**

**Additional Alternatives.** The commenter states that the City should consider additional project alternatives.

#### **Response 5-32:**

The EIR’s analysis shows that the range of feasible alternatives is indeed quite limited in this case. There are five basic kinds of project alternatives, namely, the no project alternative, alternative land uses, alternative project density or intensity, alternative project size, and alternative location. (In addition, project design alternatives are often considered in cases where an important resource [e.g., historic structure] occupying a portion of the site could be avoided

through project redesign, but that is not the case here.) All five of these basic alternatives were considered in the screening analysis, although the land use alternative and reduced project intensity alternative were not included in the full alternatives analysis for the reasons reiterated in Responses 5-34 and 5-35 below. This leaves three alternatives, of which the No Project alternative would clearly not meet the basic project objectives, and the Alternative Project Location would neither meet the basic project objectives nor reduce the impacts, as discussed in the DREIR. This leaves only the Reduced Project Size Alternative as a “feasible” alternative to the proposed project.

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**Summary of Comment 5-33:**

No Project. The commenter questions the necessity for the project. (In his oral comments presented at the November 14, 2007 Planning Commission hearing, the commenter suggested that the modernization of the existing Wal-Mart should also be considered as an alternative.)

**Response 5-33:**

The decision to approve or deny the project is a policy decision and not properly within the purview of this EIR under CEQA. As such, it is not within scope of the EIR To examine the purpose of the project.

In CEQA terms, the option to deny the project is embodied in the No Project alternative. The suggestion that the modernization of the existing Wal-Mart store be considered is also essentially suggesting consideration of the No Project alternative. As required under CEQA, the EIR includes full analysis of the No Project alternative, at pages 94 through 97. This alternative was not selected since it does not meet any of the basic project alternatives.

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**Summary of Comment 5-34:**

Alternatives Analysis Unnecessarily Constrained. The commenter suggests that the EIR unnecessarily constrains the range of alternatives by “asserting that only full-on retail meets the C-S Shopping Center zoning overlay.”

**Response 5-34:**

The DREIR does not limit the range of uses, as permitted under the C-S zoning, which could be developed under the alternative. As enumerated in the Zoning Ordinance, the permitted uses include non-retail uses such as service and restaurant uses, many of which are contemplated in the proposed project. The DREIR discussion only states that the zoning district would not permit residential uses to be considered. The discussion also states that the governing General Plan designation would preclude business park or general office development from consideration in the alternatives analysis. Therefore, the range of possible land uses that can be considered is indeed very limited by existing City policy and regulation. However, the consideration of non-permitted uses, as implied in this comment, would produce an alternative that could not be consistent with plans and policies. This is neither appropriate nor required under CEQA.

**Summary of Comment 5-35:**

Reduced Density Alternative. The commenter requests that the City “[r]e-examine its unsupported conclusions that a reduced density alternative would not be ‘economically feasible.’”

**Response 5-35:**

In the screening analysis of alternatives on page 92 of the DREIR, the text states that “a reduced *intensity* retail shopping center would not be economically feasible and would not be developed” (emphasis added). However, this statement does not refer to the Reduced Project Size Alternative, which is discussed in the next paragraph of the DREIR on page 92, but rather an alternative with substantially lower building *coverage* over the same land area than the 25 percent coverage that is typical for retail commercial shopping centers. There are no known examples of shopping center projects which reflect a building coverage of only 12 or 13 percent, as considered in the referenced paragraph of the DREIR screening analysis. This is logical since it is not reasonable to assume that a developer would develop a property at half of its permitted development intensity. Therefore, it is reasonable to conclude that such a project would not be developed, as stated in the DREIR. Such an alternative would also be very wasteful of land resources. Since this alternative would provide no reduction in agricultural land conversion and would not reduce air quality impacts to less-than-significant levels, this alternative also does not merit further consideration on environmental grounds. Therefore, it was appropriate not to carry this alternative forward for full analysis. The reduced project size alternative is evaluated in the subsequent paragraph of the DREIR, and was selected for further analysis as a potentially feasible full project alternative.

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**Summary of Comment 5-36:**

Range of Alternatives. The commenter reiterates that the DREIR should include a broader range of alternatives including a “viable alternative.”

**Response 5-36:**

The EIR has analyzed a reasonable range of feasible alternatives. The range of feasible alternatives is limited in this case, as discussed in detail in Responses 5-32 through 5-35. As discussed in Response 5-32, the Reduced Project Size Alternative is a “feasible” alternative to the proposed project, which was discussed and analyzed in the EIR.

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**Summary of Comment 5-37:**

Conclusion. This paragraph briefly summarizes the major points raised throughout the comment letter.

**Response 5-37:**

These issues are addressed in detail in Responses 5-1 through 5-36. No further response is required.

## **RESPONSES TO COMMENTS CONTAINED IN EPS MEMO (ATTACHMENT 1 TO DONALD B. MOONEY COMMENT LETTER)**

The following pages include comments contained in the EPS memo (which is included in Appendix A as Attachment 1 to the comment letter from Donald B. Mooney) which are followed in turn by responses to the comments.

### **Comment EPS-1a:**

*The BAE Report's central conclusion that urban decay is not a likely outcome appears inconsistent with the report's general research findings which estimate considerable sales losses to existing retailers and documents vulnerable market conditions.*

*According to the BAE Report, the proposed Center will capture about \$56 million in annual sales from existing retailers, or about 6 percent of the sales in the Trade Area. In addition, the Report documents the existing under-performance of several major tenants (e.g., Kmart) and even urban decay in several locations (e.g., Sacramento Street) as well as household income and growth levels below the County average. Projected sales losses of this magnitude combined with unfavorable market conditions would, on the face of it, suggest the potential for the Center to precipitate urban decay.*

### **Response to Comment EPS-1a:**

The net change is six percent, but this loss is concentrated in a few sectors: general merchandise stores, food stores, and restaurants (see Table 15 of BAE report). Thus the impacts would be focused in those sectors, which are discussed at length in BAE's report. [CITE]

While forecast growth is slower than countywide or statewide, income levels are similar to the County's and actually higher on a per capita basis. Since growth is still expected, and since income levels are on par with the County, it is an overstatement to conclude that these are "unfavorable market conditions." Slow growth is not the same as an actual decline in population. The projected loss of approximately six percent of sales from existing retailers would abate over time, even with modest population growth. While there may be a decline in sales, the evidence and analysis do not lead to the conclusion that this decline will result in store closures and attendant urban decay.

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### **Comment EPS-1b:**

*Indeed, the BAE Report acknowledges that the cumulative or combined impact of the proposed Center and the equally large Reynolds Ranch project will lead to conditions conducive to urban decay. It then relies on considerations outside its own analysis to dismiss this outcome. Specifically, the Report states "an oversupply of retail space could result in... a cycle of long-term vacancies... and the eventual possibility of physical deterioration and urban decay" (page 76). However, BAE concludes that aggressive government intervention will prevent commercial landlords from neglecting their properties. In other words, the BAE's central argument against urban decay appears to be based on a policy rather than an economic rationale.*

### **Response to Comment EPS-1b:**

The above quote paraphrases BAE's language in such a way as to sound somewhat more conclusive about the likelihood of urban decay. Following is the complete section quoted (from page 76 of the BAE report):

For other centers, an oversupply of retail space could result in difficulties re-tenanting vacant retail space in a reasonable period of time, and the vacant space could then be at risk of entering a cycle of long-term vacancies, secondary business closures, the inability to re-tenant existing stores, and the eventual possibility of physical deterioration or urban decay.

More importantly, this comment presupposes an overly simplistic approach in addressing urban decay. If, as the commenter suggests, the discussion should be limited to a purely economic analysis, the BAE report would not even need to follow the chain of causation to urban decay since these do not involve purely economic issues either (e.g., owner's actions to maintain property in a condition suitable for retenanting; suitability of space for other retailers wishing to enter the market, etc.). Despite the slightly inaccurate language used in the comment, the commenter is actually suggesting that the analysis stop at the point where the possibility of urban decay is identified, without considering the institutional interventions which are already in place and available to address the issue. However, omitting this relevant and helpful information would result in an EIR that falls short of a full disclosure document. (For a full discussion of the efficacy of the City of Lodi's code enforcement program, the reader is referred to Response 5-6 above.)

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### **Comment EPS-1c:**

*The [BAE] Report's presumption of effective government intervention raises several issues. First, it begs the question of the intent of an economic impact analysis to begin with. In other words, the BAE Report appears to argue that its own economic findings are irrelevant because adequate regulatory protections already exist to prevent urban decay regardless of market forces. Though an important consideration, the question of the policy intentions or future capacity of Lodi public officials is external to the economic analysis, and should not change the study's central conclusions. Second, the Report provides little in the way of policy analysis to support its finding that government intervention will be adequate and effective. For example, specific mitigations are not proposed or evaluated. Rather the Report assumes that the City will have the resources and ability to off-set fundamental economic forces (even without addressing the Centers' impact on the City budget, as discussed below). However, their own mapping of existing downtown vacancies and physical deterioration stands in stark contrast to this assumption.*

### **Response to Comment EPS-1c:**

This comment overlooks the fact that the urban decay analysis entails a multi-step analysis, of which the economic impact analysis is only one element. The economic analysis is far from irrelevant – it is the essential first step in the analysis of urban decay. Although the economic impact analysis has no direct connection to the CEQA findings, which are only concerned with physical impacts, it is the first link in the chain of causation which may or may not lead to an urban decay impact. If there is no economic impact, there can be no urban decay impact. However, the finding of a potential economic impact does not necessarily allow one to conclude that there will be an urban decay impact. There are several other factors to be considered in the

analysis of urban decay, all of which must be satisfied in order to conclude that the chain of causation will in fact result in urban decay. This is discussed at length in the DREIR.

The issue of the efficacy of the City of Lodi's code enforcement program is discussed at length in Response E-6 above.

With respect to the final statement on downtown vacancies in the last sentence, it should be clarified that vacancies are not equivalent with urban decay, even long term vacancies. Urban decay is evidenced by actual physical deterioration. In addition, the mapping shown (on pages 32 and 34 of BAE report) is not of downtown vacancies, except to the extent that usage of second floors is constrained by ADA issues. In fact, brokers indicated vacancy rates in the range of five percent downtown (page 35 of BAE report), a level consistent with a stabilized market. Even some of the buildings noted as having structural deficiencies are in use, and not all of the buildings with issues downtown are in retail uses or suitable for retail use and thus their status is not linked to retail-related urban decay.

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### **Comment EPS-2:**

*The BAE Report fails to assess the impact of the proposed Center on the City's fiscal health and thus its ability to combat urban decay if it were to occur. Moreover, based on the Report's own calculations, over 90 percent of the sales tax revenues from the Center will be transferred away from existing businesses, and thus will not represent net new revenue to the City.*

*Developments of the magnitude of the proposed Center result in fiscal costs in addition to benefits. The BAE Report estimates the project will capture only \$14 million in taxable sales from outside the trade area, or only 8.5 percent of projected \$164 million in taxable sales expected from the project, with the rest captured from businesses currently operating in the trade area. Since sales tax revenue to the City represents 1 percent of the total, this equals only \$140,000 in new revenues. From this must be factored the fiscal costs associated with the project, such as police, fire, road maintenance, administration etc., leaving little to no benefit to the City. Additionally, if costs outweigh benefits, the City is further limited in its ability to undertake efforts to combat urban decay.*

### **Response to Comment EPS-2:**

The comment overstates the shift in existing sales from existing outlets. While the total revenues generated by the project are estimated at \$164 million (as shown in Table 15 of the BAE report), approximately \$14 million will be captured from outside the Trade Area (as shown in Table 16), and approximately \$75 million is merely a shifting of sales from the existing Wal-Mart (the BAE analysis assumes the same conditions of project approval imposed previously regarding the vacancy of this store will be imposed upon reconsideration of project approval, as discussed on page 49 of the BAE report). Furthermore, increases in Trade Area population will generate enough additional demand such that the sales at existing businesses (other than the existing Wal-Mart) in 2008 are estimated at only \$56 million below current levels (see Table 17 of BAE report). Over time, as population and overall Trade Area consumer demand increase, these declines are projected to lessen and eventually disappear.

In addition to understating the net new sales revenue which will accrue as a result of the project, the comment also contains inaccurate and unsupported statements regarding fiscal impacts. First, the comment does not provide evidence as to the fiscal costs associated with the project, relative

to the fiscal benefits, and fails to acknowledge that there are additional fiscal benefits from the project, e.g., increased property taxes. Secondly, fiscal impacts do not represent a change to the physical environment and thus analysis of fiscal impacts is not required per CEQA. Since the analysis of fiscal impacts is not relevant to the urban decay analysis or any other physical impact recognized under CEQA, neither the BAE report nor the DREIR addresses the subject of fiscal impacts.

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**Comment EPS-3a:**

*The BAE Report consistently underestimates the impact of the project on small and/or specialized retailers, including those in Lodi's downtown, by overstating the importance of product differentiation.*

**Response to Comment EPS-3a:**

While this general comment mentions small and/or specialized retailers, the subsequent discussion relates largely to food store competition. There are no significant supermarket or food store competitors in downtown Lodi. The stores that sell food items downtown are all very small and either extremely specialized (health food or ethnic food) or convenience-oriented. The comment does not provide supporting evidence or analysis to support its claim that the EIR's analysis of downtown impacts is inaccurate or places too much or too little emphasis on product differentiation. Apart from food sales, there are no other products or services proposed for the expanded Wal-Mart which are not already available at the existing Wal-Mart. The general lack of vacancy in the overall Lodi trade area, as well as the ongoing viability of downtown businesses, shows that the Lodi's retail sector has adjusted to the existing Wal-Mart (and other discount merchandisers such as Kmart and Target) by differentiating themselves from the discount retailers.

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**Comment EPS-3b:**

*The BAE report states that, "... smaller food stores... are assumed to have a level of sales that already accounts for supermarket-type competition; an additional large supermarket is unlikely to draw a substantial number of shoppers away from these small stores..." (page 22). Though it is true that product differentiation is an important means for Lodi's smaller retailers to compete against supermarkets and other large retailers, it is incorrect to assume that such product differentiation protects them from growth in large retailers. Because product differentiation occurs along a continuum, consumers are willing to substitute apparently dissimilar products if there are differences in convenience or price. This is especially likely in the case of Wal-Mart consumers, who may be disproportionately moderate to low income. These customers are more responsive to marginal savings in price and time-cost, and therefore especially likely to forsake specialized retailers.*

**Response to Comment EPS-3b:**

Lodi has existing supermarkets representing a spectrum of competition from somewhat upscale (Safeway) to discount food warehouse (Food 4 Less), effectively covering the continuum of shopping choices. Wal-Mart's addition of a full line of groceries does not substantially change this range of options, and thus the EIR's finding that the downtown food retailers already effectively compete against the full range of supermarket types (DREIR, p. 42; BAE study, p.

58). The comment does not identify a specific small food store competitor; Lodi is served largely by either the full-service supermarkets cited in the EIR's analysis or convenience stores that operate in a very different market niche. As noted above, the food stores downtown are unlikely to be any more directly competitive with a Supercenter than with the existing array of full-service supermarkets, as discussed and analyzed in the DREIR (at page 42).

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**Comment EPS-3c:**

*Retailers like Wal-Mart are also constantly evolving their product lines and market strategies to capture additional demand segments. Indeed, national retailers such as Wal-Mart are increasingly targeting consumers with specialized tastes. The greater visibility and increased diversity of large retailers in niche markets enhances the intensity of competition. By way of example, Wal-Mart operates "stores of the community" which offer specialized product lines tailored to the particular community of their locale, and in 2006 undertook months of new initiatives to reorient their selection to target six key demographic groups. For instance, Wal-Mart has been developing their selection of organic and natural products to increase their appeal to health-conscious consumers.*

**Response to Comment EPS-3c:**

Just as Wal-Mart is "constantly evolving their product lines and market strategies," so too in response are its competitors. For example, as noted in BAE's report on page 47:

With its "Lifestyle" store concept, Safeway has been repositioning its stores to a more upscale market niche, in part to differentiate them from Supercenters as Wal-Mart expands throughout the country.

Existing stores in Lodi have been competing with a regular Wal-Mart for many years, and their survival indicates that they have evolved strategies to deal with this large competitor. Downtown, for instance, has largely differentiated itself from Wal-Mart also, as discussed in the BAE report on page 59:

Downtown Lodi's shift from an everyday shopping destination to a mix of small specialty stores, entertainment, and non-chain restaurants puts it in a market niche somewhat distinct from the kind of larger chain retailers likely to tenant the Proposed Project.

Change is normal as retail evolves, and it would be speculative to assign an impact based on changes in Wal-Mart's product mix and retail strategies that may or may not occur in the future.

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**Comment EPS-3d:**

*Another concern relating to the Center's customer appeal is that the BAE Report does not account for the reduced patronage across retailers because of the efficiency savings from combining grocery and retail purchases in the Center's Wal-Mart supercenter. Supercenters, as opposed to a standard Wal-Mart, aim to capture more customers than would either a supermarket or general merchandiser alone by lowering the time cost needed to acquire either of those goods, satisfying both impulse and regular demand. This*

*should amplify the effect of any lower price and enhance willingness to substitute Wal-Mart products for other goods.*

**Response to Comment EPS-3d:**

The EIR's analysis used a sales estimate of \$564 per square foot, well above Wal-Mart's national average sales per square foot as derived from the 2006 Annual Report to Shareholders. By using numbers above the national averages, the EIR has used a reasonable estimate that already "builds in" additional efficiency savings. Furthermore, the existing Wal-Mart is already in a center with a Food 4 Less supermarket in a discount food warehouse format which shows very strong sales, indicating that while not under the same roof, Lodi shoppers are already availing themselves of efficiency savings.

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**Comment EPS-3e:**

*Finally, BAE's conclusions regarding the lack of any closures in downtown resulting from the impact of the proposed shopping center appear inconsistent with its own literature review. In projecting impacts of the project upon Lodi's downtown, the BAE analysis reviews six distinct studies, which without exception estimate shifts away from small retail stores to Wal-Mart.*

**Response to Comment EPS-3e:**

The findings regarding the literature is that none of the studies adequately analyze actual shifts of retail from small retail stores to a Supercenter expansion such as that planned for Lodi. This is discussed on page 58 of BAE's report, which states as follows:

In summary, these studies, which are cited as indicators of substantial impacts on downtown retailing due to a Wal-Mart Supercenter, do not actually look specifically at actual after-the-fact impacts on downtowns of a Supercenter, albeit in some cases for a regular Wal-Mart. The studies such as the Stone studies that assess conditions also tend to be limited to rural areas and smaller cities in regions with limited or no growth. In addition, aside from the King Report, none of these available studies or others found by BAE relate specifically to the impacts on a downtown district of a Wal-Mart expansion to a Supercenter, where the primary competitive addition to the retail market is the grocery component. Thus, further objective research needs to be undertaken to properly assess the impacts of the opening of and expansion to Wal-Mart Supercenters in more urbanized markets that are larger and growing in population and that already have a wide array of large chain discount stores (e.g., Kmart, which preceded Wal-Mart into many California markets by a number of years).

Thus, the EIR findings and literature reviewed are consistent. Furthermore, as noted above, there are no competitive supermarkets in the downtown area, and the Wal-Mart relocation consists largely of an expansion to include more groceries; the Downtown has been competing with the existing Wal-Mart for many years.

**Comment EPS-3f:**

*The BAE Report estimates a decline of about 7 percent in downtown retail sales, an area which they describe as vulnerable, especially since City funds buffering the area's growth in recent years have dried up. Projecting an economic downturn equivalent to a medium-sized recession in an already "fragile" retail district would appear to put this area at risk of urban decay, contrary to the Report's conclusion.*

**E Response to Comment EPS-3f:**

As noted in BAE's analysis, downtown occupies a separate market niche, largely occupied by small, locally-owned, and specialized businesses that are not as directly competitive with the proposed project as the other more modern shopping centers/districts in Lodi. Much of downtown's estimated loss of sales would be at the drug store, which as part of a larger chain should be able to sustain the downturn that will be abated over the long term by growth in the Trade Area. Given the differentiation, and the fact that the tenant mix for much of the proposed project is unknown, BAE's conclusion was that:

These limited levels of reductions in sales cannot be assumed to lead to the closure of the existing Longs store or any other particular business outlet, especially since the exact tenant mix for much of the Proposed Project is unknown. Furthermore, Downtown Lodi's shift from an everyday shopping destination to a mix of small specialty stores, entertainment, and non-chain restaurants puts it in a market niche somewhat distinct from the kind of larger chain retailers likely to tenant the Proposed Project. (BAE report, page 59.)

This conclusion is supported by the analysis. (See BAE report at pages 58-60 for a full analysis of potential impacts to downtown.)

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**Comment EPS-4a:**

***BAE's conclusion that the Center's impacts on specific retail categories will result in few store closures is not supported by its findings.***

***Supermarkets:*** BAE's Report estimates a 16 percent decrease in the City's overall supermarket sales per square foot to \$326, which at \$390 are already found to be slightly below national levels. Of the two supermarkets in the immediate vicinity of the proposed Wal-Mart, the Safeway is in the most precarious position, as "any reduction in sales may put this store ... at risk of closure." Despite this finding, the BAE Report concludes that Safeway's closure is unlikely because of recent attempts to differentiate its product by appealing to a wealthier demographic and the possibility that managers may expect that newly developing residential areas will boost sales. This position seems untenable given that the magnitude of expected losses from the new Wal-Mart (likely close to 30 percent or more given its proximity) would completely deflate already sub par performance, and the fact that Wal-Mart also is attempting to enhance its appeal to attract more affluent customers.

**Response to Comment EPS-4a:**

While the outcome for the Lodi Safeway of the company's attempts to increase market share by moving to its more upscale "Lifestyle" format are not known, nationally the program has been

very successful in increasing sales at Safeway, even with Wal-Mart attempting to attract more upscale consumers. As noted in the *Safeway 2006 Annual Report*,

Total sales rose 4.6% to \$40.2 billion in 2006 from \$38.4 billion in 2005, primarily due to consistent execution of our strategy, *ongoing success of our Lifestyle stores* and increased fuel sales. ... With 751 Lifestyle stores in operation as of year-end 2006, they accounted for 43% of our total store base. These stores contributed significantly to sales growth throughout the year, and their aggregate return on capital continues to exceed our investment hurdle rate. (Page 2, emphasis added.)

In addition, Wal-Mart's attempts to attract more affluent customers have not been as successful as envisioned. For instance, in the International Herald Tribune article "Wal-Mart's new strategy goes back to basics: Saving money," it states:

Wal-Mart built its reputation on rock-bottom prices but, after wringing just about every cost out of its legendary supply chain, it decided last year to stock upscale merchandise and market it with sleek ads, hoping to persuade customers to spend more every shopping trip to lift its languid individual store sales. That did not work. (International Herald Tribune, March 1, 2007, <http://www.iht.com/articles/2007/03/01/business/walmart.php>.)

Thus, BAE's finding "although there is a possibility that the Safeway might close, it cannot be concluded that such an outcome is likely" (page 47) is a conclusion that is supported by the available evidence.

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#### **Comment EPS-4b:**

*The BAE Report's conclusions that the S-Mart will not close because of recent change in corporate ownership, and that the Apple Marketplace will not close because it "may" have lower break even requirements, also do not appear justifiable given earlier findings regarding the already poor performance of these establishments. In all of these cases, the BAE Report appears to dismiss its own quantitative analysis based on qualitative or anecdotal considerations that have not been fully evaluated, an approach that reoccurs throughout the Report.*

#### **Response to Comment EPS-4b:**

To avoid misinterpretation, some clarification of the EIR's findings may be useful. When BAE did its field work and assessed its performance, the S-Mart in question was still an Albertson's. BAE did not reach a conclusion that the store would not close because of this change in ownership. What the BAE study states is that, as a result of this ownership change, "past sales patterns are not necessarily an indication of future trends." (Page 47.) Furthermore, the fact that another chain was willing to acquire this store location (in the face of the proposed Wal-Mart expansion) indicates potential reinvestment rather than future decline. Thus, based on the available evidence, it is reasonable to state that closure of this store is not necessarily an outcome due to Wal-Mart's proposed expansion/relocation. The evidence does not lead to the conclusion, with any degree of certainty, that the closure of the store is due to Wal-Mart's proposed expansion or relocation.

While the Apple Marketplace appears to have lower sales per square foot, as a smaller region-based competitor (based in Stockton) a lower cost structure may mean that this is not necessarily "poor" performance in the context of its corporate cost structure.

With respect to “qualitative or anecdotal considerations,” local on-the-ground conditions in Lodi for individual outlets as analyzed in the EIR are key to understanding possible outcomes, along with the more general quantitative analysis.

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**Comment EPS-4c:**

*General Merchandise:* Lodi’s general merchandise sector is composed of three major retailers, Wal-Mart, Kmart, and Target. Of these, the Kmart is reported as having “extremely poor” sales, to the point that any additional competition risks closure. Although BAE projects a 46 percent decline in sales per square foot in general merchandise over the trade area, it refrains from predicting whether the Kmart will actually close, though it mentions the possibility.

**Response to Comment EPS-4c:**

Kmart nationally appears to be operating at a sales performance level well below that of Wal-Mart. (Based on information contained in corporate annual financial statements, BAE estimates that Kmart’s average sales are \$140 per square foot, compared with Wal-Mart’s average sales of \$418 per square foot. BAE’s observations of the Lodi Kmart and Wal-Mart stores indicate that the performance levels of the respective Lodi stores appears to be consistent with the national averages for each store.) As noted by the property owner (page 61 in BAE’s report), this store has a very low-cost long term lease. It would be speculative to conclude that the Kmart would face closure, although the EIR does note that it is at risk. Interviews with the property owner, as noted above, also indicate that the owner believes the space could be re-tenanted, perhaps with some subdivision of the store space, and perhaps with a non-retail user. Thus it cannot be stated with any degree of certainty that even closure of this store would lead to urban decay.

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**Comment EPS-4d:**

*Other Establishments:* Despite estimating that the Center (with Wal-Mart and other stores) will generate an average 13 percent citywide decrease in sales at existing pharmacies, an 8 percent reduction in sales in existing eating and drinking establishments, and a 6 percent reduction in sales in other existing retail stores, the report predicts no closures in any of these categories. This conclusion appears particularly unsupportable given the low profit margins typical of retail markets, and the likelihood of a wide degree of variation around these averages, implying that some stores will face more severe drop-offs.

**Response to Comment EPS-4d:**

At these impact levels, and without knowledge of specific store performance levels and profit margins (which are proprietary information), it would be speculative to predict closures of any or specific stores. The “low profit margins typical of retail markets,” as asserted by the comment, would not necessarily be a causative factor; if expectations of profit are low, it does not necessarily follow that slightly lower profit margins would lead to closure, especially when current profit margins are unknown. There has been no information or evidence provided that would support a conclusion that Lodi outlets are operating at margins where they could be forced below break-even levels by the stated reduction in sales. It also should be emphasized that the

EIR states that the reductions in sales at competing retailers will be temporary, and that ongoing residential growth in Lodi will allow sales to improve in the short term, as noted from the following on page 51 of the BAE report included with the EIR:

Based on the analysis...., two other major retail sectors show potential for capture from existing outlets: eating and drinking places, and the “other retail” category. The proportionate impacts for these two sectors are smaller, at eight percent and six percent respectively in 2008, with a rebound expected in subsequent years as with the other affected categories.

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**Comment EPS-4e:**

*The 13 percent reduction in pharmacy sales is particularly concerning given that the Report notes that an existing drug store is the most successful tenant in a “fragile” downtown retail market.*

**Response to Comment EPS-4d:**

The 13 percent reduction in pharmacy sales is for an assumed opening year of 2008. By 2012, with population growth, the reduction declines to only nine percent. At a nine to thirteen percent impact level, and without specific knowledge of individual store performance, it would be speculative to conclude that any store would be likely to face closure. Furthermore, since the existing drug store caters to everyday needs, while much of the downtown is specialized retail and restaurants, this drug store does not necessarily function as the kind of anchor where closure would dramatically impact the remaining retail outlets. Also, it is not accurate to characterize Longs Drugs as the “most successful tenant.” While BAE states that with respect to downtown that “the largest single retail outlet in terms of physical size and sales is almost certainly the Longs Drugs at the southern edge of Downtown,” (page 29), size and total sales level are not necessarily measures of profit or “success.”

## **RESPONSES TO COMMENTS CONTAINED IN PETITIONER'S OPENING MERITS BRIEF (ATTACHMENT 8 TO DONALD B. MOONEY COMMENT LETTER)**

On page 10 of the comment letter from Donald B. Mooney, it states: "The Citizens therefore incorporate as comments on the DREIR the arguments made at pages 12-18 in its Opening Merits Brief." (See Attachment 8 to Mr. Mooney's letter, which is included in Appendix A of this document.) (The brief is dated September 9, 2005.) These comments are summarized below and are followed in turn with responses.

### **Summary of Comment OMB-1:**

Use of developer's project objectives preordained selection of its project. This comment states that the Statement of Project Objective contained in the original EIR contains objectives that only the project site can satisfy and therefore precludes a meaningful analysis of project alternatives and fails to provide the City with a "reasoned choice."

### **Response to Comment OMB-1:**

The DREIR includes a revised statement of project objectives in which the objectives are more general than those contained in the original EIR. The former objective statements which are location-specific or size-specific have been stricken.

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### **Summary of Comment OMB-2:**

The EIR contains no legally adequate alternatives. This comment is summarized in the following statement, beginning on page 13, line 18 of the brief: "CEQA mandates that for public agencies to have a meaningful choice alternatives to the proposed project must possess two critical components: (1) feasibility of most of the project objectives, and (2) avoidance or substantial reduction of an of the significant effects of the proposed project." The EIR's alternatives fail to meet these two additive minimum criteria.

### **Response to Comment OMB-2:**

The DREIR presents feasible alternatives which would "offer environmental benefits over the proposed project." Section IV.D. of the DREIR presents the analysis of the "Reduced Project Size Alternative" which comprises only the Wal-Mart store, without any ancillary retail on outlying pads, on about 24 gross acres. The analysis does not conclude that this alternative is infeasible, nor does it conclude that this alternative would not feasibly attain most of the basic objectives while lessening any of the significant effects of the project. On page 99 of the DREIR, it states that "the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels." In the subsequent discussion of the ability of this alternative to meet project objectives, the EIR does not state that this alternative would not feasibly attain most of the project objectives, but rather that it would be "less effective than the proposed project" in fulfilling those objectives. On page 107, the Reduced Project Size Alternative is identified as the environmentally superior alternative.

The EIR analysis shows that the range of feasible alternatives is indeed quite limited in this case. In general, there are five basic kinds of project alternatives, namely, the no project alternative,

alternative land uses, alternative project density or intensity, alternative project size, and alternative location. (In addition, project design alternatives are often considered in cases where an important resource [e.g., historic structure] occupying a portion of the site could be avoided through project redesign, but that is not the case here.) All five of these basic alternatives were considered in the screening analysis at the beginning of the alternatives analysis; however, the land use alternative and reduced project intensity alternative were not included in the full alternatives analysis for the reasons stated in Responses 5-34 and 5-35 above. This left three alternatives to be evaluated in detail. Of these, the No Project alternative would not meet the basic project objectives, and the Alternative Project Location would neither meet the basic project objectives nor reduce the impacts, as discussed in the DREIR. This left only the Reduced Project Size Alternative as a “feasible” alternative to the proposed project.

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### **Summary of Comment OMB-3:**

The EIR failed to adopt reasonable mitigation for agricultural resources. This comment provides that the original EIR should have identified the acquisition of conservation easements as mitigation for loss of prime farmland resulting from the project.

### **Response to Comment OMB-3:**

The DREIR includes a revised section on Agricultural Resources in which the acquisition of an agricultural easement is identified as a mitigation for the project’s impacts to prime farmland. (See Responses 5-9 to 5-11 for further discussion.)

## **6. RESPONSES TO COMMENTS FROM JAMES AND ALICE ADKINS, DATED NOVEMBER 11, 2007**

### **Summary of Comment 6-1:**

The commenters are in favor of the proposed project, and one of the main reasons is that it includes ample parking for disabled and senior citizens close to the front of the stores. The commenters do not shop downtown often because it does not have enough adequate parking, and the downtown parking garage is lot is too far away for the elderly. Also there are no grocery stores downtown, and the commenters need to shop where they can conveniently park only once and do all their shopping. The commenters would like to see reasonably priced eating establishments downtown, and they feel that downtown is trying to attract wealthy shoppers which the commenters do not believe would frequent downtown on a regular basis. They believe that it was a waste of money to renovate the downtown the way it was. They would not like to see downtown deteriorate but do not believe denying the project is the solution.

### **Response 6-1:**

These comments express general opinions concerning the project and the commenters' general preference to shop in the outlying shopping centers instead of downtown. Since these comments do not include comments or suggestions regarding the DREIR, no further response is required.

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## **7. RESPONSES TO COMMENTS FROM KEN ALLEN, DATED SEPTEMBER 17, 2004**

### **Summary of Comment 7-1:**

This comment states that it is unrealistic to expect customers to ride bicycles or walk to the center since they will be buying in bulk. Thus the Energy section needs to be revised to reflect almost 100 percent travel by personal vehicle.

### **Response 7-1:**

Although it may be unlikely that many customers will use bicycles or walk, it is likely that facilities for bicycle access and storage as well as pedestrian circulation will encourage store employees to bicycle or walk to work. Since the center will employ hundreds of workers, this provides real commute alternatives for those employees. In addition, while most customers will travel to the center for the retail opportunities, other patrons will be attracted to the various restaurants that will locate at the center, and some of these restaurant or coffee shop patrons may wish to access the center by bicycle or on foot.

It is not accurate to state that the DREIR relies on bicycle and pedestrian alternatives as mitigations for the energy and other effects of vehicle travel. The traffic data relied upon to estimate mobile energy consumption does not include a reduction factor for trips diverted to bicycle use, and therefore does not affect the total energy consumption estimate for the project. Additionally, the discussion of energy impacts mentions bicycle use and pedestrian access as two

means of reducing project energy consumption, along with other facilities and programs for alternative transportation to be incorporated into the project. However, since the DREIR concludes that the project would not result in significant energy impacts, no specific mitigations for energy use are identified or required.

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## **8. RESPONSES TO COMMENTS FROM ALEX ALIFERIS, DATED OCTOBER 18, 2007**

### **Summary of Comment 8-1:**

The commenter states that the existing Wal-Mart is adequate and that a Supercenter would result in too much retail for a city of Lodi's size. The commenter believes that Lodi instead needs more manufacturing, call centers, distribution centers, etc., to provide good jobs.

### **Response 8-1:**

This comment letter expresses opinions and preferences related to the project but does not include any specific comments on the DREIR. Therefore, no further response is required.

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## **9. RESPONSES TO COMMENTS FROM MARK ANAFORIAN, DATED NOVEMBER 9, 2007**

### **Summary of Comment 9-1:**

The commenter opposes the project and states that, based on his experience, he believes the Supercenter would result in a major loss of business for Safeway, Food 4 Less, and S.Mart, which will either be forced to close or lay off workers.

### **Response 9-1:**

The commenter's opinion is not inconsistent with the findings of the EIR which indicates that other grocery stores would experience an initial reduction in sales which would gradually improve with population growth. However, the EIR concludes that it is unlikely that supermarkets would close as a result of the project (see DREIR at page35).

**Summary of Comment 9-2:**

The commenter expresses concern about the existing Wal-Mart store which will be vacated, and notes that the old Wal-Mart store on Hammer Lane in Stockton stood vacant for over two years after the opening of the Supercenter there.

**Response 9-2:**

The economic impact report by BAE (and the EIR) states that the vacant Wal-Mart store would not likely remain vacant for very long given its prime retail location near the corner of Highway 12 and Lower Sacramento Road. In its previous approval of the Lodi Shopping Center project in 2005, the City Council placed a condition of approval on the project which required that prior to issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall either: 1) have obtained signed leases for 50 percent of the floor area of the existing Wal-Mart (including a minimum two-thirds of the building frontage); or 2) have entered into a purchase agreement with a buyer for the existing Wal-Mart building; or 3) present to the City an cash escrow account to secure the applicant's obligation to demolish the existing Wal-Mart building within 90 days of the opening of the Supercenter. The City Council might consider imposing this same condition upon reconsideration of the project for approval. This condition would ensure that any urban decay that could result from the vacancy of the existing Wal-Mart would be avoided either by prompt retenanting (i.e., prior to issuance of building permits for the Supercenter) or by demolition of the building within 90 days of the Supercenter opening.

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**10. RESPONSES TO COMMENTS FROM GERRI ARRIGALE, DATED OCTOBER 19, 2007**

**Summary of Comment 10-1:**

Commenter is against the project because it will cause small businesses to close and have a generally negative affect on Lodi.

**Response 10-1:**

The BAE study and DREIR conclude that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

## **11. RESPONSES TO COMMENTS FROM DEBRA BACON, DATED NOVEMBER 8, 2007**

### **Summary of Comment 11-1:**

The commenter feels strongly that the existing Wal-Mart is adequate and that approval of a Supercenter would be at the expense of Downtown.

### **Response 11-1:**

The comment letter expresses an opinion about the project but does not include a comment or criticism on the DREIR itself. Therefore, no further response is required.

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## **12. RESPONSES TO COMMENTS FROM WILLIAM D. BAKER, DATED DECEMBER 4, 2007**

### **Summary of Comment 12-1:**

This comment letter expresses a number of opinions regarding such issues as the downtown improvement program, tax revenue generation, unions, the Lodi First group, a possible mitigation fee, and retail competition.

### **Response 12-1:**

The comment letter includes several general opinions on issues related to the project but does not include any comments or criticisms on the DREIR itself. Therefore, no further response is required.

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## **13. RESPONSES TO COMMENTS FROM MR. & MRS. JOHN BALLANTINE, DATED NOVEMBER 10, 2007**

### **Summary of Comment 13-1:**

The commenters state that they support the project and express disappointment in the fact that the City seems more concerned with downtown than the revenue that Wal-Mart would bring. They also believe that the project would have very little impact to grocery stores in Lodi.

**Response 13-1:**

The comment letter includes several opinions about the project and its economic benefit and impact. Since the comments do not include any specific comments or criticisms on the DREIR itself, no further response is required.

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**14. RESPONSES TO COMMENTS FROM JESSE BARNETT, DATED DECEMBER 7, 2007**

**Summary of Comment 14-1:**

This comment states that a leakage study should be undertaken to determine whether there is significant retail leakage in the area of Lodi where the project is proposed. If it cannot be shown that there is significant leakage in this area, then the City should require that all new retail development occur in the areas least served, such as the east side.

**Response 14-1:**

The economic impact report prepared by BAE (which is part of the DREIR) included an analysis of retail leakage from the City of Lodi to retail centers located in other communities. The findings were that there is retail leakage of about \$14.3 million from Lodi in some retail categories (e.g., apparel, building materials, service stations, other retail) while there is retail capture or injection of approximately \$47.9 million from outside communities in other categories (e.g., general merchandise, food, drug stores, eating and drinking, home furnishings and appliances), resulting in a net capture of approximately \$33.6 million overall (BAE study, pp.22 and 43.) Economic impact studies of this nature only consider retail leakage or capture from the community as a whole since the primary concern to be addressed in a leakage study is the loss of retail sales tax revenue and employment opportunities from the community under study. There usually is not a concern with the distribution of retail within a given community, and therefore, the added effort and expense of preparing a study of internal leakage or capture for individual districts within a community is not justified. Additionally, there is no reliable published sub-city data with the detail required to complete a leakage analysis at the district or neighborhood level. Moreover, the opportunities for retail shopping center development in Lodi are constrained by the City's General Plan which specifically directs new shopping center development to the "Four Corners" area, and does not designate other lands within the City for shopping center development. Therefore, even if an internal leakage analysis for Lodi could be justified on analytical grounds, the value in conducting one would be low since no other lands within the City are general planned for shopping center development. However, in 2006 the City approved the Reynolds Ranch project which includes approximately 45 acres for shopping center development. Reynolds Ranch is located near the East Side area and would certainly serve the residents of that area.

**15. RESPONSES TO COMMENTS FROM JEANETTE BEDFORD, DATED NOVEMBER 13, 2007**

**Summary of Comment 15-1:**

This comment simply states “No more Wal-Mart under any conditions!”

**Response 15-1:**

Since this comment expresses an opinion on the project and does not include a comment on the DREIR, no response is required.

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**16. RESPONSES TO COMMENTS FROM DEBORAH BLANKENBERG, DATED DECEMBER 6, 2007**

**Summary of Comment 16-1:**

This comment letter expresses concern over the project impact on Lodi’s downtown revitalization efforts, and asks what can be done to make sure Wal-Mart will pay its fair share if downtown businesses close as a result of the Supercenter.

**Response 16-1:**

The BAE economic impact report and the DREIR found that downtown retailers would likely experience a limited reduction in sales due to the proposed project because most impacts occurred when the first Wal-Mart opened. Downtown Lodi has shifted its retail mix to specialty stores, entertainment, and restaurants less directly competitive with the proposed project. Since the downtown retailers have established a distinct retail niche, no closures of downtown businesses are expected and therefore no urban decay is expected to occur as a result of the project. Since the BAE study and DREIR do not identify a significant urban decay impact, the DREIR likewise does not identify a mitigation measure or fee. Whether a program may or may not be imposed outside the CEQA context is beyond the scope of this EIR.

**17. RESPONSES TO COMMENTS FROM LYNNETTE L. BREWER, DATED DECEMBER 7, 2007**

**Summary of Comment 17-1:**

The commenter asks if there are any plans for a gas station/mini-mart in the shopping center, and if so, have fuel deliveries been factored in when determining project energy use.

**Response 17-1:**

The proposed project does not include a gas station and/or mini-mart.

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**18. RESPONSES TO COMMENTS FROM STEPHEN BROCK, DATED DECEMBER 7, 2007**

**Summary of Comment 18-1:**

The commenter asks if the energy section in the DREIR factored-in the other stores in the project or if it only focused on the Wal-Mart Supercenter. He also asks if the other retailers would be held to the same energy conservation standards as Wal-Mart.

**Response 18-1:**

To calculate the overall energy consumption resulting from the project, the DREIR included energy consumption by all proposed retailers, restaurants and services that would occupy the Lodi Shopping Center. All project facilities will be constructed to meet the energy-efficiency requirements of Title 24, as required. It is known that the Wal-Mart store will incorporate energy conservation features which will enable it to exceed the requirements of Title 24, but since most other tenants have not yet been identified it is not known if they would incorporate energy conservation measures that go beyond the Title 24 requirements, which are incorporated in the City's Building Code.

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**19. RESPONSES TO COMMENTS FROM BRENDA BURGHARDT, DATED NOVEMBER 15, 2007**

**Summary of Comment 19-1:**

This comment letter expresses strong support for the project. The commenter does not believe the project would compete with downtown because they cater to a completely different clientele. The commenter includes several ideas for revitalizing downtown, as well as ideas on how to best use the tax revenues that would be generated by the project.

**Response 19-1:**

The commenter's position on issue of the economic impact to downtown is consistent with the findings and conclusions of BAE's economic impact report and the DREIR. The other issues discussed in the letter are related to the project but do not include any comments or criticism on the EIR. Therefore, no further response is required.

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**20. RESPONSES TO COMMENTS FROM ANN M. CERNEY (1), DATED DECEMBER 6, 2007**

**Summary of Comment 20-1:**

Air Quality. This comment states that the DREIR should include an analysis of how the project would meet the emissions reductions requirements under SJVAPD's Rule 9510 (Indirect Source Review).

**Response 20-1:**

As discussed above under Response 5-27 above, the City of Lodi is aware of the Air District's Rule 9510 – Indirect Source Review (ISR). Rule 9510 became effective on March 15, 2006, which was after the original EIR was certified in February 2005. As such, there was no obligation to address Rule 9510 in the original EIR. Since the analysis of air quality impacts in the original EIR was deemed sufficient by the Superior Court, there is no obligation to supplement that analysis in the DREIR. Moreover, there is no language in CEQA, or in Rule 9510, or in the Air District's CEQA guidelines, which require Rule 9510 to be addressed in EIRs. Rule 9510 involves a separate permitting and review process which results in the reduction of project emissions by on-site mitigations and/or payment of fees for off-site mitigations. Since its promulgation, discussions concerning Rule 9510 have been included in EIRs for informational purposes. However, the timelines for ISR reviews are relatively short (30 days) and are only required to be complete prior to the last discretionary approval (e.g., tentative map). The level of project design detail required in an ISR application is far greater than is typically available at the time a project EIR is prepared. Therefore, as a practical matter the data prepared and specific mitigations identified through the Rule 9510 review process are typically not produced until detailed construction information on a project is available, which usually is not until well after the EIR process has ended. As such, EIRs which include discussions of ISR typically do not include detailed calculations of emissions reductions, but rather discuss the general measures to be employed to meet the Rule 9510 requirements. Such a listing of general mitigation measures to reduce regional emissions associated with the project is included in the Air Quality section of the original EIR. (It is noteworthy that application of the ISR emissions reduction requirements [i.e., 33 percent for NO<sub>x</sub>] would not reduce the air quality impact of the project to less-than-significant levels, since coming in under the significance threshold would require an emissions reduction of approximately 66 percent.) Finally, it is important to note that the Air District's NOP comment letter merely puts the City on notice that the project is subject to Rule 9510. Nowhere does it state or imply that ISR must be discussed in the DREIR.

### **Summary of Comment 20-2:**

**Health Risk Assessment.** This comment states that the DREIR should include a Health Risk Assessment (HRA) and notes that the HRA prepared for a Wal-Mart expansion in Redding found that additional diesel truck deliveries would result in a significant health risk to sensitive receptors (i.e., the estimated 13 new cancer cases per million would exceed the SJVAPD significance threshold of 10 cases per million).

### **Response 20-2:**

The discussion of toxic air emissions from diesel exhaust contained in the original EIR was adequate under the Air District's guidelines that were applicable at that time the original EIR was certified in February 2005. In 2006, the Air District adopted a requirement that Health Risk Assessments be conducted for projects with sources of diesel emissions, such as delivery trucks. The Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and the City of Lodi did not voluntarily undertake to revise the air quality analysis. As such, the DREIR does not contain a reanalysis of air quality impacts, and no further health risk assessment is contemplated in connection with this DREIR, and no further analysis is required under CEQA.

In this context, it is important to note that the Redding example cited in the comment letter is quite different from the Lodi Shopping Center situation. In the Redding case, the maximally exposed receptors are located directly adjacent to and downwind from emissions source (e.g., residential rear yards are located adjacent to and directly east of the loading docks and routes) (City of Redding, *Draft EIR for the Wal-Mart Expansion Project*, July 2006, Figures 2-2 and 2-3). In other instances, such as the Bakersfield Wal-Mart (on Gosford Lane), where the nearest receptors are at least 500 feet from the emissions source, albeit downwind, the calculated risk was 5 cases per million for a new Supercenter (Michael Brandman Associates, *Local Air Quality and Health Risk Assessment of Gosford Village Shopping Center*, April 24, 2007, p. 48). In the case of another Bakersfield Wal-Mart (on Panama Lane), where the nearest receptors were 100 feet and upwind from the emissions source, the calculated risk was 7.9 cases per million (Michael Brandman Associates, *Localized Air Quality and Health Risk Assessment of the Panama Lane Shopping Center*, April 23, 2007, p. 44). In the case of the Delano Wal-Mart, where the nearest receptors were 1,500 feet and downwind from the emissions source, the calculated risk was 1.8 cases per million (San Joaquin Valley Air Pollution Control District, *CEQA Modeling Memo, from Matthew Cegielski, AQS-Technical Services, to Kurt Legleiter, Ambient Consulting, Regarding Delano Marketplace, Application No. C-7076, Project No. 1061533*, August 14, 2006). These cases illustrate that diesel emissions are dispersed and diluted rapidly over relatively short distances. In the case of the Lodi Shopping Center, the nearest existing residences would be at least 1,000 feet from the Wal-Mart loading area. Since this distance is greater than the distances separating the loading areas from the sensitive receptors in the Bakersfield Wal-Mart projects, it is expected that the health risk would be similarly low and well below the 10 cases per million threshold. This is consistent with the findings of the original Lodi Shopping Center EIR.

### **Summary of Comment 20-3:**

**Agricultural Mitigation.** This comment states that Agricultural Resources Mitigation Measure B1, which requires the acquisition of off-site agricultural conservation easements for loss of prime farmland, should also have included a provision requiring payment of fees for ongoing maintenance of such easements.

#### **Response 20-3:**

As noted in the comment, the City has required payment of such maintenance fees in previous cases, such as Reynolds Ranch, where agricultural easements were required. In addition, Mitigation Measure B1 has been revised to specifically include a requirement that the applicant pay a fee for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity (see Section V. *REVISIONS TO THE TEXT OF THE DREIR*). In establishing the amount of the fee, the City would consider the recommendations contained in the nexus studies prepared for the City of Stockton and the County of San Joaquin. However, the many procedural, legal, and financial details related to implementation of the agricultural conservation easement requirement, including the determination of fees, far exceed the level of detail required for an EIR. The City of Lodi has the authority to establish the mechanical aspects of the agricultural easement requirement in conjunction with subsequent stages of project approval, and is not constrained by the lack of detailed procedural information in an EIR from establishing further details for the easement requirement.

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### **Summary of Comment 20-4:**

**Energy/Global Climate Change.** This comment states that the DREIR must quantify, disclose, and evaluate the project's greenhouse gas emissions to ensure that the project will not impede the legislative mandate to reduce statewide greenhouse gas emissions to 1990 by 2020.

#### **Response 20-4:**

No discussion of global climate change and project greenhouse gas emissions was included in the DREIR because it was not included among the issues for which the Superior Court directed the City of Lodi to prepare new or revised discussions. Since the concept of global warming is not new, it could have been raised in comments on the original EIR. Since no comments were made pertinent to global warming at the time the original EIR was circulated for public review so the commenter is precluded from raising that issue now for the first time now based on claim preclusion/*res judicata* and statute of limitations. The scope of public comment is limited to those sections of the original EIR that were mandated to be revised by the Court and/or those sections the City volunteered to revise. At the time the original EIR was reviewed and certified by the council, there was no legal requirement to include a discussion of global warming. (*See Highland Springs Conf. v. City of Banning* (2008) Case No. 460950, attached hereto in Appendix F.)

It is also important to note that AB 32 – California Global Warming Solutions Act, was passed in September 2006 and became effective on January 1, 2007, well after the certification of the initial EIR in February 2005. AB 32 is not the type of new information contemplated by Public Resources Code section 21166. (*American Canyon Community United For Responsible Growth v. City of American Canyon and City of American Canyon v. Lake Street Ventures* “*American*

*Canyon*” (Case No. 26-27462), attached hereto in Appendix E.) In the American Canyon case, the Court held that “CEQA Guidelines section 15162, which augments section 21166 [of the Public Resources Code], clarifies that the “new information” must show something about the particular project’s effects, i.e., that the project will have one or more significant effects not discussed in the previous negative declaration. New legislation requiring creation of state regulations certainly does not pertain...” (The Court acknowledged that such forthcoming regulations may in turn result in the need for environmental review in the future but AB 32 did not, itself, require such CEQA analysis.) Here, nothing about the project itself has changed since the certification of the original EIR. In conclusion, an analysis of global warming or AB 32 is not required for this REIR.

To date there have been no amendments to the CEQA Statute or Guidelines which mandate inclusion of discussions of global climate change in EIRs. (Importantly, no consensus has developed on how to conduct such an analysis, or the significance levels that should be applied in such an analysis, or which mitigation measures would be appropriate and feasible. These issues have proven resistant to easy resolution despite massive and determined efforts to reach commonly accepted approaches and standards.) It is worth noting that the only state legislation which addresses global climate change in the context of CEQA is Senate Bill 97, which was enacted in August 2007. SB 97 (Public Resources Code section 21083.05) directs the Governor’s Office of Planning and Research (OPR) 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 directs the Resources Agency to certify or adopt those guidelines by January 1, 2010. Once the analytical methodologies, thresholds of significance, and appropriate levels of mitigation for individual development projects are established, it will be possible for new EIRs to address this issue in a consistent and meaningful way. However, as indicated by the recent court decisions cited above, EIRs that have already been completed will not be required to be supplemented with new analyses on global climate change.

The comment also states that the analysis should also ensure that the project will not impede the legislative mandate to reduce statewide greenhouse gas emissions to 1990 by 2020. However, even if there was a current requirement to study greenhouse gas emissions under CEQA and there was an established threshold for determination of significance for global climate change, the data required to make such determinations does not currently exist. While quantified greenhouse gas rollback benchmarks are currently being analyzed, it remains unclear how this will be translated to the project-specific level in a manner which is feasible. Thus, the commenter’s suggestion of applying greenhouse gas reduction goals as a significance threshold for this project is inappropriate and infeasible until a reliable and scientifically accepted guidance is established for quantifiable project-specific mitigation goals.

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### **Summary of Comment 20-5:**

Energy. This comment states that the project’s energy consumption must be analyzed and reduced with enforceable mitigation measures. It further suggests that the project should incorporate energy conservation measures which exceed those contained in Title 24, and the LEED standards for new construction should be applied. The comment also lists numerous other energy mitigation measures that should be adopted.

**Response 20-5:**

In response to the direction provided by the Superior Court, the DREIR includes an extensive discussion of energy resources and infrastructure, and evaluates the project's impacts upon those resources and infrastructure. In doing so, the DREIR followed guidance for energy impact analyses contained in the CEQA Guidelines. The determination of whether a project will result in significant impacts under CEQA depends upon whether established significance thresholds are exceeded or not. In the case of energy consumption, the CEQA-based significance criteria are: 1) whether the project's use of energy is wasteful or inefficient, and 2) whether the energy infrastructure has sufficient capacity to serve the project. The first criterion is best summarized in Appendix F of the CEQA Guidelines, which states:

“In order to assure that energy impacts are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.”

Within the terms of reference defined by these CEQA-based significance criteria for energy impacts, the DREIR found that the project would not result in a significant impact to energy resources. As such, no mitigation measures are required for energy impacts. However, it is important to note that several of the energy conservation measures suggested by the commenter are already proposed to be incorporated into the project. For example, the proposed project includes a transit route which travels through the project instead of passing by it, and also includes two on-site bus stops in order to better facilitate access to public transportation. The project has also been designed with full internal pedestrian interconnections, as well as external pedestrian access and full bicycle access. The project will also include a range of transportation demand measures as identified in the Air Quality section of the original EIR.

With respect to the California Energy Code (Title 24), it should be noted that it is known to have the most stringent energy saving building requirements in the country,. (See [http://greenbuildings.berkeley.edu/pdfs/bp2006\\_ucla.pdf](http://greenbuildings.berkeley.edu/pdfs/bp2006_ucla.pdf) [Green Building Research Center, UC-Berkeley, *Best Practices Case Studies 2006*, “UCLA La Kretz Hall, ” accessed March 17, 2008], <http://www.facilitiesnet.com/bom/article.asp?id=6274> [Operating Building Management, “*Finding Incentives for Cool Roofs*,” March 2007], <http://www.douglaslightingcontrol.com/state-energy-codes.htm> [Douglas Lighting Controls, “*State Energy Codes*,” accessed March 17, 2008]) (See DREIR page 75 for a description of Title 24 energy efficiency requirements for new buildings.) Title 24 is also continuously updated to reflect advances in energy-efficient building materials and techniques. In fact, one of the tests for significance of energy impacts contained in Appendix F of the CEQA Guidelines is “[t]he degree to which the project complies with existing energy standards.” Additionally, there are numerous energy conservation features planned for the project, as described on page 81 of the DREIR, which go well beyond the energy-efficiency requirements of Title 24.

## **21. RESPONSES TO COMMENTS FROM ANN M. CERNEY (2), UNDATED**

### **Summary of Comment 21-1:**

This letter serves as a transmittal letter for the comment memo by EPS which is attached to the letter.

#### **Response 21-1:**

The EPS memo attached to Ms Cerney's comment letter is included in Appendix B of this document. For responses to comments contained in the EPS report, the reader is referred to Responses EPS-1 through EPS-4, which follow directly after Response 5-37.

## **22. RESPONSES TO COMMENTS FROM MR. & MRS. CONSTANTINE M. COPULOS, DATED NOVEMBER 13, 2007**

### **Summary of Comment 22-1:**

The commenters are against the proposed project because it would be detrimental for other grocery stores in Lodi and increase congestion at the proposed location.

#### **Response 22-1:**

The BAE economic impact analysis and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). The traffic impacts associated with the project were analyzed in detail in the original EIR and supported by a traffic study prepared by Fehr & Peers, transportation consultants, who identified substantial widening and improvements for Kettleman Lane and Lower Sacramento Road that will be required in order to prevent unacceptable congestion as a result of the project.

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## **23. RESPONSES TO COMMENTS FROM JAMIE CUNNINGHAM, DATED NOVEMBER 28, 2007**

### **Summary of Comment 23-1:**

The commenter states that she is "deeply troubled" by the proposed Wal-Mart Supercenter. She notes that given the investment in downtown that has turned it from a "ghost town" to a vibrant area, it seems "counterproductive to give Wal-Mart the green light to further 'box up' South Lodi."

**Response 23-1:**

The commenter implies that approval of the project would be detrimental to downtown. The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that the short-term reduction in sales in the downtown area is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded that these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in store vacancies or that it would initiate a chain of events which might ultimately result in urban decay impacts in the downtown.

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**Summary of Comment 23-2:**

The commenter recounts Wal-Mart's reported violations of environmental regulations elsewhere, and states that the company disregards the health and welfare of communities. The commenter also notes that Wal-Mart does not pay its employees a living wage and cites a reported labor violation elsewhere.

**Response 23-2:**

The commenter's recounting of reported environmental violations elsewhere is noted. For purposes of CEQA, however, this information is not germane to the analysis of environmental impacts for the proposed project, and no response is required on this point. However, it should be noted that the implementation of mitigation measures required for the proposed project, as identified in this EIR, will be ensured through the State-mandated Mitigation Monitoring and Reporting Program (MMRP) which will be adopted in conjunction with the project approval. The MMRP specifies the parties responsible for implementation of each mitigation measure as well as the timing of implementation, and requires follow-up inspections by City staff to ensure that the mitigation measures have been implemented as specified. This strict enforcement of the mitigation measures will prevent violation of environmental laws with respect to this project.

The comments on wages and labor relations involve purely socio-economic issues which are not relevant to analysis of environmental impacts under CEQA, which is solely focused on physical impacts to the environment. As such, no response on this point is required.

**24. RESPONSES TO COMMENTS FROM MARGE DEGENSTEIN, DATED NOVEMBER 19, 2007**

**Summary of Comment 24-1:**

This comment letter expresses strong support for the project. It also includes opinions on several subjects including the project's impact on downtown, and the loss of retail sales and tax revenue to Stockton.

**Response 24-1:**

The comment letter addresses the merits of the project and expresses opinions on several subjects related to the project. Since the comment letter contains no specific comments or criticisms on the DREIR itself, no further response is required.

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**25. RESPONSES TO COMMENTS FROM CHRISTY DESCHAMP, DATED DECEMBER 6, 2007**

**Summary of Comment 25-1:**

The commenter opposes the project and states that downtown businesses should be protected. She is surprised that the DREIR finds that the potential for urban decay is not significant, and suggests looking at the existing Wal-Mart store which still lacks a future occupant with Home Depot now reportedly planning to locate in Reynolds Ranch. The impact that the empty Wal-Mart will have on the shopping center should be studied, especially since it will be difficult to find an anchor tenant who will compete against a Supercenter.

**Response 25-1:**

The issues of economic impacts/urban decay and the potential impacts associated with the vacated existing Wal-Mart store are discussed in turn below.

**Economic Impacts/Urban Decay**

The salient conclusions of the DREIR and BAE report with respect to the economic and urban decay impacts associated with the project are as follows:

**General Retail in Lodi:** The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

**Grocery Stores:** The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery

store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

Downtown Lodi: The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded that these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

Cumulative Conditions: When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

#### Vacated Existing Wal-Mart Store

In its previous approval of the Lodi Shopping Center project in 2005, the City Council placed a condition of approval on the project which required that prior to issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall either: 1) have obtained signed leases for 50 percent of the floor area of the existing Wal-Mart (including a minimum two-thirds of the building frontage); or 2) have entered into a purchase agreement with a buyer for the existing Wal-Mart building; or 3) present to the City an cash escrow account to secure the applicant's obligation to demolish the existing Wal-Mart building within be re-tenanted with 90 days of the opening of the Supercenter or the building would have to be demolished. It is expected that the City Council might consider imposing this same condition upon reconsideration of the project for approval. This condition would ensure that any urban decay that could result from the vacancy of the existing Wal-Mart would be avoided either by prompt retenanting (i.e., prior to issuance of building permits for the Supercenter) or by demolition of the building within 90 days of the Supercenter opening. This provides a strong incentive for the owner of the Sunwest Plaza, who is also the applicant for the proposed project, to obtain a tenant for this space in short order. However, the economic impact report by BAE (and the EIR) state that the vacant Wal-Mart store would not likely remain vacant for very long given its prime retail location near the corner of Highway 12 and Lower Sacramento Road. The DREIR also concluded that the Sunwest Plaza where the existing Wal-Mart is located is unlikely to be subject to long-term vacancies since it is relatively new, and will be in close proximity to the new Supercenter and the existing Target and Lowe's as well as other regional retail draws, and thus is a very attractive location for retailers.

**26. RESPONSES TO COMMENTS FROM MARILYN DOMINGO, DATED NOVEMBER 16, 2007**

**Summary of Comment 26-1:**

This comment letter expresses support for the project. It states that the project would not compete with downtown since it would provide items for everyday needs while downtown businesses provide high-end merchandise.

**Response 26-1:**

This comment addresses the merits of the project, but not necessarily environmental impacts. This comment is, however, consistent with the findings of the BAE economic impact report and the EIR. No further response is required.

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**27. RESPONSES TO COMMENTS FROM LEO B. DUNCAN, DATED DECEMBER 5, 2007**

**Summary of Comment 27-1:**

This comment letter expresses a strong opinion in favor of allowing the project to go forward.

**Response 27-1:**

Since this letter expresses a general opinion on the merits of the project and does not address the DREIR itself, no further response is required.

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**28. RESPONSES TO COMMENTS FROM HELEN ELLIS, DATED NOVEMBER 15, 2007**

**Summary of Comment 28-1:**

This comment letter expresses a strong opinion in favor of approving the proposed project.

**Response 28-1:**

Since this letter expresses an opinion on the merits of the project and does not address the DREIR, no further response is required.

## 29. RESPONSES TO COMMENTS FROM LESTER EMIGH, DATED NOVEMBER 15, 2007

### Summary of Comment 29-1:

This comment letter expresses a strong opinion in favor of approving the proposed project.

### Response 29-1:

Since this letter expresses an opinion on the merits of the project and does not address the REIR, no further response is required.

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## 30. RESPONSES TO COMMENTS FROM ROBERT EVANS, DATED DECEMBER 4, 2007

### Summary of Comment 30-1:

This comment contains several detailed questions on the implementation of the agricultural easement requirement. In particular, the following questions are raised:

- “1. When must the applicant meet this requirement?
2. What do the restrictions say? Can we see the text?
3. Considering California’s demand for water, how do you guarantee water is available to the proposed 40 acres if the easement is located in a designated greenbelt area?
4. Where are the current greenbelt areas located?
5. The City of Galt is located only 10 miles north of Lodi and is in Sacramento County. Technically based on this mitigation, a 40-acre parcel could be located just south of the Sacramento County line. How do the citizens of Lodi benefit from a parcel of land 15 miles away when they are losing land located right on the city border? Wouldn’t a more sensible mitigation place the easement nearer to the City of Lodi?”

### Response 30-1:

Each of the above 5 items are addressed in turn below:

1. Timing. At the time of issuance of the occupancy permit for the first commercial building in the project, the applicant would be required to either produce proof that the off-site easement requirement had been met, or post a surety bond with the City of Lodi for an amount equivalent to the cost of acquiring the off-site easement.
2. Details of Restriction. Although the specific details of the easement restrictions have not yet been developed, the ongoing management of the easement and the accompanying conditions will be either conducted by the City or an established land trust/conservancy whose primary function is to acquire and manage such lands and easements. As provided in Mitigation Measure B1 (as revised herein), the applicant will be required to contribute funds for administration of the easement which are over and above the costs of acquisition (see Section V. REVISIONS TO TEXT OF THE DREIR).

3. Guaranteed Water Supply. There will be a requirement that evidence of secure water supply must be produced for any lands considered for easement acquisition. The terms of the easement itself would specify that any water rights to the underlying land could not be sold or transferred.
4. Location of Greenbelt. The County of San Joaquin and the cities of Lodi and Stockton have considered the designation of a greenbelt area to provide a permanent open space buffer between the two cities. However, no official greenbelt area has been designated by either city or the County. Mitigation Measure B1 has been revised in this document to remove the reduced mitigation ratios for easements acquired in areas desired by the City, such as a greenbelt area (see Section V. *REVISIONS TO TEXT OF THE DREIR*).
5. Rationale for 15 Mile Radius Requirement. The maximum 15-mile distance requirement has been removed from Mitigation Measure B1, which now requires that the conservation easement be located within San Joaquin County (outside the Delta Primary Zone)(see Section V. *REVISIONS TO TEXT OF THE DREIR*). This reflects the City's goal to have the easement lands be located somewhat proximate to the City, but far enough away that the price of such lands is unlikely to include much speculative value. Unlike remote areas, the land between Stockton and Lodi, due to its proximity to existing development in those two cities, is perceived as having stronger potential for development, and thus commands higher market prices. For example, current market value for agricultural land suitable for row crops located about 15 miles from Lodi is about \$10,000 per acre (and the value of conservation easements on such land is about \$5,000 per acre), while current market value for similar agricultural land located between Lodi and Stockton is up to \$30,000 per acre (and the value of a conservation easement on such land is about \$20,000 per acre)(Bill Martin, Executive Director, Central Valley Farmland Trust, and Bob Hasseltine, agricultural real estate broker, Personal Communications with Randy Hatch, City of Lodi Community Development Director, February 27, 2008). In addition, agricultural land trusts prefer to acquire agricultural easements in areas removed from urban centers where there is a better likelihood of obtaining blocks of contiguous land protected by easements, and where it is less likely that easements will remain isolated, fragmented and subject to increasing constrictions on farming operations due the encroachment of urban development (Bill Martin, *op. cit.*). .

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### **Summary of Comment 30-2:**

The commenter notes that on November 28, 2007, the Court of Appeal ruled that the 2004 City Council approval of a Wal-Mart Supercenter in Spanos Park West (1-5 and Eight Mile Road) was illegal. Stockton City Council has since banned stores that exceed 100,000 square feet and contain full-sized grocery stores. This raises serious and significant concerns about where residents of northwest Stockton will go to shop because that supercenter will not be built. Since the intersection of Lower Sacramento Road and Eight Mile Road is only 4.12 miles from Lower Sacramento Road and Kettleman Lane, maybe they will now drive north to Lodi. If the Supercenter at Spanos Park is not built, the commenter asks if the traffic implications upon access roadways connecting north Stockton with the Lodi Supercenter have been considered, particularly the additional traffic during weekends and holidays, and the adequacy of holding lanes to prevent vehicle backup.

**Response 30-2:**

Although the Court of Appeal decision (*Stockton Citizens for Responsible Planning v. City of Stockton*, 157 Cal.App.4<sup>th</sup> 332 (2007)), combined with the prior Stockton City Council decision, may appear to preclude the construction of a Supercenter at Spanos Park, such an outcome is not a certainty. The applicant has sought review of the case by the California Supreme Court, which review was granted on February 17, 2008. The case is still pending. Also, the Stockton ordinance would not preclude the construction of a smaller Supercenter of less than 100,000 square feet (see copy of Stockton ordinance in Appendix G of this FREIR). However, any attempt to predict the ultimate outcome with respect to the proposed Supercenter at Spanos Park would be speculative. Since the possibility of a Supercenter at Spanos Park cannot be ruled out, and it remains reasonably foreseeable that the Stockton Supercenter would be built, the cumulative analysis in the BAE report or the DREIR should remain the same. If the proposed Supercenter at Spanos Park is ultimately downsized to less than 100,000 feet, the DREIR analysis of cumulative economic and urban decay impacts will then represent a worst-case analysis, and will therefore still be valid under CEQA.

With respect to the traffic questions, it is important to first note that the Superior Court found the traffic analysis in the original EIR to be sufficient, and the City did not voluntarily revise the traffic analysis. Therefore, the DREIR does not include a revised traffic analysis and comments related to traffic are outside the scope of material subject to public comment and review. The analysis in the original EIR remains valid and no further analysis is required under CEQA. In response to the comment, it should also be noted that substantial other retail, including Target, Kohl's, Lowe's and other retailers at the Spanos center would continue to attract northwest Stockton shoppers to the Spanos center, resulting in fewer redirected trips even if a Supercenter is not opened at the center. As to where those Supercenter trips would be redirected, it is noted that the trade area for the Spanos Center Supercenter would primarily encompass the northwest quadrant of Stockton. Since most of the residents in that area are within three miles of the existing East Hammer Lane Supercenter, it is logical that they would choose to shop at the Hammer Lane Supercenter rather than travel at least four or five miles north to the Lodi Shopping Center. A few shoppers who live at the northern margins of Stockton may choose to travel to Lodi instead of the Hammer Lane Supercenter. However, the incremental increase in traffic generated by these few shoppers would not have a significant effect on traffic volumes or congestion on Lower Sacramento Road or other roads connecting Stockton and Lodi, neither during weekday peak hours nor on weekends and holidays.

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**31. RESPONSES TO COMMENTS FROM BETSY FISKE (1), DATED DECEMBER 6, 2007**

**Summary of Comment 31-1:**

The commenter asks how the establishment of the redevelopment area planned for the east side of Lodi will be affected by added competition from the proposed project. The City should also look at the potential for store closures on the west side of Lodi due to newer stores opening on the east side. The commenter also asks what the impact will be of both outlying commercial areas on the downtown?

**Response 31-1:**

The proposed Redevelopment Project Area will cover much of the east side of Lodi, extending west to Sacramento Street and beyond in some places, especially along major arterials. It includes both S-Mart stores, both Longs stores, and the Rite-Aid store, as well as the major retail nodes along Cherokee Lane. While excluding the downtown retail core along School Street, it includes the deteriorated properties on both sides of Sacramento in the Downtown area.

In general, redevelopment agencies provide cities with additional tools and funding sources, especially via property tax increment financing, that allows cities to make physical improvements within the designated redevelopment project areas. The City of Lodi is currently in the process of forming its Redevelopment Agency, and no specific projects have yet been identified which might be undertaken by the Agency. As such, it is premature to evaluate with any degree of certainty how the proposed Redevelopment Project Area would be affected by the proposed Lodi Shopping Center project.

However, the analysis in the BAE study and DREIR found that within the planned Redevelopment Project Area the only store which is at risk of closure due to the introduction of the Lodi Shopping Center is the Kmart on Cherokee Lane. However, the Cherokee center property owner indicated that Kmart was in a very low-cost long-term lease, and even if Kmart vacated the property, the space could be re-tenanted, perhaps with a non-retail use (see discussion on page 61 of BAE Report).

Currently, there are no known commercial retail projects which are planned or proposed for the Redevelopment Project Area. The only known project proposed for the east side is the Reynolds Ranch project, which is outside the Redevelopment Project Area. The cumulative impacts of the commercial retail proposed for the Reynolds Ranch project, when combined with the potential impacts of the Lodi Shopping Center project, are discussed in the DREIR, based on the cumulative analysis contained in the BAE report. The analysis found that while some existing retail outlets in the west side, such as Mervyn's and JC Penney would be potentially at risk of closure under cumulative conditions (assuming the cumulative projects included retailers which would be directly competitive with these outlets), it is unlikely that such closures would result in urban decay, even under reasonable worst-case conditions, because of the City's expressed commitment to undertake diligent code enforcement actions to prevent physical deterioration of vacated commercial properties.

The potential impacts on the downtown are discussed at length in the BAE report (see pages 58 through 60 included in the DREIR). In summary, the findings regarding the Downtown indicate that the proposed project would not result in urban decay in that area.

## **32. RESPONSES TO COMMENTS FROM BETSY FISKE (2), DATED DECEMBER 7, 2007**

### **Summary of Comment 32-1:**

This comment letter states that it has been reported in the news that Wal-Mart's recycling program might actually harm the environment. The letter states that the DREIR should account for how much waste and recycling the Wal-Mart and the other tenants of the Lodi Shopping Center will generate and how this will impact the landfill.

### **Response 32-1:**

As to the assertion that Wal-Mart's recycling program might be harmful to the environment, it is not possible to respond to this comment without more information on how this harm would occur and the source of this information. Neither the City of Lodi nor the EIR preparer are aware of any news items or other sources which make this claim, or any scientific analysis or data which would support it.

Even if the commenter's statement/question was more specific, the issue of solid waste is discussed in detail in the original Lodi Shopping Center EIR which addresses all of the issues mentioned in the comment letter. However, since the subject of solid waste is not within the scope of issues which were ordered to be revised by the Superior Court, or voluntarily undertaken by the City, the DREIR does not include a revised discussion of solid waste. The analysis of this issue in the prior EIR remains valid and no further review is required under CEQA. The commenter is referred to the original DEIR, which is included on the CD contained in the DREIR, and available upon request.

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## **33. RESPONSES TO COMMENTS FROM ETHELEEN FISKE (2), DATED DECEMBER 6, 2007**

### **Summary of Comment 33-1:**

The commenter states that the DREIR points out many ways the Supercenter can conserve energy, and asks how the City will make sure that Wal-Mart is held to these standards.

### **Response 33-1:**

The DREIR, on page 82, lists several energy conservation features planned by Wal-Mart which would exceed the energy-efficiency requirements of Title 24, as contained in the City's Building Code. These are features which are voluntarily incorporated into the construction of all new Wal-Mart stores, and although they are not required by the City of Lodi, the applicant has indicated that they are proposed and planned by Wal-Mart to be incorporated into this new store. The energy section of the DREIR includes this list of energy conservation features as information. However, the energy-saving effect of these features was not included in the estimate of operational energy use, and these features are not intended as mitigation, per se, since no significant energy impact has been identified. .

**34. RESPONSES TO COMMENTS FROM ETHELEEN FISKE (1), DATED DECEMBER 7, 2007**

**Summary of Comment 34-1:**

This comment letter states that the DREIR does not quantify the amount of solid waste that the project would generate, where the solid waste would be disposed of, and what the effect is to the landfill and how much is recycled.

**Response 34-1:**

The issue of solid waste is discussed in detail in the original Lodi Shopping Center EIR which addresses all of the issues mentioned in the comment letter. However, since the subject of solid waste is not within the scope of issues which were ordered to be revised by the Superior Court or voluntarily undertaken by the City, the DREIR does not include a revised discussion of solid waste. The analysis of this issue in the prior EIR remains valid and no further review is required under CEQA. The commenter is referred to the original DEIR, which is included on the CD contained in the DREIR, and available upon request.

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**35. RESPONSES TO COMMENTS FROM CARLA FLETCHER, DATED DECEMBER 7, 2007**

**Summary of Comment 35-1:**

The commenter notes that while the proposed Wal-Mart Supercenter is discussed in the DREIR, there is little or no mention of the other stores which would occupy the shopping center. It is not clear whether those other stores are included in the EIR analysis of impacts on other stores, energy consumption and air quality.

**Response 35-1:**

The original EIR and DREIR considered all of the potentially significant environmental impacts associated with the entire Lodi Shopping Center project including the retailers, restaurants, and services who would occupy the other 13 buildings proposed in the center. The effects of these other project tenants were included in the evaluations of economic/urban decay impacts, and energy impacts in the DREIR; and, the air quality impacts associated with all of the project tenants were evaluated in the original EIR. Since the original air quality analysis is not subject to reanalysis, per order of the Superior Court, and the City did not voluntarily revise the air quality analysis, the DREIR does not include a reanalysis of air quality. The analysis of this issue in the prior EIR remains valid and no further review is required under CEQA.

**36. RESPONSES TO COMMENTS FROM ELIZABETH GALBREATH, DATED DECEMBER 7, 2007**

**Summary of Comment 36-1:**

The commenter is concerned about the impact that a new Wal-Mart Supercenter will have on downtown Lodi. She is “90% certain that many of these stores will need to close due to lack of business.”

**Response 36-1:**

With regard to downtown, the BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi’s population continues to grow. As stated in the DREIR, it cannot be concluded that these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

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**Summary of Comment 36-2:**

The commenter is also concerned with increased traffic on Kettleman Lane and Lower Sacramento Road, and states the “emissions from trucks and cars will be horrendous, not to mention very unhealthy.”

**Response 36-2:**

Traffic was not a subject that the Superior Court required to be reanalyzed, and the City of Lodi did not undertake to revise the traffic analysis. The original EIR (at pages 71-97) includes a thorough analysis of traffic impacts associated with the project, which found that although the volume of traffic will increase on Kettleman Lane and Lower Sacramento Road, the street widenings and other improvements to be completed in conjunction with the project would ensure that any traffic impacts would be fully mitigated to ensure acceptable levels of service.

Air quality is another topic that was not ordered to be reanalyzed by the Superior Court, nor was it voluntarily revised by the City of Lodi. The air quality analysis in the original EIR (at pages 112-125) found that the vehicular emissions associated with the project would exceed the applicable significance thresholds for several regional pollutants, and that the levels of emissions could not be feasibly mitigated to less-than-significant levels. The original EIR includes a discussion of adverse health effects associated with these pollutants (at pages 114-115).

### **37. RESPONSES TO COMMENTS FROM GERRY AND JANE GANDT, DATED DECEMBER 3, 2007**

#### **Summary of Comment 37-1:**

The commenters express concern that no urban decay impacts are identified as a result of business closures and building vacancies. The commenters also question why a new Wal-Mart Supercenter would be reasonable if the City is concerned that the Kettleman Lane shopping centers are experiencing a downward slide.

#### **Response 37-1:**

With respect to the comment on urban decay, it is important to note that building vacancies do not automatically result in urban decay. Rather, urban decay is the ultimate consequence of a series of downward spiraling circumstances including: long-term vacancy; inability or unwillingness of a building owner to maintain the space in a condition suitable for retenanting; and failure of the City's code enforcement staff to prevent or abate building code violations before they result in significant physical deterioration or urban decay. The process leading to urban decay is not inexorable, but depends upon several cascading failures over a substantial period of time. The DREIR and the BAE report found that there is insufficient evidence to conclude that the proposed project would initiate a chain of causation resulting in urban decay.

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#### **Summary of Comment 37-2:**

The commenters state that a Wal-Mart Supercenter at the western gateway to Lodi would not be a welcoming first impression to Bay Area tourists that the City is seeking to attract downtown.

#### **Response 37-2:**

The visual impression created by the project at the western entrance to Lodi, this is not a CEQA issue but a question of architectural design and aesthetics. The project architecture and design are subject to the review and approval of the City's Site Plan and Architectural Review Committee (SPARC) which will ensure that the project meets the City's design standards for commercial development.

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### **38. RESPONSES TO COMMENTS FROM LAURA GONZALES, DATED DECEMBER 7, 2007**

#### **Summary of Comment 38-1:**

This comment states that the project places too much reliance on bicycle use as an alternative to vehicular travel, particularly since it is impractical for customers who will typically buy in bulk to carry these items by bicycle. The comment states that bikes will not make the impact on reducing the number of cars traveling on the roads that the DREIR assumes.

**Response 38-1:**

The project has been designed with full internal bicycle access and connections to external bike routes, full pedestrian interconnections, and full transit access including two on-site bus stops. Although it may be unlikely that many customers will use bicycles, it is likely that the facilities planned for bicycle access and storage will encourage some employees to bicycle to work. Since the center will employ hundreds of workers, the opportunities for bicycle, pedestrian, and transit access provide real commute alternatives for those employees. In addition, while most customers will travel to the center for the retail shopping, other patrons will be attracted to the various restaurants that will locate at the center, and some of these restaurant, coffee shop, or juice bar patrons may wish to access the center by bicycle, on foot, or via public transit.

The DREIR does not rely on bicycle use or any other transportation alternative as mitigation for the energy and other effects of vehicle travel. The traffic data relied upon to estimate mobile energy consumption does not include a reduction factor for trips diverted to bicycle use or other transportation modes, and therefore does not affect the total energy consumption estimate for the project. Additionally, the discussion of energy impacts mentions bicycle use as one means of reducing project energy consumption, along with other facilities and programs for alternative transportation to be incorporated into the project. However, since the DREIR concludes that the project would not result in significant energy impacts, no specific mitigations for energy use are identified or required for energy per se. However, the implementation of a program for transportation alternatives is a required mitigation measure to reduce the project's air quality impacts (see original DEIR at page 123).

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**39. RESPONSES TO COMMENTS FROM LINDA, JOE & BRYCE HAMMONS, DATED NOVEMBER 9, 2007**

**Summary of Comment 39-1:**

The commenters are opposed to the project and feel that Lodi's downtown sets it apart from so many indistinguishable places dominated by strip malls. They believe that the proposed project would threaten the viability of the unique city center.

**Response 39-1:**

The BAE economic study and DREIR found that the project would result in a limited reduction in sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

#### 40. RESPONSES TO COMMENTS FROM TERRI HEDDEN, DATED DECEMBER 7, 2007

##### Summary of Comment 40-1:

The commenter requests additional information regarding detailed financial and fiscal aspects of the conservation easement that the DREIR identifies as mitigation for loss of prime farmland resulting from the project. The commenter asks: how will the easement benefit residents of the City? Does the developer get tax breaks for purchasing the easement? Will Lodi residents receive price breaks on produce from this land? Will Lodi residents be required to pay property tax on this land? The commenter opposes the project and believes that the agricultural easement “is nothing more than the developer buying off the community.”

##### Response 40-1:

The purpose of the agricultural conservation easement is to provide partial mitigation for the conversion of the prime farmland at the project site to urban uses. This mitigation requires the applicant to acquire or fund the acquisition of a conservation easement over an equivalent area of prime farmland elsewhere in the vicinity. This easement is permanent and restricts the use of the underlying land to agricultural uses only. This is considered partial mitigation since it cannot physically replace the prime farmland to be converted, but does prevent the similar conversion of other prime farmland in perpetuity. The funding for ongoing administration, monitoring, and maintenance of the easement is provided by an endowment established by payment of fees by the applicant. The on-going management of the easement is implemented through the Mitigation Monitoring and Reporting Program (MMRP) for the project which is prepared, adopted, and administered by the City of Lodi.

The questions posed by the commenter are not directly related to the CEQA discussion of agricultural impacts and mitigations, which is focused on the identification of feasible and enforceable mitigations. It is not the purpose or role of the EIR to address the detailed procedural and financial aspects of implementation and administration of these easements. However, preservation of agricultural land benefits Lodi residents in the long-term by ensuring the long-term sustainability of agriculture in the San Joaquin Valley.

It is unlikely that the developer would receive tax benefits for a condition of project approval such as acquisition of conservation easements, but this is question is beyond the scope of any CEQA document.

The future price of produce is unknown and is also beyond the scope of environmental review. However, it is unlikely that produce grown on lands covered by the conservation easement would be offered to Lodi residents for reduced prices, since the easement would not apply to the underlying farming operation apart from ensuring that it does remain in agricultural production and cannot be sold for development.

The answer to the property tax question is unknown and is also beyond the scope of environmental review. However, it is likely that lands covered by agricultural easements would also be subject to Williamson Act Land Conservation Contracts which are already taxed at below market rates. Thus it is unlikely that there would be a change in tax revenue resulting from the addition of a conservation easement to a particular property. As such, there would probably not be a loss in property tax revenue that would need to be compensated for, if that is the gist of the question.

#### **41. RESPONSES TO COMMENTS FROM DAFFNEY HILLIS, DATED DECEMBER 3, 2007**

##### **Summary of Comment 41-1:**

The commenter states that she is “extremely disturbed” by the proposed Wal-Mart Supercenter. She notes that given the investment in downtown that has turned it from a “ghost town” to a vibrant area, it seems counterproductive to give Wal-Mart the green light to further “box up” south Lodi.

##### **Response 41-1:**

The commenter implies that approval of the project would be detrimental to downtown. The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that the short-term reduction in sales in the downtown area is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi’s population continues to grow. As stated in the DREIR, it cannot be concluded that these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

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##### **Summary of Comment 41-2:**

The commenter recounts Wal-Mart’s reported violations of environmental regulations elsewhere, and states that the company disregards the health and welfare of communities. The commenter also notes that Wal-Mart does not pay its employees a living wage and cites a reported labor violation elsewhere.

##### **Response 41-2:**

The commenter’s recounting of reported environmental violations elsewhere is noted. However, this information is not germane to the analysis of impacts for the proposed project, and no response is required on this point.

The comments on wages and labor relations involve purely socio-economic issues which are not relevant to analysis of environmental impacts under CEQA, which is solely focused on physical impacts to the environment. As such, no response on this point is required.

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#### **42. RESPONSES TO COMMENTS FROM AMY KAIDA, DATED DECEMBER 4, 2007**

##### **Summary of Comment 42-1:**

The commenter states that she is against Wal-Mart, and that the community needs competitive diversity offered by the range of grocery stores in Lodi, and needs to have its neighborhoods intact.

**Response 42-1:**

The comment on Wal-Mart suggests that it would result in the closure of other grocery stores. The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

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**Summary of Comment 42-2:**

The commenter suggests the creation of a “green strip” from the project site to Stockton which could connect with the green strip that runs west on March Lane, and could include an amphitheater as the beginning of a vineyard trail or the like.

**Response 42-2:**

The commenter’s suggestion of a green strip is noted. However, this comment does not contain a comment on the DREIR itself, and the designation and creation of open space areas does not involve a topic that is subject to CEQA review, which is solely focused on the physical impacts of projects under consideration. As such, no response is required on this point.

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**43. RESPONSES TO COMMENTS FROM BRIAN KORTUEM, DATED NOVEMBER 8, 2007**

**Summary of Comment 43-1:**

The commenter believes that “many businesses in Lodi, not just the downtown area will be greatly affected if the super Wal-mart is built.” He states that he appreciates the improvements that the City has made to the downtown and supports continued improvements.

**Response 43-1:**

The intended meaning of “greatly affected” is not clear from the comment, but it is assumed that it is meant in the negative sense. The analyses in the DREIR and the BAE economic impact report provide substantial evidence that Lodi retailers would likely experience a reduction in sales due to the proposed project, and that the effect on downtown would be somewhat less than citywide effects. The salient conclusions of the DREIR and BAE report with respect to the economic and urban decay impacts associated with the project are as follows:

General Retail in Lodi: The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is

insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

**Grocery Stores:** The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

**Downtown Lodi:** The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

**Cumulative Conditions:** When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

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#### **44. RESPONSES TO COMMENTS FROM MICHAEL KOST, DATED NOVEMBER 14, 2007**

##### **Summary of Comment 44-1:**

This comment letter simply expresses opposition to having a Wal-Mart Supercenter in Lodi.

##### **Response 44-1:**

Since this comment expresses an opinion on the project and does not include a comment on the DREIR, no response is required.

#### **45. RESPONSES TO COMMENTS FROM LA JEAN KUETHE, DATED DECEMBER 7, 2007**

##### **Summary of Comment 45-1:**

The commenter asks if a health risk assessment will be prepared for the project, as the San Joaquin Valley Air Pollution District recommended, and if so, when. The commenter suggests that health risk assessments should be prepared for both summer and winter conditions when air quality is at its worst.

##### **Response 45-1:**

This comment refers to the analysis of diesel exhaust emissions from delivery trucks at the project. The analysis of diesel exhaust contained in the original EIR (which found that the project would result in a less-than-significant health risk) was adequate under the Air District's guidelines that were applicable at that time the original EIR was certified in February 2005 and the District did not comment or recommend a health risk assessment at that time. In 2006, the Air District adopted a requirement that quantitative Health Risk Assessments be conducted for projects with sources of diesel emissions, such as delivery trucks. Moreover, the Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and the City of Lodi did not voluntarily revise the air quality analysis. As such, the DREIR does not contain a reanalysis of air quality impacts, and no further health risk assessment is contemplated in connection with this DREIR, or required under CEQA.

In this context, it is important to note that several health risk assessments have been conducted on similar shopping center projects since 2006. The general finding has been that diesel emissions disperse and dilute rapidly with distance from the source. For example, in cases of similar Wal-Mart projects proposed elsewhere in the Central Valley, it was found that maximally exposed receptors located directly adjacent to the emissions source (e.g., residential rear yards located adjacent to loading areas) would likely be subject to cancer risk which exceeds the Air District's significance threshold of 10 cases per million. However, in cases where the nearest receptors are substantially removed from the truck loading and circulation areas (e.g., 500 feet or more), it was determined that the risk is substantially lower than 10 cases per million. Since the nearest existing residents to the proposed Lodi Shopping Center site are far removed from the diesel emission sources (at least 1,000 feet away), the health risk would be expected to be even lower for the proposed project. This is consistent with the findings of the original EIR.

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#### **46. RESPONSES TO COMMENTS FROM JANE LEA, DATED NOVEMBER 29, 2007**

##### **Summary of Comment 46-1:**

The discussion in this comment letter is focused on the position that the approval of the project would result in closed businesses, vacant buildings, further deterioration of downtown, urban decay, blight, loss of jobs, lower wages, foreclosures, code enforcement issues, and health and safety issues. The point is also made that since there are a number of Wal-Marts in the surrounding communities, the proposed Wal-Mart would take sales away from existing businesses in Lodi, since there is only a given amount of

consumer spending capacity in the community. The commenter requests that the DREIR be rejected by the City.

**Response 46-1:**

The commenter's points appear to be focused on the issue of economic impacts and the secondary effects which may result. The physical effects such as closed businesses, vacant buildings, urban decay/blight, and deterioration of downtown are covered in detail in the DREIR. The overall findings and conclusions are that while one businesses outside the downtown area (i.e., Kmart), and none within downtown, may be at risk of closure, there is insufficient evidence to support a conclusion that urban decay will result from such a closure (see DREIR, pp. 33-52). With the City's expressed commitment for diligent code enforcement to prevent physical deterioration of any vacated commercial properties, no public health and safety issues would arise.

With respect to socio-economic effects such as lower wages, unemployment, foreclosures, etc., these issues are not within the range of topics which are included in EIRs since CEQA expressly excludes such non-physical effects from consideration and only requires analysis of physical environmental impacts. As such, no discussion of these issues is required under CEQA.

With respect to other existing and proposed Wal-Marts in the surrounding communities, these other Wal-Marts were fully considered in the BAE report and DREIR analysis of economic impacts associated with the project alone as well as under cumulative conditions. In other words, the analysis of economic impact analysis incorporates the existence of these other Wal-Marts into the analysis, and as such their effects are fully taken into account in the findings and conclusions regarding economic impact and urban decay.

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**47. RESPONSES TO COMMENTS FROM SUSAN LEASURE, DATED NOVEMBER 13, 2007**

**Summary of Comment 47-1:**

This comment states "As a citizen of Lodi for *only* 14 years, I escaped LA to get away from mass box stores. Please don't make Lodi another LA!"

**Response 47-1:**

Since this comment expresses an opinion on the project and does not include a comment on the DREIR, no response is required.

**48. RESPONSES TO COMMENTS FROM PAMALA LEVY, DATED NOVEMBER 13 2007**

**Summary of Comment 48-1:**

This comment simply states “NO! Keep Wal-Mart Super Center OUT of LODI!!!”

**Response 48-1:**

Since this comment expresses an opinion on the project and does not include a comment on the DREIR, no response is required.

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**49. RESPONSES TO COMMENTS FROM BETTY LIBERT (1), DATED NOVEMBER 16, 2007**

**Summary of Comment 49-1:**

This commenter is strongly opposed to the proposed project because she believes that it will severely damage downtown by taking away business just as it is beginning to look beautiful and attractive for shopping again. She believes the existing Wal-Mart is very adequate.

**Response 49-1:**

Comment noted. The Economic Impact Report by BAE, which is part of the DREIR, concludes that the project would result in reduced sales in downtown for a period of a few years. However, the impact would not be severe enough to result in business closures since the retail sectors served by the proposed project are different from the downtown businesses which are serving niche specialty markets.

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**50. RESPONSES TO COMMENTS FROM BETTY LIBERT (2), DATED NOVEMBER 29, 2007**

**Summary of Comment 50-1:**

The commenter asks that the City refuse to approve the proposed project. She is concerned that the project would result in the failure of Safeway and Raley’s, and would also have an affect on Food 4 Less, Penney’s, Radio Shack, Target, and mostly downtown. She is also concerned with added congestion on Kettleman Lane.

**Response 50-1:**

The economic impact analysis by BAE, which is part of the DREIR, concludes that all of the businesses mentioned would be affected by the project in varying degrees, but that none of these

would be likely to close as a result of the project. The traffic impacts associated with the proposed project were analyzed in detail by Fehr & Peers, transportation consultants, who identified substantial road widenings and improvements along Kettleman Lane and Lower Sacramento Road that would be required to accommodate the proposed project without resulting in unacceptable traffic congestion.

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## **51. RESPONSES TO COMMENTS FROM JAMES LIBERT, DATED NOVEMBER 13, 2007**

### **Summary of Comment 51-1:**

The commenter is opposed to the project and believes that a Super Wal-Mart will bring an end to downtown Lodi.

### **Response 51-1:**

The Economic Impact Report by BAE, which is part of the DREIR concludes that the project would result in reduced sales in downtown for a period of a few years. However, the impact would not be severe enough to result in business closures since the retail sectors served by the proposed project are different from the downtown businesses which are serving niche specialty markets.

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## **52. RESPONSES TO COMMENTS FROM JIM LOCKE, DATED NOVEMBER 7, 2007**

### **Summary of Comment 52-1:**

The commenter notes the results of the election where the citizens voted in favor of the project, and states that tax revenues are being lost due to delaying action on the project. He states that many Lodi shoppers patronize the Supercenter on Hammer Lane in Stockton, and that those shopping dollars should be brought back to Lodi. He states that a local Supercenter would be more convenient than traveling to Stockton and it would also reduce fuel consumption and air pollution.

### **Response 52-1:**

This comment expresses opinions about the project but does not include specific comments on the DREIR. Therefore, no further response is required.

**Summary of Comment 52-2:**

The commenter relates an anecdote about a Supercenter constructed in Colorado Springs. In that case, the commenter states that the added competition for grocery sales resulted in other markets in the community reducing their food prices to stay competitive.

**Response 52-2:**

This comment discusses certain possible economic impacts of the project but does not include specific comments or suggestions pertaining to the physical and environmental impacts, as discussed in the EIR.

The salient conclusions of the DREIR and BAE report with respect to the economic and urban decay impacts associated with the project are summarized in the following.

General Retail in Lodi: The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

Grocery Stores: The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

Downtown Lodi: The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

Cumulative Conditions: When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

### **53. RESPONSES TO COMMENTS FROM GUILLERMO LOPEZ, DATED DECEMBER 7, 2007**

#### **Summary of Comment 53-1:**

This comment expresses concern about the adequacy of water supply for the proposed project. The commenter asks if the project has entitlements for water supply, and suggests that the development be required to pay for any water supply capacity increases necessitated by the project.

#### **Response 53-1:**

Water supply was not a subject which the Superior Court required further review and the City did not voluntarily make amendments to that section; therefore, the section is not subject to further review/revision. (See page i of this FREIR for a discussion of the scope of this document.) It should be noted that the original EIR found that the project would not result in an impact to water supplies or capacity of water supply infrastructure. The water supply analysis of the EIR remains valid and no further environmental review is required.

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### **54. RESPONSES TO COMMENTS FROM OLEN & SUZANNE McCOMBS, DATED NOVEMBER 14, 2007**

#### **Summary of Comment 54-1:**

This comment concerns “redistricting” and appears to address a different item on the November 14<sup>th</sup> Planning Commission agenda that does not pertain to the proposed project.

#### **Response 54-1:**

Since this comment does not appear to address the proposed project or the DREIR, no response is required.

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#### **Summary of Comment 54-2:**

The commenters state that they voted to allow Wal-Mart a few years ago, and now after many delays are hanging on an Impact Report which they believe is “so negative as to not be realistic.” The existing Wal-Mart store is crowded and people shop at the Stockton location instead while Lodi receives no benefit from that tax money. The commenter also believes that the Supercenter would provide for a wider range of grocery shopping choices, particularly opportunities for lower prices, and states that the citizens should be able to decide where they want to shop.

**Response 54-2:**

Regarding the comment about the negativity of the DREIR, the commenter offers no specific examples of deficiencies in the EIR and states that the report “appears to assume that a new monster is trying to come into Lodi” when a Wal-Mart will provide benefits to the City. Without more specific information on the commenter’s concern, it is not possible to respond to this comment in the context of CEQA. The other comments concern the merits of the project and do not address the content of the DREIR; as such, no further response is required.

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**Summary of Comment 54-3:**

The commenter states that the “million or so” dollars that Lodi is forcing developers to pay to improve downtown is not right, since “there is nothing to do with Wal-Mart that takes away from downtown.”

**Response 54-3:**

The DREIR does not address fees that developers might be obligated to pay to improve downtown. The issue is beyond the scope of the EIR and the environmental impacts under CEQA.

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**55. RESPONSES TO COMMENTS FROM JOLYNN McDONALD, DATED NOVEMBER 12, 2007**

**Summary of Comment 55-1:**

The commenter expresses appreciation for the cautiousness being exercised by the City in considering the project. She has been to other Supercenters, including the one on Hammer Lane in Stockton, and because she dislikes the atmosphere in these stores, she would not want to see a Supercenter in Lodi.

**Response 55-1:**

This comment letter expresses opinions about the project and the approval process but contains no specific comments on the DREIR. Therefore, no further response is required.

**56. RESPONSES TO COMMENTS FROM DARLENE & GERALD REICH, DATED NOVEMBER 14, 2007**

**Summary of Comment 56-1:**

The commenters favor the proposed project, and would prefer having it in Lodi instead of driving to the Stockton Supercenter. They do not agree with forcing the Wal-Mart to pay one million dollars to Lodi, and state that the citizens made their choice known in the election, so the project should be allowed to move forward.

**Response 56-1:**

This comment letter expresses opinions about the project and related matters but does not include specific comments or suggestions on the DREIR. As such, no further response is required.

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**57. RESPONSES TO COMMENTS FROM MATT REMPFER, DATED DECEMBER 7, 2007**

**Summary of Comment 57-1:**

This commenter asks what is the trade area for the Lodi Shopping Center. This comment states that the southwest portion of Lodi is already over served by retail and that the project should be located in an area of Lodi that this underserved by retail. The comment also states that the City should prove that this area of Lodi is more underserved than other areas, and if it finds that other areas are more underserved, then the City should require the applicant to build in such underserved areas.

**Response 57-1:**

The trade area for the Lodi Shopping Center includes the City of Lodi and also encompasses the surrounding rural areas extending west to I-5, east to the Calaveras County, south to approximately mid-way between Lodi and Stockton, and north to approximately mid-way between Lodi and Galt. The trade area is shown in Figure 1 on page 4 of the BAE economic impact report, which is included as Appendix B to the DREIR.

Economic decisions regarding project siting and customer demand are beyond the scope of the EIR and the requirements of CEQA. However, until the Master Plan for Reynolds Ranch was approved in 2006, the project site was the only parcel of land in Lodi that had the appropriate General Plan and zoning designations to allow the proposed project to be built. There are currently no other lands within the City of Lodi where the proposed project would be permitted under the City's General Plan.

## **58. RESPONSES TO COMMENTS FROM JANIE ROSS, DATED DECEMBER 7, 2007**

### **Summary of Comment 58-1:**

This comment letter states: “Looking at the proposed project alternatives in the revised EIR, I noticed that the other alternative sites looked at would not reduce the impact on the downtown or impacts on air quality. The real issue is the store’s size and the numbers of people and cars it will attract. With that in mind, why not build a series of smaller stores and restaurants at that site?”

### **Response 58-1:**

The commenter seems to suggest that that an alternative should be considered in which the proposed Wal-Mart would be replaced by a series of smaller stores and restaurants. The commenter also seems to suggest that the REIR should include an alternative which reflects reduction in the overall size of the project, in order to reduce the impacts on downtown or on air quality. If so, it should be noted that the DREIR does include consideration of a Reduced Project Size Alternative of about 24 acres (compared to 40 acres for the proposed project) and found that it was the environmentally superior alternative. However, this alternative would not reduce the significant and unmitigated project impacts on air quality or agricultural resources to less-than-significant levels. It would require a reduction in size to about 14 acres to reduce air quality impacts to less-than-significant levels, and to less than 10 acres to reduce agricultural impacts to less-than-significant levels. However, such reductions in project size would not allow for the construction of the proposed Wal-Mart store, which will require about 24 acres. Since relocation and expansion of the Wal-Mart store is one of the basic objectives of the project, such large reductions in project size were not considered, nor were they required to be considered under CEQA. While the Reduced Project Size Alternative would likely result in a relatively lower level of reduced sales to downtown businesses, the EIR and the BAE report found that the project impacts to downtown would be limited given that there would be less direct competition with downtown businesses than with businesses in other parts of Lodi.

In response to the suggestion that an alternative be considered which includes a series of smaller stores and restaurants, it is important to note that the proposed project already includes a number of smaller retail outlets and restaurants, in addition to the Wal-Mart store. The replacement of the Wal-Mart with smaller stores and restaurants (assuming the overall floor area would remain the same) would not necessarily reduce the amount of traffic generated or the quantities of air pollutants emitted by the project. Some retail users may generate fewer trips per square foot than Wal-Mart, but restaurants would generate far more trips per square foot, along with associated air emissions. On balance, the traffic and air pollution generated by a project with many small users would likely be about the same as a project with a Wal-Mart and fewer small retailers and restaurants. Therefore, such an alternative would not result in a reduction in air quality impacts to levels which are less than significant and unavoidable. In addition, a project alternative that does not include a Wal-Mart Supercenter would not meet one of the basic project objectives, which is “to expand the existing Wal-Mart to a Wal-Mart Supercenter with more retail space and the addition of grocery sales.” Thus, the suggested alternative would not meet most of the basic objectives of the project, nor does it appear to be an alternative that would lessen environmental impacts.

## 59. RESPONSES TO COMMENTS FROM TAMARA ROSS, DATED DECEMBER 6, 2007

### Summary of Comment 59-1:

This comment letter is focused on the issue of energy conservation. The commenter states that the DREIR should describe the experimental energy-efficiency measures being studied at Wal-Mart's experimental Supercenter's. She inquires as to the energy standards that are applicable, and concludes that Wal-Mart should be required to do "the utmost" in energy conservation and should be required to be LEED certified.

### Response 59-1:

Wal-Mart has three demonstration supercenters where it experiments with various energy-efficiency and other sustainability features. These demonstration centers are located in Aurora, Colorado, Lawrence, Kansas, and City of Industry, California. The specific energy-efficiency and alternative energy technologies being studied at these centers include: various kinds of photovoltaic solar panels, solar walls, saw-tooth roof designs to increase passive solar access, cogeneration, wind turbines, electric car charging stations, and various kinds of energy-efficient heating, cooling, and lighting systems, among other things. Those practices that are shown to be cost-effective are incorporated into the design of new and expanded stores planned for construction.

The commenter suggests that the Wal-Mart Supercenter be required to do more than is already proposed. It is worthwhile noting that the energy-efficiency measures proposed to be incorporated go beyond the energy-efficiency requirements of Title 24 or the City Building Code. (It should also be noted that Title 24 is known to have the most stringent energy saving building requirements in the country. See [http://greenbuildings.berkeley.edu/pdfs/bp2006\\_ucla.pdf](http://greenbuildings.berkeley.edu/pdfs/bp2006_ucla.pdf) [Green Building Research Center, UC-Berkeley, *Best Practices Case Studies 2006*, "UCLA La Kretz Hall," accessed March 17, 2008], <http://www.facilitiesnet.com/bom/article.asp?id=6274> [Operating Building Management, "Finding Incentives for Cool Roofs," March 2007], <http://www.douglaslightingcontrol.com/state-energy-codes.htm> [Douglas Lighting Controls, "State Energy Codes," accessed March 17, 2008] It is also continuously updated to reflect advances in energy-efficient building materials and techniques.) The energy-efficiency techniques listed on page 82 of the DRIER are features which are voluntarily incorporated into the construction of all new Wal-Mart stores, and are not required by the City of Lodi. The energy section of the DREIR includes this list of energy conservation features as information, but the calculation of project energy use does not include the effect of these features in reducing the estimated energy consumption associated with the project.

With respect to the suggestion that the project be compelled to be LEED certified, neither Title 24 nor the City of Lodi Building Code requires projects to be LEED certified, and there is nothing in the CEQA Statute or Guidelines that mentions construction to LEED standards, either as a significance threshold or a suggested mitigation.

## **60. RESPONSES TO COMMENTS FROM MARK A. RUBBEIRO, DATED DECEMBER 7, 2007**

### **Summary of Comment 60-1:**

The commenter states that the DREIR recommends that the way to deal with the anticipated closure of large stores and their vacated property will be through strict code enforcement by the City. The commenter adds that this is a good theory, but the reality is that code enforcement staff is stretched enough as it is. The commenter states that the DREIR should address other alternatives and ways to deal with urban decay.

### **Response 60-1:**

The DREIR which concludes that in the event of store closures and vacancies, diligent code enforcement as specifically directed by the City Council would preclude the emergence of urban decay conditions. It is acknowledged that the effectiveness of the City's code enforcement has indeed been constrained by short-staffing, and for a time was staffed by a single person. However, the staff has been increased to two officers and the posting for the new supervising community improvement officer closed on February 11, 2008, which will greatly increase the City's ability to monitor and take enforcement actions against nuisance properties. The analysis and evidence in the EIR support the conclusion that an urban decay impacts will be less than significant.

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## **61. RESPONSES TO COMMENTS FROM MARK SANDNOVAL, DATED DECEMBER 6, 2007**

### **Summary of Comment 61-1:**

The commenter states that the DREIR states that the Lodi Shopping Center is a "direct threat" on the shops and stores on School Street. He notes that downtown businesses are under constant pressure to survive and asks why the City is considering another center on the west side which will continue to draw shoppers from the downtown. The commenter states that the Wal-Mart will not generate sales tax because the project is really an expansion of the existing Wal-Mart with the addition of groceries which are exempt from sales tax.

### **Response 61-1:**

The DREIR does not conclude that the project will be a direct threat to School Street or downtown business in general. The reports state that the project will result in a temporary decline in downtown sales of about seven percent, but that sales will gradually improve with continuing population growth. The report concludes that it is unlikely that any downtown businesses would close as a result of the project. Since the remainder of the comment letter states opinions about the project and related matters and does not contain specific comments on the DREIR, no further response is required.

## 62. RESPONSES TO COMMENTS FROM DENNIS SATTLER, DATED NOVEMBER 15, 2007

### Summary of Comment 62-1:

This comment letter discusses the extreme competitiveness of retail, and asserts that local business failures can be expected if the project is approved.

### Response 62-1:

In response, it is worthwhile summarizing the salient conclusions of the DREIR and BAE report with respect to the economic and urban decay impacts associated with the project, as follows:

General Retail in Lodi: The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

Grocery Stores: The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

Downtown Lodi: The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

Cumulative Conditions: When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

### **63. RESPONSES TO COMMENTS FROM DEANE SAVAGE (1), DATED DECEMBER 6, 2007**

#### **Summary of Comment 63-1:**

This comment letter states that the EIR should address the asthma risks associated with a project of this size, especially for residents living in close proximity to the site, and asks whether asthma rates will increase as a result of the project, particularly in children. It should calculate the particulate matter that will be produced by the total amount of traffic that will be generated by this project and discuss the air flow patterns in or around the project site.

#### **Response 63-1:**

First, it is important to note that the Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and the City of Lodi did not voluntarily undertake to revise the air quality analysis. Therefore, the DREIR does not contain a reanalysis of air quality impacts. The analysis in the prior EIR is adequate, not open to re-review here, and CEQA does not require further environmental analysis of air quality for the project.

In response to the commenter's questions, the original EIR includes: a description of climatology and air flows in the project vicinity; an estimate of total particulate emissions resulting from the project; and a discussion of health effects (including asthma) associated with each of the major pollutants that will be generated by the project. In summary, increased particulate matter (and smog-producing oxides of nitrogen) can cause or exacerbate asthma. (See original DEIR at pp. 112-115.)

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### **64. RESPONSES TO COMMENTS FROM DEANE SAVAGE (2), DATED DECEMBER 7, 2007**

#### **Summary of Comment 64-1:**

This comment letter states that the proposed Wal-Mart Supercenter should include more "green" elements, like those incorporated into its green store in Colorado, in order to help reduce global warming.

#### **Response 64-1:**

The Wal-Mart store includes a number of energy-efficient elements which would also have the incidental effect of reducing its greenhouse gas emissions. According to the Wal-Mart corporate website, Wal-Mart has three experimental stores, including the one in Colorado, where it tries out numerous energy saving technologies and practices. Those practices that are shown to be cost-effective are incorporated into new and expanded stores.

The commenter suggests that the Wal-Mart Supercenter be required to do more than is already proposed. It is worthwhile noting that the energy-efficiency measures proposed to be incorporated go beyond the energy-efficiency requirements of Title 24 or the City Building Code. As proposed, the project would have a less-than-significant impact on energy consumption.

The commenter states that, in light of the Global Warming Solutions Act of 2006, the City should require the Supercenter to be a green store, like the one built in Colorado, in order to help reduce global warming. However, no discussion of global climate change was included in the DREIR because it was not included among the issues for which the Superior Court directed the City of Lodi to prepare new or revised discussions, and the City of Lodi did not voluntarily include an analysis of global climate change in the DREIR. The only court decisions on this issue to date have concerned whether Supplemental EIRs should include discussions of global climate change, and the courts have held that there is no such requirement, primarily because no regulations have been adopted which would establish such a requirement. Specifically, there have been no amendments to the CEQA Statute or Guidelines which mandate inclusion of discussions of global climate change in EIRs. The only state legislation which addresses global climate change in the context of CEQA is Senate Bill 97, enacted in August 2007, which directs the Governor's Office of Planning and Research (OPR) 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 directs the Resources Agency to certify or adopt those guidelines by January 1, 2010. In the absence of regulations or guidelines which would prescribe the analytical methodologies, thresholds of significance, and appropriate levels of mitigation for individual development projects, it will be premature for new EIRs to address the issue of global climate in a manner which is not speculative.

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## **65. RESPONSES TO COMMENTS FROM MARCIA SAVAGE, DATED DECEMBER 6, 2007**

### **Summary of Comment 65-1:**

The commenter asks if it has been determined who will pay for the road improvements needed by the project.

### **Response 65-1:**

The original EIR contains the traffic analysis that is referred to in the comment letter. It should be noted that the Superior Court did not require a reanalysis of traffic impacts, and the City of Lodi did not voluntarily undertake a reanalysis of traffic; therefore, the DREIR does not include a revised traffic section. The traffic analysis in the original EIR is sufficient and further analysis is not required under CEQA.

In response to the commenter's question, the City of Lodi requires development projects to construct street improvements along their property frontages. Development projects are also required to pay traffic impact fees to the City of Lodi for local transportation improvements, as well as to San Joaquin Council of Governments for improvements to roadways which are part of the County-wide arterial road network. In addition, the City of Lodi requires that developers pay their fair share of other off-site transportation improvements that have been identified in project traffic studies to be wholly or partially needed as a result of their projects. [In some cases, a project would construct a facility for which it has major responsibility, such as a new traffic signal at a nearby intersection, and then would be reimbursed for a portion of the cost by subsequent developments which would also benefit from the improvement.

**66. RESPONSES TO COMMENTS FROM JERRY AND SHIRLEY SCHMEIRER, DATED NOVEMBER 29, 2007**

**Summary of Comment 66-1:**

The commenters question other commenters' concern with air pollution resulting from the project without considering the air pollution caused by Lodi residents traveling to the Wal-Mart Supercenter in Stockton. Lodi should be collecting revenue from its own Supercenter. The commenters appreciate the revitalization of downtown, but state that the shops are too exclusive for Lodi residents and that Lodi does not have a range of retail choices that are affordable.

**Response 66-1:**

The comment on the air quality impacts associated with the project is noted. The subject of air quality was not one that was ordered by the Superior Court to be reanalyzed. The air quality analysis in the original EIR concludes that the project would result in significant levels of emissions of several regional pollutants and that these impact could not be feasibly mitigated to less-than-significant levels.

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**Summary of Comment 66-2:**

The commenters express disappointment in the delays in approving the Wal-Mart Supercenter after the residents voted to approve it. The commenters believe that Lodi can have its beautiful downtown as well as an affordable new Super Wal-Mart.

**Response 66-2:**

With respect to the comment about project delays, the City is not delaying the project, but is proceeding with the environmental analysis for the project.

The commenters' statements regarding the merits of the project are noted. Since they do not contain comments on the Draft REIR or other environmental issues subject to CEQA review, no response is required on these points.

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**67. RESPONSES TO COMMENTS FROM LUCILLE SCHNABEL, DATED NOVEMBER 18, 2007**

**Summary of Comment 67-1:**

The commenter believes that Lodi has enough stores and shopping centers and does not need a Supercenter. She believes that Lodi would lose its small town feeling and that people would lose their jobs.

**Response 67-1:**

This comment letter expresses opinions about the project but does not contain any specific comments on the DREIR itself. Therefore, no further response is required.

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**68. RESPONSES TO COMMENTS FROM BRUCE & CONNIE SCHWEIGERDT, DATED NOVEMBER 21, 2007**

**Summary of Comment 68-1:**

The commenters support both continued downtown revitalization and approval of the Wal-Mart Supercenter, and do not believe they are mutually exclusive. They note that they and others they know would prefer to shop in Lodi and leave tax dollars here rather than drive to Stockton. They also note that although Kmart, Penney's, and Mervyns may close, this will not adversely affect the downtown, and other stores will move in to replace them.

**Response 68-1:**

The comments in support of both downtown revitalization and the proposed Wal-Mart project are noted. With respect to the store closure issue, it is worth summarizing the main conclusions of the DREIR and BAE report with respect to the economic and urban decay impacts, as follows:

General Retail in Lodi: The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

Grocery Stores: The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

Downtown Lodi: The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

Cumulative Conditions: When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other

approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

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## **69. RESPONSES TO COMMENTS FROM LLOYD SCOTT, DATED DECEMBER 6, 2007**

### **Summary of Comment 69-1:**

The commenter notes that the developer should pay some fee to offset the loss to downtown business or to assist in the downtown redevelopment.

### **Response 69-1:**

The economic impact report prepared in conjunction with the DREIR found that downtown retailers would likely experience a small but temporary reduction in sales due to the proposed project, but since the downtown retailers have established a distinct retail niche, such impacts would not be significant. Therefore, the DREIR did not identify any CEQA mitigation measures for impacts to downtown businesses.

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## **70. RESPONSES TO COMMENTS FROM BILL SELLING, DATED NOVEMBER 8, 2007**

### **Summary of Comment 70-1:**

The commenter is in favor of the project and does not believe that denial of the project will result in customers shopping downtown instead.

### **Response 70-1:**

The comment letter expresses an opinion about the project and does not include a comment or criticism on the DREIR itself. Therefore, no further response is required.

## **71. RESPONSES TO COMMENTS FROM MAXINE SHEAR, DATED NOVEMBER 12, 2007**

### **Summary of Comment 71-1:**

The commenter believes that the proposed project would have a devastating effect on downtown businesses. She believes that downtown businesses should be supported.

### **Response 71-1:**

This comment is not consistent with the findings of the BAE economic impact report which found that downtown retailers would likely experience a small but temporary reduction in sales due to the proposed project; however, since the downtown retailers have established a distinct retail niche, such impacts would not be significant.

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## **72. RESPONSES TO COMMENTS FROM LESTER SMITH, DATED NOVEMBER 7, 2007**

### **Summary of Comment 72-1:**

This comment states that the DREIR places too much emphasis on the Supercenter, but very little mention of the other stores in the shopping center, particularly in terms of energy use and consumption.

The DREIR analyzed the impacts of the entire 399,000 square foot project, of which the Supercenter would comprise 233,000 square feet. The estimate of project energy use and consumption includes the energy use by all of the project tenants.

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## **73. RESPONSES TO COMMENTS FROM SANDRA SMITH, DATED DECEMBER 7, 2007**

### **Summary of Comment 73-1:**

This comment letter expresses concern about the possibility that existing grocery stores will close as a result of the project, and that this would result in jobs which pay a good wage being replaced by low wage jobs at Wal-Mart. The letter goes on to state that this will result in downtown businesses losing shoppers.

### **Response 73-1:**

An impact on jobs is considered an economic impact and is not considered a CEQA impact in that it does not result in an impact on the physical environment. The comment suggests a causal link between the loss of jobs at existing grocers and a loss of sales at other outlets and possible store closures. The EIR analysis concludes that store closures are unlikely and thus, the physical impacts from the proposed project resulting from potential store closures is less than significant.

Furthermore, while a decline in consumer income may result from the loss of certain jobs, those jobs represent only a small proportion of the total jobs (and consumer spending) in Lodi (i.e., even if one grocery store closed, resulting in the loss of up to 100 jobs, this would represent 0.34 percent of the total 29,600 employed residents in Lodi in 2006 (BAE report, p. 79). Additionally, some sources estimate that lower prices resulting from a Supercenter would free up consumer income for other expenditures, thus countering any effects from the direct loss of jobs or wages resulting from a Supercenter. For instance, in *Wal-Mart Supercenters: What's in store for Southern California*, prepared by Gregory Freeman of the Los Angeles County Economic Development Corporation in January, 2004, it was projected that if Wal-Mart established Supercenters in the region, the potential savings by households in food expenditures would total at least \$668 million annually in the City of Los Angeles (page 1 of report). ([http://www.laedc.org/consulting/projects/2004\\_WalMart-Study.pdf](http://www.laedc.org/consulting/projects/2004_WalMart-Study.pdf))

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#### **74. RESPONSES TO COMMENTS FROM DORIS TAKAO, UNDATED**

##### **Summary of Comment 74-1:**

The commenter believes that it is not a good idea to have a Super Wal-Mart at Highway 12 and Lower Sacramento Road, first because traffic is a difficult problem at times with the large stores that are already located here, and many smaller stores which may not survive.

##### **Response 74-1:**

Traffic was not among the subjects included in the original EIR that were required to be reanalyzed by the Superior Court, and the City of Lodi did not voluntarily undertake to revise the traffic analysis. The traffic analysis is contained in the original EIR (at pp. 71-97) and remains valid. No further CEQA analysis of traffic impacts is required. The original EIR found that all potential traffic impacts that could result from the project would be mitigated to less-than-significant levels by intersection and roadway improvements to be constructed in conjunction with the project.

With respect to smaller businesses closing, the economic analysis contained in the DREIR concluded that there is a low likelihood of business closures anywhere in Lodi as result of the proposed Lodi Shopping Center project. The only exception may be the existing K-Mart store on Cherokee Lane which is currently performing very poorly and could face closure. However, as explained in the DREIR (at p. 37), even if the K-Mart store was to close, physical impacts on the environment would be less than significant.

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##### **Summary of Comment 74-2:**

The commenter states that there should be a plan in place to put back in use the existing Wal-Mart building which would be vacated when the Wal-Mart operation moves to the proposed Supercenter.

**Response 74-2:**

As condition of its previous approval of the project, the City Council placed detailed requirements on the project with respect to retenanting of the vacated building. This condition of approval, which the City might consider re-imposing upon re-approval of the project, is set forth in full on page 44 of the DREIR. This condition essentially mandates that unless at least 50 percent of the building is retenanted within 90 days of the opening of the new Wal-Mart, the existing building shall be demolished. This provides a strong incentive for the owner of the Sunwest Plaza, who is also the applicant for the proposed project, to obtain a tenant for this space in short order.

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**Summary of Comment 74-3:**

The commenter expresses concern that the downtown shopping area could be negatively affected by competition from the Lodi Shopping Center.

**Response 74-3:**

The economic impact report prepared in conjunction with the DREIR found that downtown retailers would likely experience a small but temporary reduction in sales due to the proposed project, but since the downtown retailers have established a distinct retail niche, such impacts would not be significant.

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**75. RESPONSES TO COMMENTS FROM SHELLY TOY, DATED NOVEMBER 14, 2007**

**Summary of Comment 75-1:**

This comment letter simply states: “My response to a Big and New Wal-Mart in Lodi is NO THANK YOU.”

**Response 75-1:**

Since the letter expresses an opinion on the project and contains no comment on the DREIR itself, no response is required.

## **76. RESPONSES TO COMMENTS FROM JOE AND OLIVIA TRIFIRO, DATED DECEMBER 2, 2007**

### **Summary of Comment 76-1:**

The commenters express their opposition to the project. Although the commenters understand that the General Plan allows commercial development at the site, they believe the scale of the project is not right for Lodi.

### **Response 76-1:**

The commenters' opposition to the project is noted, as is their belief that scale of the project is not right for Lodi. The comment on the merits of the project and do not include comments on the DREIR itself. As such, no response to this comment is required. As to the scale of the project, the proposed site plan and building elevations conform with the size and bulk requirements contained in the City's zoning and development standards that apply to development of the site. While the magnitude of the project has a direct bearing on impacts such as traffic generation and air emissions, these impacts are evaluated in accordance with specific significance criteria relating to service levels and public health impacts. The issue of project scale, per se, is not a topic that is subject to direct evaluation under CEQA, but rather is indirectly connected to the various types of impacts that are related to it, and which are evaluated under CEQA.

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### **Summary of Comment 76-1:**

The commenters state that the traffic and land use impacts of the project will be greater than portrayed in the EIR. The commenters ask what will become of the existing Wal-Mart store. The commenters are concerned about the impact the supercenter development will have on a small town such as Lodi. They believe the project will have an adverse effect on downtown.

### **Response 76-1:**

With respect to the commenters' suggestion that the traffic impacts will be greater than portrayed in the EIR, it should be noted that the subject of traffic is not within the scope of issues which were ordered by the Superior Court to be revised in the EIR, and the City of Lodi did not voluntarily undertake to revise the traffic analysis. The traffic analysis in the original EIR (at pages 71-97) found that the project would result in potentially significant traffic impacts but concluded that those traffic impacts would be fully mitigated through street improvements to be completed in conjunction with the project. The commenters provide no analysis or evidence that contradicts the findings of the traffic impact analysis contained in the original EIR. The traffic analysis in the original EIR is adequate under CEQA.

With respect to the commenters' suggestion that the land use impacts of the project will be greater than portrayed in the EIR, it should be noted that, with the exception of cumulative urban decay impacts, the subject of land use is not within the scope of issues which were ordered by the Superior Court to be revised in the EIR, and the City of Lodi did not voluntarily undertake to revise the land use analysis. The land use analysis in the original EIR (at pages 17-25) found that the project would not result in potentially significant land use impacts, and therefore no mitigations for land use impacts were required. As ordered by the Superior Court, the DREIR

contains a reanalysis of cumulative urban decay impacts at pages 45-52 (this analysis has been revised for clarity in this document under Section *V. REVISIONS TO TEXT OF THE DREIR*). The conclusion of the revised analysis is that the cumulative urban decay impacts would be less than significant, and that no mitigations for cumulative urban decay impacts are required. The commenters provide no analysis or evidence that contradicts the findings of the land use analysis contained in the original EIR or of the findings of the cumulative urban decay analysis contained in the DREIR. The land use and urban decay analyses in the EIR and DREIR are adequate under CEQA.

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#### **77. RESPONSES TO COMMENTS FROM BARBARA & MINH TRANSON, DATED NOVEMBER 17, 2007**

##### **Summary of Comment 77-1:**

The commenters are very concerned that a Wal-Mart Supercenter will draw business away from downtown. Also, adding Wal-Mart does not bring Lodi closer to the goal of attracting tourists and keeping its rural flavor.

##### **Response 77-1:**

This comment letter expresses opinions about the project but does not include specific comments or suggestions on the DREIR. As such, no further response is required.

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#### **78. RESPONSES TO COMMENTS FROM PAT AND PAUL UNDERHILL, DATED DECEMBER 6, 2007**

##### **Summary of Comment 78-1:**

The commenters state that additional traffic generated by the project, including cars and trucks, would add further air pollution and worsen the already poor air quality in the San Joaquin Valley, and add to the health risks to Lodi citizens.

##### **Response 78-1:**

Air quality was not among the subjects ordered to be revised by the Superior Court, and the City of Lodi did not voluntarily undertake to revise the air quality section of the EIR. The analysis of air quality, which is found on pages 112-125 of the original EIR, found that the traffic generated by the project would result in emissions levels of three regional pollutants which would exceed the significance thresholds of the San Joaquin Valley Air Pollution Control District, and which could not be feasibly mitigated to less-than-significant levels. Therefore, the project would result

in a significant and unavoidable impact to regional air quality. The adverse health effects associated with these regional pollutants is discussed on pages 114-115 of the original EIR.

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### **Summary of Comment 78-2:**

The commenters state that Lodi has maintained its unique charm, which has been enhanced by the downtown improvements. The western entrance to Lodi on Highway 12 at Lower Sacramento Road is reasonably inviting. The commenters are concerned that the addition of the proposed project at this location could force the closure of other stores in that area, which in turn would result in an “unpleasant environment” here, rather than an improvement to Lodi.

### **Response 78-2:**

The potential for store closures in the Kettleman Lane/Lower Sacramento Road area or elsewhere in Lodi, the DREIR and the BAE report made the following findings and conclusions:

General Retail in Lodi: The BAE study and DREIR concluded that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

Grocery Stores: The BAE report and the DREIR concluded that while the proposed project would result in reduced sales at other grocery stores, and that one or more grocery stores may be at risk of closure, there is insufficient evidence to conclude that a particular competing grocery store is likely to close (BAE report, p. 48). Therefore, the project would not result in urban decay associated with competing grocery stores.

Downtown Lodi: The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi’s population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42). Therefore, the project would not result in urban decay impacts in the downtown.

Cumulative Conditions: When the potential economic impacts associated with the Lodi Shopping Center project are considered in combination with the economic impacts resulting from other approved, pending and probable future projects in the trade area (e.g., Reynolds Ranch), the BAE study and DREIR found that additional stores that become at risk of closure include the existing OSH at Cherokee Center, Mervyns at Vineyard Plaza, and JC Penney at Sunwest Plaza. However, the actual potential for closure of any of these stores depends largely on the retail composition of the Reynolds Ranch project, which is currently unknown. However, even under general assumptions of reasonable worst-case conditions, and assuming diligent code enforcement as has been specifically directed by City Council, it is expected that the economic conditions which would occur under cumulative conditions would be unlikely to result in urban decay (DREIR, pp. 48-52).

As discussed above, while there is a potential for store closures to occur in the vicinity of Kettleman Lane/Lower Sacramento Road under cumulative conditions, it is not expected that such closures would result in urban decay or the “unpleasant conditions” suggested in the commenters’ letter.

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## **79. RESPONSES TO COMMENTS FROM NORMAN WALKER, JR., DATED DECEMBER 4, 2007**

### **Summary of Comment 79-1:**

Although the commenter is generally not opposed to big box development, he wonders whether a Supercenter would be an added benefit to the community, particularly since it would only add a grocery store and some more square footage of merchandise to what already exists. Since Lodi wants to keep a small town image, he asks what would be the cost to the community of approving the project.

### **Response 79-1:**

Comments noted. Since these comments do not comment upon or suggest changes to the DREIR, no further response is necessary or required.

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### **Summary of Comment 79-2:**

The commenter notes that it has been reported that Wal-Mart is now backing out of its commitment to re-tenant the existing Wal-Mart building or post a bond with the City which would provide for its demolition.

### **Response 79-2:**

Since the time of the original project approval in early 2005, the City has not reconsidered provisions for the Wal-Mart space that would be vacated upon the opening of the Supercenter. For purposes of the DREIR, it is assumed that the same conditions of approval would be imposed upon re-approval of the project.

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### **Summary of Comment 79-3:**

The commenter expresses concern that continued development is adversely affecting wildlife habitat and migratory routes, and that the impact of development on the ecosystem must be taken into account.

**Response 79-3:**

The analysis of biological impacts contained in the original EIR was deemed to be adequate by the Superior Court, and the City of Lodi did not voluntarily undertake to revise the biological analysis; therefore, no revised biological analysis is included in the DREIR.

The biological studies conducted on the proposed project found that the project would not result in significant impacts to migratory routes or habitat for wildlife under current conditions. However, there is a possibility that the site could be used as foraging area for Swainson's hawk, and it could become breeding habitat for western burrowing owl or California horned lark. To avoid potential impacts to the breeding bird species, pre-construction surveys are required to ensure the absence of such breeding activity, or to avoid or mitigate impacts as deemed appropriate by the resource agencies at the time. The loss of potential foraging area for Swainson's hawk will be mitigated through payment of fees under the San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP). The details of the impacts and mitigation measures summarized above are described in detail in the original EIR.

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**80. RESPONSES TO COMMENTS FROM PATTI WALLACE, DATED DECEMBER 6, 2007**

**Summary of Comment 80-1:**

The commenter inquires about the health risk assessment (HRA) suggested by the San Joaquin Valley Air Pollution Control District in its letter in response to the Notice of Preparation (NOP) for the DREIR. If an HRA has been prepared, its conclusions should be released. If an HRA has not been prepared, the City should have one prepared before it moves forward with consideration of the proposal.

**Response 80-1:**

The analysis of toxic air emissions from diesel exhaust contained in the original EIR (which found that the project would result in a less-than-significant health risk) was adequate under the Air District's guidelines that were applicable at that time the original EIR was certified in February 2005. In 2006, the Air District adopted a requirement that quantitative Health Risk Assessments be conducted for projects with sources of diesel emissions, such as delivery trucks. Since the Superior Court found the analysis of air quality impacts in the original EIR to be adequate, and since the issue of a health risk assessment was not raised in connection with the prior EIR certification, the DREIR does not contain a reanalysis of air quality impacts, and no further health risk assessment is contemplated or required in connection with this DREIR. It is also worth noting that the Air District did not submit any written comments on the DREIR itself.

In this context, it is important to note that several health risk assessments have been conducted on similar shopping center projects since 2006. The general finding has been that diesel emissions disperse and dilute rapidly with distance from the source. For example, in the case of a Wal-Mart expansion project proposed in Redding, it was found that maximally exposed receptors located directly adjacent to the emissions source (e.g., residential rear yards located adjacent to loading areas) would likely be subject to a cancer risk of 13 cases per million, which exceeds the Air

District's significance threshold of 10 cases per million (City of Redding, *Draft EIR for the Wal-Mart Expansion Project*, July 2006, p. 4-19). In other instances, such as the Bakersfield Wal-Mart (on Gosford Road), where the nearest receptors are at least 500 feet from the emissions source, albeit downwind, the calculated risk was 5 cases per million for a new Supercenter ((Michael Brandman Associates, *Local Air Quality and Health Risk Assessment of Gosford Village Shopping Center*, April 24, 2007, p. 48)). In the case of another Bakersfield Wal-Mart (on Panama Lane), where the nearest receptors were 100 feet and upwind from the emissions source, the calculated risk was 7.9 cases per million (Michael Brandman Associates, *Localized Air Quality and Health Risk Assessment of the Panama Lane Shopping Center*, April 23, 2007, p. 44). In the case of the Delano Wal-Mart, where the nearest receptors were 1,500 feet and downwind from the emissions source, the calculated risk was 1.8 cases per million (San Joaquin Valley Air Pollution Control District, *CEQA Modeling Memo, from Matthew Cegielski, AQS-Technical Services, to Kurt Legleiter, Ambient Consulting, Regarding Delano Marketplace, Application No. C-7076, Project No. 1061533*, August 14, 2006). These cases illustrate that diesel emissions are dispersed and diluted rapidly over relatively short distances, and that the only instances in which the significance threshold would be exceeded is where the maximally exposed receptors are located directly adjacent to and downwind of the emissions source. In the case of the Lodi Shopping Center, the nearest existing residences would be at least 1,000 feet from the Wal-Mart loading area. Since this distance is greater than the distances separating the loading areas from the sensitive receptors in the Bakersfield Wal-Mart projects, where no significant health risks were found, it is expected that the health risk associated with the Lodi Shopping Center project would be similarly low and well below the 10 cases per million threshold. This is consistent with the findings of the original Lodi Shopping Center EIR.

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## **81. RESPONSES TO COMMENTS FROM KEN WARBURTON, DATED NOVEMBER 26, 2007**

### **Summary of Comment 81-1:**

This comment letter expresses strong opposition to the project. The commenter believes that the project will have an adverse impact upon businesses in the downtown and elsewhere in Lodi. In the second paragraph, the letter states: “[y]our own EIR tells you that as much as 50% of the downtown business will be taken away to the new Wal-Mart Supercenter.” The letter also expresses a number of other opinions regarding the positions of nearby municipalities on big boxes, the politics surrounding the project, and general aspects of financing of municipal services.

### **Response 81-1:**

The BAE economic study and the EIR found that the project would result in a limited reduction in overall sales in downtown and elsewhere in Lodi. However, commenter's assertion the EIR states that “as much as 50% of the downtown business will be taken away to the new Wal-Mart Supercenter” is not correct. The BAE report and DREIR state that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible impacts on furniture sales) (DREIR, p. 42).

The other opinions expressed in the comment letter are not directly related to the project or the DREIR. Therefore, no further response is required.

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**82. RESPONSES TO COMMENTS FROM CHARLES WASMUTH, DATED NOVEMBER 8, 2007**

**Summary of Comment 82-1:**

The commenter is in favor of the project and believes it will bring benefits such as jobs, tax revenues, and money in the community, and more revenue for the City electric service. He believes that downtown can withstand the effects of the project because it mostly consists of specialty shops and it withstood the competition from the current Wal-Mart. He believes Food 4 Less will be most affected while Safeway will be fine because it is still doing fine going up against Food 4 Less.

**Response 82-1:**

The comments in this letter are consistent with the findings and conclusions of the BAE report and the DREIR. No further response is required.

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**83. RESPONSES TO COMMENTS FROM HELEN S. WEEKS, DATED NOVEMBER 25, 2007**

**Summary of Comment 83-1:**

This comment letter expresses strong opposition to the project. The commenter believes it would result in closure of downtown businesses. The letter states that instead of approving the project, the City should focus its efforts on filling the vacant buildings in downtown.

**Response 83-1:**

As stated in the BAE study and in the DREIR, the levels of sales declines in downtown businesses as the result of the project are expected to be short in duration and limited in magnitude (e.g., 13 percent for pharmacies, 8 percent for Downtown restaurants, and 7 percent overall for downtown retailers, with negligible impacts expected for furniture stores). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42).

**84. RESPONSES TO COMMENTS FROM KARL M. WELLSBACHER, JR., DATED OCTOBER 26, 2007**

**Summary of Comment 84-1:**

The commenter is in favor of developing a shopping center on the project site but believes that a Wal-Mart Supercenter should not be included because it would be detrimental to other businesses in town. It would be preferable to have the existing Wal-Mart remain as is, which would also avoid having to vacate the store.

**Response 84-1:**

The comments contained in this letter are in line with the findings and conclusions of the BAE study and the EIR in the sense that the project would likely result in lost sales at existing businesses. However, the EIR concludes that store closures are not likely to result from the project, with the possible exception of the Kmart. However, there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart, and to conclude otherwise would be speculative (DREIR, p. 37).

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**85. RESPONSES TO COMMENTS FROM RON WERNER, DATED NOVEMBER 16, 2007**

**Summary of Comment 85-1:**

The commenter is not against Wal-Mart unless it will hurt the downtown merchants. The commenter is not concerned if Wal-Mart affects large retailers such as Safeway or Raleys, but he wants to protect downtown.

**Response 85-1:**

The BAE economic study and DREIR found that the project would result in a limited reduction in overall sales in downtown and elsewhere in Lodi. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible impacts on furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow. As stated in the DREIR, it cannot be concluded these limited levels of sales declines would lead to the closure of any downtown businesses (DREIR, p. 42).

**86. RESPONSES TO COMMENTS FROM JOHN WIXON, DATED NOVEMBER 11, 2007**

**Summary of Comment 86-1:**

The commenter alludes to the election concerning the ordinance to restrict big box development, and asks why the City is delaying the decision on the project.

**Response 86-1:**

The City is not delaying the project but is proceeding with the environmental analysis for the project..

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**87. RESPONSES TO COMMENTS FROM MRS. CLEDA & CYRIL WRIGHT, DATED NOVEMBER 9, 2007**

**Summary of Comment 87-1:**

The commenters stated that they voted for the Wal-Mart project and that it has been put off long enough.

**Response 87-1:**

The City is not delaying the project, but is proceeding with the environmental analysis for the project.

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**88. RESPONSES TO COMMENTS FROM ROBERT YABUMOTO, DATED DECEMBER 6, 2007**

**Summary of Comment 88-1:**

The commenter believes that the Wal-Mart Supercenter will cause additional urban blight in the eastside before any work within the new eastside redevelopment area can occur. The report should address the urban decay that will occur when the Kmart closes as a result of the Wal-Mart Supercenter. There is nothing in the report that discusses the steps the city will take to ensure the eastside businesses, particularly the Kmart shopping complex, will survive. The commenter feels strongly that the project should be rejected, and that the City should instead look at approving new businesses on the eastside of town.

**Response 88-1:**

The BAE report and DREIR conclude that it is possible that Kmart will close as a result of the project. Should Kmart close, the owner of the complex has stated that he believes the vacated space could be retenanted. The BAE report and DREIR conclude that it is unlikely that the project would result in urban decay at this or any other location. There is a potential that the threat of urban decay could arise due to the combined effect of the Lodi Shopping Center and Reynolds Ranch, but the BAE report and DREIR conclude that the City would prevent the onset of urban decay in any event through aggressive code enforcement, as directed by the City Council in March 2006.

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**89. RESPONSES TO COMMENTS FROM VALETA YOUNG, DATED NOVEMBER 13, 2007**

**Summary of Comment 89-1:**

The commenter expresses her position in favor of the proposed project and also discusses several issues including: possible fees to be charged to Wal-Mart; the City's downtown revitalization efforts; the specialized nature of downtown businesses; jobs created by Wal-Mart; tax revenues generated by Wal-Mart; and shopping opportunities for blue-collar workers at Wal-Mart.

**Response 89-1:**

The issues raised by the commenter are generally related to the project but the letter does not include any specific comments or criticisms on the DREIR itself. As such, no further response is required.

#### **IV. COMMENTS ON DREIR PRESENTED AT THE PLANNING COMMISSION HEARING OF NOVEMBER 14, 2007**

##### **PC1. RESPONSES TO COMMENTS FROM PLANNING COMMISSION CHAIR MATTHEIS**

###### **Summary of Comment PC1-1:**

Commissioner Mattheis questioned how there could be store closures with no impacts.

###### **Response PC1-1:**

Since CEQA only recognizes physical impacts to the environment, EIRs are not required to address purely socio-economic effects such as store closures unless they in turn can be shown to result in physical impacts such as urban decay. Thus the DREIR states that while there is a potential risk of store closures, it cannot be concluded that such closures would result in urban decay. The detailed analysis leading to this conclusion is presented on pages 33 through 53 of the DREIR.

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###### **Summary of Comment PC1-2:**

Commissioner Mattheis questioned the efficacy of the City's code enforcement program in preventing urban decay.

###### **Response PC1-2:**

The City brings abatement orders against landowners of nuisance properties, and the record has been one of compliance and success. The City's Code Enforcement staff has been reorganized from the Community Development Department to the Police Department which will allow greater effectiveness in day-to-day code enforcement. This reorganization is also designed to bring more focused attention to identifying problem properties before they become physically deteriorated and become a nuisance to the community.

The physical deterioration of some downtown buildings that has occurred over a long period of time is not evidence that the City will not be able to abate future cases of building deterioration which could hypothetically arise as a result of cumulative conditions after the proposed project and the Reynolds Ranch project are completed. First, the downtown buildings which are physically deteriorated are all old structures, some of which are functionally obsolete or have major structural problems which cannot be readily corrected. Because of the intrinsic value of the older downtown buildings in representing Lodi's architectural heritage, it is not appropriate to demolish these buildings for the sake of creating the appearance of having corrected the problem. Instead, the City recognizes that these buildings are valuable community assets that provide irreplaceable character to downtown and will be key to its full revival. Since the City recognizes the intrinsic value of these buildings to the future of the City, and also recognizes that major effort and expense is required for their rehabilitation, it is willing to be patient and work with building owners in order to bring about incremental improvements to the buildings downtown.

Secondly, the DREIR finds that any building vacancies which could potentially occur under cumulative conditions would occur in the older outlying commercial centers, not in the downtown which would generally not be subject to direct competition from the new retailers at the project or Reynolds Ranch. Since these older commercial centers are structurally up-to-date and well-maintained under current conditions, it would not be so onerous to keep them in a condition suitable for retenanting should they become vacant. With the new reorganization of the Code Enforcement staff, the City would have the capability to constantly monitor any such vacancies and be ready to take action at the first indication of neglect.

In support of the City's position that it is fully capable of correcting nuisance property conditions as they arise, Joseph Wood, Manager of the City of Lodi Community Improvement Division, has prepared the following description of the abatement process that would be followed:

In the case where one of the major tenants in a shopping center were to vacate and the overall condition of the property were to deteriorate, for example, we would likely issue a Notice of Violation and Intent to Abate to address property maintenance issues. In the event that the property owner failed to abate the violation, we have a rotating list of contractors that we would use to carry out the abatement to correct the violation. We would in turn bill the property owner for the abatement and administrative costs, while also issuing Administrative Citations to assess penalties.

The abatement process would also trigger the recordation of a lien to recover any costs incurred. We would then continue to monitor the property and call out any condition noted upon the property or buildings that constitutes a nuisance. Again, if the owner failed to respond to voluntarily correct the violation, we would abate the violation and assess the costs to the property owner, along with additional fines/penalties.

In cases of persistent non-compliance, the owner's failure to comply with our orders would be documented throughout in order to build up sufficient evidence to support further action, such as Receivership or other appropriate legal action. (Joseph Wood, January 22, 2008.)

In summary, the City has code enforcement authority and it provides that it will be diligent and aggressive in abatement actions against any commercial retail buildings which could potentially become vacant as result of competition from the Lodi Shopping Center project and/or the Reynolds Ranch project.; this will help ensure that environmental impacts remain less than significant. For further discussion, the reader is referred to pages 37 and 38 of the DREIR, which contain a detailed summary of the various provisions in the City's Municipal Code and State law which provide the legal authority for abatement of nuisance properties in the City of Lodi.

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**Summary of Comment PC1-3:**

Commissioner Mattheis does not agree with the conclusion in the DREIR that the project would not result in urban decay.

**Response PC1-3:**

Based on the analysis of project-specific impacts presented on pages 33 through 45 of the DREIR, it was concluded that urban decay impacts were not likely to occur as a result of the opening of the project alone. Based on the analysis of cumulative impacts presented on pages 45

through 53 of the DREIR, which considered the combined competitive effects of the Lodi Shopping Center and the Reynolds Ranch, it was concluded that while some stores are potentially at risk of closure under cumulative conditions, it is unlikely and speculative that urban decay would result, particularly given the City's commitment to undertake aggressive code enforcement in order to prevent such conditions from developing.

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## **PC2. RESPONSES TO COMMENTS FROM PLANNING COMMISSIONER HENNECKE**

### **Summary of Comment PC2-1:**

Commissioner Hennecke asked if there will be a net gain or loss in revenue in the downtown area.

#### **Response PC2-1:**

The BAE economic study and DREIR found that the project would result in a limited reduction of sales in downtown. The DREIR states that in the downtown area the short-term reduction in sales is estimated to be 7 percent overall for all retail categories. For some categories the short-term percentage may be higher (e.g., 13 percent for pharmacies, 8 percent for restaurants), and for others it may be lower (e.g., negligible reductions in furniture sales). After an initial decline, retail sales would gradually improve over time as Lodi's population continues to grow (DREIR, p. 42).

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## **PC3. RESPONSES TO COMMENTS FROM PLANNING COMMISSION VICE-CHAIR KISER**

### **Summary of Comment PC3-1:**

Commissioner Kiser asked if there is a size limit to the big box stores.

#### **Response PC3-1:**

According to City Attorney Steve Schwabauer, the City of Lodi does not have a limit on the size of stores.

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### **Summary of Comment PC3-2:**

Commissioner Kiser asked how this project can be a positive thing for Lodi if it stops the upward trend of the main tourist focus in the downtown area that Lodi has had.

**Response PC3-2:**

The question of whether the project is generally beneficial to the community is a policy matter with many aspects to be considered. Since the scope of CEQA review is focused on the relatively narrow question of the project's adverse physical effects upon the environment, the question of community benefit is outside the scope of the DREIR. With respect to the project's potential impacts to downtown, the DREIR found that there is no evidence that the project would result in store closures or urban decay in the downtown area (see DREIR, p. 43).

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**PC4. RESPONSES TO COMMENTS FROM ANN CERNEY**

**Summary of Comment PC4-1:**

Ms Cerney stated that the comments she was presenting (at the November 14<sup>th</sup> Planning Commission hearing) would all be covered in a detailed comment letter to follow, but she just wanted to raise them orally. These issues are summarized as follows:

- 1) The draft EIR does not respond to the San Joaquin Valley Air Pollution Control District's (SJVAPCD) response to the Notice of Preparation, which indicates that the EIR must comply with Air District Rule 9510;
- 2) The EIR needs to analyze and disclose health risks associated with emission of diesel emissions from construction equipment and delivery trucks;
- 3) The agricultural mitigation component fails to address adequate endowment for managing the easements in perpetuity;
- 4) The energy impact section does not address global climate change, as required, and only addresses the Wal-Mart portion, not the other 12 buildings;
- 5) The project energy efficiency should exceed Title 24 requirements and should meet LEED standards, and should include a requirement for solar power and solar water heating.

As stated by Ms Cerney, these comments are intended to raise the issues which are discussed in further detail in her comment letter on the DREIR, which is attached as Comment Letter 20 in Section VI of this document.

**Response PC4-1:**

The responses to the oral comments presented by Ms Cerney at the November 14<sup>th</sup> Planning Commission hearing are, with one exception, the same as the responses to the written comments contained in Comment Letter 20. Each of Ms Cerney's points are addressed in the following response. To the extent that the comment is the same as the comment in Ms Cerney's comment letter, the reader is referred to that previous response.

- 1) SJVAPCD Rule 9510 – Since this comment is the same as written Comment 20-1, the reader is referred to Response 20-1 for a full responsive discussion.
  - 2) Health Risks from Diesel Exhaust – This comment states that the EIR should address the health risks associated with diesel exhaust from construction equipment and delivery trucks. The written comment letter differs from this oral comment in that it states only that the EIR should include a Health Risk Assessment (HRA) for diesel exhaust from delivery trucks, and does not mention construction equipment in the context of a health risk assessment (although it does mention construction emissions in the context of Rule 9510, which is addressed in the previous response). Since the issue of preparing an HRA for delivery truck emissions is addressed in detail in Response 20-2, the reader is referred to that response for a fully responsive discussion. With respect to health risks associated with diesel exhaust from construction equipment, this issue is fully addressed in the original EIR at page 119. Air quality is not within the scope of issues ordered by the Superior Court to be reanalyzed, and the City of Lodi has not voluntarily undertaken to reanalyze air quality impacts. As such, the subject of air quality was not addressed in the DRIER and is not open for review. It is worth noting, however, that the SJVAPCD’s comments on the original DEIR did not take issue with the adequacy of any portion of the air quality analysis contained in the original EIR (see original FEIR at page 7).
  - 3) Endowment for Administration of Agricultural Mitigation – Since this comment is the same as written Comment 20-3, the reader is referred to Response 20-3 for a full responsive discussion.
  - 4) Global Climate Change – Since this comment is the same as written Comment 20-4, the reader is referred to Response 20-4 for a full responsive discussion.
  - 5) Energy - Since this comment is the same as written Comment 20-5, the reader is referred to Response 20-5 for a full responsive discussion.
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## **PC5. RESPONSES TO COMMENTS FROM DONALD MOONEY, CITIZENS FOR OPEN GOVERNMENT**

### **Summary of Comment PC5-1:**

The oral comments presented by Mr. Mooney at the November 14<sup>th</sup> Planning Commission hearing briefly cover the same issues which are discussed in greater detail in his comment letter, which is included in Section VI of this document as Comment Letter 5. These comments are summarized as follows:

- 1) Urban Decay – The DREIR analysis indicates no leakage of sales tax or sales, which indicates there is a redistribution of sales within Lodi, which would have an impact on the downtown.
- 2) Energy and Global Climate Change – The Energy section of the DREIR applies an inadequate significance standard and should have included a discussion of global climate change.

- 3) Air Quality – The letter from the Air Pollution Control District indicates that there needs to be an analysis with regard to Rule 9510.
- 4) Agricultural Mitigation – The DREIR includes agricultural mitigation at a 1:1 ratio but does not address whether it would be feasible to increase the mitigation to a 2:1 or 3:1 ratio.
- 5) Vacated Wal-Mart Store – The DREIR urban decay analysis does not take into account the additional competition for tenants that would arise from the existing Wal-Mart space once it is vacated.
- 6) Code Enforcement – There is no demonstration that increased code enforcement would in fact reduce the urban decay or the public nuisance aspect of it.
- 7) Project Alternatives/Project Objectives – The alternatives analysis in the DREIR continues to be inadequate, and are done narrowly so as to meet the project objectives. CEQA requires a range of feasible alternatives and this document lacks that. The project objectives need to be broader. Another alternative is one that consists of the modernization of the existing Wal-Mart, which would have a smaller area, smaller footprint.

**Response PC5-1:**

The responses to the oral comments presented by Mr. Mooney at the November 14<sup>th</sup> Planning Commission hearing are, with one exception, the same as the responses to the written comments contained in Comment Letter 5. Each of Mr. Mooney’s points are addressed in the following response. To the extent that the comment is the same as the comment in Mr. Mooney’s comment letter, the reader is referred to that previous response.

- 1) Urban Decay – This comment is the same as written Comment 5-5 (and Comment EPS-2 from which it is drawn). Therefore, the reader is referred to Response 5-5 and Response EPS-2 for a full responsive discussion. See also Response 5-7 for a detailed discussion of downtown impacts.
- 2) Energy and Global Climate Change – This comment is the same as written Comment 5-13. For a detailed response the reader is referred to Response 5-13, and also related Responses 5-14 through 5-25.
- 3) Air Quality – This comment is the same as written Comment 5-27. For a detailed response, the reader is referred to Response 5-27.
- 4) Agricultural Mitigation – Since this comment is also contained in written Comment 5-10, the reader is referred to Response 5-10 for a full response.
- 5) Vacated Wal-Mart Store – Since this comment is also contained in written Comment 5-8, the reader is referred to Response 5-8 for a full response.
- 6) Code Enforcement – Since this comment is also contained in written Comment 5-6, the reader is referred to Response 5-6 for a full response.
- 7) Project Alternatives/Project Objectives – These comments are the largely same as written Comments 5-30 through 5-36. As such, the reader is referred to Responses 5-30 through 5-36 for full responses. The sole exception is the oral comment that “the project objectives need to be broader” which is not found in the commenter’s December 7, 2007 comment letter on the

DREIR. In response, it is noted that the revised project objectives, as set forth on pages 31 and 32 of the DREIR, are considerably broader than the project objectives contained in the original EIR. These revised basic objectives are theoretically capable of being met elsewhere in the City of Lodi, on a parcel of land that is substantially smaller (i.e., 45 percent smaller) than the proposed project site. However, as discussed in Responses 5-30 through 5-35, there are no other sites in the City of Lodi which have the appropriate commercial retail General Plan and Zoning designations and can meet the basic project objectives, and are not otherwise proposed for commercial development (e.g., Reynolds Ranch). This leaves the Reduced Project Size Alternative as the only feasible alternative to the proposed project. While this alternative would result in reductions in the level of impacts to agricultural resources and air quality, and thus is environmentally superior to the proposed project, it would not reduce those impacts to less-than-significant levels in either case. As stated in the DREIR, this alternative was not selected because it would be less effective than the proposed project in achieving most of the basic objectives of the project.

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#### **PC6. RESPONSES TO COMMENTS FROM MICHAEL FOLKNER, WAL-MART STORE MANAGER**

##### **Summary of Comment PC6-1:**

Mr. Folkner does not believe the project will result in urban decay. He states that is speculative to try to guess which stores will go out of business. He also noted that Wal-Mart has a “no idling” policy for delivery trucks.

##### **Response PC6-1:**

The comments on urban decay are generally consistent with the conclusions of the DREIR. The information on Wal-Mart’s truck idling policy is duly noted.

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#### **PC7. RESPONSES TO COMMENTS FROM NORMA J. SMITH**

##### **Summary of Comment PC7-1:**

Ms Smith stated that the citizens voted for Wal-Mart Supercenter, and if the City denies the Wal-Mart project she will no longer shop in Lodi. She stated that she needs a place to shop where she doesn’t have to walk.

**Response PC7-1:**

Comments noted. Since these comments address the merits of the project and do not address the DREIR itself, no further response is required.

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**PC8. RESPONSES TO COMMENTS FROM JANET MOORE**

**Summary of Comment PC8-1:**

Ms Moore expressed her support for the project and noted that the citizens voted for the Supercenter. She stated that she is not going shop downtown because she cannot afford to shop there.

**Response PC8-1:**

Comments noted. Since these comments address the merits of the project and do not address the DREIR itself, no further response is required.

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**PC9. RESPONSES TO COMMENTS FROM DENNIS WARTON**

**Summary of Comment PC9-1:**

Mr. Warton stated that Wal-Mart hired his wife even though she spoke less-than-perfect English. He also stated that Wal-Mart also hires the disabled while grocery stores will not.

**Response PC9-1:**

Comments noted. Since these comments do not address the DREIR, no further response is required.

## **PC10. RESPONSES TO COMMENTS FROM HAROLD JAXELL**

### **Summary of Comment PC10-1:**

Mr. Jaxell expressed support for Wal-Mart. He stated that “Kmart is closing like a lawn chair” but that “it’s not because of Wal-Mart.” He noted that these impacts “are just a reason to say no to Wal-Mart” and the City “did not do that to Lowe’s or Target.”

### **Response PC10-1:**

Comments noted. Since these comments do not address the DREIR specifically, no further response is required.

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## **PC11. RESPONSES TO COMMENTS FROM LORINDA GENARO**

### **Summary of Comment PC11-1:**

Ms Genaro noted that the project would result in lost agricultural land and wondered about the building materials that will be used for the project. She also stated that 10,000 customers (mentioned earlier in the evening in comments by Wal-Mart store manager Michael Folmer) means a lot of cars. With respect to urban decay, she stated that old businesses won’t be able to compete.

### **Response PC11-1:**

The comment on the loss of agricultural land is noted. This subject is addressed in detail in Section *II.B. Agricultural Resources* of the DREIR.

With respect to the question on building materials, this is not an area that is subject to CEQA review since choice of building materials, per se, would not result in a physical impact to the environment. However, the DREIR does note in Section *II. N. Energy* that Wal-Mart uses only recycled steel for structural steel, and uses recycled plastic for baseboards and shelving. The choice of materials proposed for the project is an issue which would be considered by the Site Plan and Architectural Review Committee (SPARC) subsequent to overall project approval by Planning Commission and/or City Council.

With respect to traffic impacts, this is a subject that was not ordered by the Superior Court to be reanalyzed, and the City of Lodi did not voluntarily undertake a reanalysis of traffic impacts. Therefore, the traffic analysis in the original EIR is adequate and not open for review.

With respect to the comment that old businesses won’t be able to compete, the DREIR and BAE study found that while the Lodi Shopping Center project would result in small general decline in retail sales at existing stores and that no store closures are expected to result, with the possible exception of Kmart. However, the DREIR and the BAE study concluded that there is insufficient evidence to support the conclusion that urban decay would likely result from the closure of Kmart (DREIR, p. 37).

## **PC12. RESPONSES TO COMMENTS FROM KENNETH LOPES**

### **Summary of Comment PC12-1:**

Mr. Lopes believes that Kmart is already in a state of decay. He noted that truckers are not going to leave their trucks idling at \$5 per gallon for diesel and that even though there are nine other fancy coffee shops that have come into town, he still goes to the same coffee shop and it is still in business. Mr. Lopes further stated that the agricultural lands in the region are “poisoned” after years of pesticide use and that the no one should think of that piece of land as any agricultural issue.

### **Response PC12-1:**

With respect to Kmart, the DREIR and the BAE study found that while there is a risk that the existing Kmart could close as a result of increased competition from Wal-Mart, there is insufficient evidence to support the conclusion that urban decay would be the likely result of such a closure (DREIR, p. 37).

The comments regarding truck idling and coffee shops are noted.

With respect to the agricultural value of the project site, the DREIR notes that it is classified as prime farmland, and therefore its conversion to urban uses would constitute a significant impact. In order to reduce that impact, the DREIR specifies the acquisition of an agricultural conservation easement over an equivalent area of prime farmland so that such off-site agricultural land may be protected from conversion in perpetuity.

With respect to the pesticide comment, the original EIR on the Lodi Shopping Center found no evidence that any residual agricultural chemicals were present on the site in concentrations that exceed the applicable regulatory thresholds.

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## **PC13. RESPONSES TO COMMENTS FROM ROGER OSTER**

### **Summary of Comment PC13-1:**

With respect to urban decay, Mr. Oster stated that Wal-Mart does not compete with downtown, and that downtown caters to tourists. Mr. Oster mentioned retailers in Lodi such as Kmart and Mervyn’s and stated that they are in trouble of closure, but not because of a Super Wal-Mart in Lodi.

**Response PC13-1:**

The DREIR and the BAE study found that while there is a risk that the existing Kmart could close as a result of increased competition from Wal-Mart, there is insufficient evidence to support the conclusion that urban decay would likely result from such a closure (DREIR, p. 37). The DREIR and the BAE study found that under cumulative conditions the existing Mervyn's is at risk of closure if the Reynolds Ranch project includes a competitive retailer such as Kohl's (DREIR, p. 49). However, since no information is available on the planned tenant mix at Reynolds Ranch, any conclusions with respect to potential closure of the Mervyn's store would be speculative. However, the DREIR and BAE study concluded that even under general assumptions of reasonable worst-case conditions, as discussed above, and with diligent code enforcement as has been specifically directed by City Council, it is expected that the cumulative economic effects of the Lodi Shopping Center, when combined with the economic effects of the Reynolds Ranch project, would result in a less-than-significant cumulative urban decay impact (DEIR, p. 52).

## V. REVISIONS TO THE TEXT OF THE DREIR

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The following section contains revisions to the Draft Revisions to the Environmental Impact Report (DREIR) for the Lodi Shopping Center based on comments received that were responsive to those sections of the EIR that were either (a) ordered by the San Joaquin Superior Court or (b) voluntarily revised by the City of Lodi and open for public comment and review. Underlining depicts text added while ~~strikeouts~~ depict text removed.

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### SUMMARY

#### Page 14      A. LAND USE AND PLANNING

REVISE Impact A4 as follows:

A4. Potential for Urban Decay Due to Cumulative Economic Effects of Competing Retail Projects. 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), ~~With the addition of the substantial additional retail floor area currently proposed for the pending Reynolds Ranch project,~~ 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)

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#### Page 15      B. AGRICULTURAL RESOURCES

REVISE Mitigation B1 as follows:

B1. The applicant shall obtain a permanent Agricultural Conservation Easement(s) over 40 acres of prime farmland. ~~within 15 miles of the project site~~ The agricultural conservation easement(s) ~~may~~ shall consist of ~~involve one or more~~ a single parcel of land ~~within an aggregate land area~~ of at least 40 acres. ~~This~~ These easements shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement ~~and~~ shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put in agricultural production ~~or will~~ as a result of the conservation easement transaction ~~be put into agricultural production~~. The lands subject to the easement(s) 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 easements 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. ~~If the easements are located in an area desired by the City (i.e., a designated greenbelt area) the City may include an incentive such as counting each acre of mitigation as two acres.~~

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## II. ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

### Page 45 A. LAND USE AND PLANNING

REVISE pages 45 through 53 as follows:

**Impact A4. Potential for Urban Decay Due to Cumulative Economic Effects of Competing Retail Projects.** 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), ~~With the addition of the substantial additional retail floor area currently proposed for the pending Reynolds Ranch project,~~ 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)

#### *Analysis of Cumulative Economic Impacts*

As required under CEQA, the cumulative analysis for the proposed project must take into account other reasonably foreseeable projects in the Trade Area or elsewhere that might, in combination with the proposed project, result in cumulatively significant impacts. Projects to be considered in the cumulative analysis include projects which have been approved but not yet completed, and projects for which development applications have been filed, and can also include other potential projects which may have been announced but not yet formally proposed to the approving agency.

The Trade Area defined by BAE for the project includes the City of Lodi and surrounding portions of unincorporated San Joaquin County. Discussions with staff for the city and the county indicated that there is one ~~pending proposal for a~~ competitive retail project within the Trade Area – the ~~proposed~~ Reynolds Ranch project at Harney Lane and Highway 99 in southeast Lodi. (This project is described in the next paragraph.) In addition, the two closest municipalities, Stockton and Galt, were contacted regarding projects that might impact the Trade Area. Staff for Stockton confirmed the plans for additional region-serving retail at Eight Mile Road and I-5, including a Wal-Mart Supercenter. Staff for Galt confirmed plans for a Supercenter in that city. The presence of these proposed projects was taken into consideration in the

delineation of the Trade Area, thus effectively accounting for any cumulative impacts resulting from these additional Supercenter projects. In other words, since the trade areas for the Supercenters are not expected to overlap to any great degree, the planned Supercenters to the north and south of Lodi are not expected to have a cumulative impact within the Trade Area defined for the Lodi Supercenter. (It should be noted that the existing Wal-Mart Supercenter on Hammer Lane in Stockton was also taken into account for purposes of defining the project Trade Area.)

As mentioned, the only other pending retail project in the City of Lodi is the Reynolds Ranch project in the southwest quadrant of Harney Lane and State Route 99. The overall development plan consists of over 200 acres of residential, office, commercial retail, and public facility uses. The approved Master Plan includes approximately 350,000 square feet of commercial retail development on 45 acres adjacent to the Harney Lane/State Route 99 interchange. The City approvals in late 2006 included amendments to the General Plan and zoning, as well as approval of annexation by LAFCO. Based on recent discussions between the City of Lodi and the representatives of the Reynolds Ranch project, which included the submittal of a preliminary conceptual site plan, it is expected that the approved retail center will be proposed to be expanded to include at total up to 640,676 square feet of retail building area on approximately 75.6 acres, configured for a mix of users including four anchor spaces of more than 90,000 square feet each and a mix of smaller retail. (While no formal development application has been received by the City of Lodi for an expanded retail center at Reynolds Ranch, it is expected for purposes of this analysis that any such application would generally fit this description.) ~~It is also expected that supplemental environmental review on the revised Reynolds Ranch project will commence preparation soon after a formal application is received. This review is expected to include an analysis of potential economic impacts resulting from the expanded Reynolds Ranch retail center, as well as an evaluation of the potential for urban decay impacts to occur as a result.~~

It is important to note that no specific tenants or tenant types have been definitively proposed or announced for the Reynolds Ranch project. Without reliable information on prospective tenants, it is very difficult to undertake a detailed analysis of cumulative urban decay impacts without making broad assumptions regarding tenant mix. Thus, while no specific tenants for the Reynolds Ranch retail center have been identified to date, for purposes of analysis it is generally assumed that potential tenants for a center of this size could reflect the full spectrum of retail users (especially store types not well-represented in Lodi, such as a warehouse club, a home improvement center, a home electronics store, or a large apparel merchandiser) which would be potential anchor tenants. One 13,200 square-foot space in the preliminary site plan is called out for occupancy as a drug store, and one of the pads is called out as a fast-food restaurant. (While it is assumed for purposes of this analysis that the above tenant types may occupy Reynolds Ranch based on the big box pads shown on the current an illustrative site plan shown to City staff in mid-2007, it is important to emphasize that this assumed tenant mix should be considered hypothetical until such time as actual tenants are identified.) The center is likely to be a strong retail destination, drawing from Lodi itself and beyond along the Highway 99 corridor. Since some of the retailers expected to locate at Reynolds Ranch do not have existing or planned facilities in immediately surrounding communities (e.g., a Costco or Sam's Club), the trade area for those retailers would be larger than the trade area of the Lodi Shopping Center and could extend northward to

Galt and beyond, and eastward to the Sierra foothill communities of Jackson, Mokelumne Hill, Valley Springs, and San Andreas.

A revised Reynolds Ranch project, if it were developed as described above, would represent a substantial addition to the retail inventory in Lodi. With both the Lodi Shopping Center and Reynolds Ranch retail center operating, it is estimated that the existing retail sector in Lodi would face an overall reduction in sales of approximately 30 percent, even assuming substantial capture of sales leakages by both the Lodi Shopping Center and Reynolds Ranch ~~and~~ of sales from outside the Wal-Mart Trade Area, especially to the north and east, by Reynolds Ranch retailers.

The ~~combined additional~~ reduction in sales resulting from the Lodi Shopping Center and attributable to Reynolds Ranch projects would be concentrated among the stores most directly competitive. Since the actual retail mix for the Reynolds Ranch project is not known ~~confirmed~~, it cannot be stated with certainty which stores would be most impacted. However, the *possible* impacts of several potential retail types assumed to be included in the Reynolds Ranch project, as mentioned above, can be considered. Again, given the lack of specific information currently available on the retail mix for the ~~revised~~ Reynolds Ranch project, the following discussion is by necessity hypothetical given that it is based on an assumed retail mix, and therefore should be considered somewhat speculative.

A warehouse club store would likely attract shoppers from beyond the Lodi Shopping Center trade area, as defined above, especially from the Galt area, and would likely recapture some sales from Lodi shoppers currently patronizing the Costco in Stockton. However, it also would likely attract some pantry-loading grocery shoppers from existing supermarkets in Lodi itself, and also would draw Lodi shoppers frequenting other local outlets, including Wal-Mart.

A home improvement center would take some sales from Lowe's, Orchard Supply Hardware (OSH), and other building materials outlets in Lodi. OSH representatives stated that their Lodi store was already seriously impacted by Lowe's. Such a store could also attract shoppers from Galt and other areas outside the Lodi Shopping Center Trade Area.

A major apparel outlet such as Kohl's could negatively impact similar outlets in Lodi, especially Mervyns and JC Penney. While the apparel category shows significant leakage, these leakages, even if all captured by Reynolds Ranch, are not enough alone to support a Kohl's-type store without drawing shoppers from existing stores within the trade area.

The construction of ~~the Lodi Shopping Center-Reynolds Ranch~~ in combination with Reynolds Ranch ~~the Lodi Shopping Center, or even alone~~, could lead to an oversupply of retail space in the Lodi area. To illustrate, with the completion of the Lodi Shopping Center alone, it is estimated that there would remain a residual demand for approximately 22,000 square feet of retail space over the 2006 to 2015 period.

## Cumulative Economic Impacts on Existing Retail Nodes

Following is a discussion of potential cumulatively significant economic impacts, by major retail node in Lodi and vicinity. Again, because of the uncertain tenant mix for Reynolds Ranch, this discussion is largely qualitative and somewhat speculative, since ~~and~~ its conclusions are highly dependent on the underlying assumptions of tenant mix at the Reynolds Ranch retail center, as discussed above.

### *Target Center*

The two largest tenants of this center, Target and Safeway, are directly competitive with the Lodi Shopping Center, and those ~~project~~ impacts associated with the project alone have been considered above in the analysis of direct project impacts. Unless Reynolds Ranch includes a major food store, which is not considered likely, these two stores are not likely to be greatly impacted by the cumulative additional retail at Reynolds Ranch. However, the Staples and Marshalls stores may experience a reduction in sales, depending in large part on the tenant mix at Reynolds Ranch. For example, if the new center included an office supply outlet, it would compete with the Staples. But based on assumptions regarding the likely tenant mix for Reynolds Ranch, it is unlikely that any existing stores in this center would face closure under cumulative conditions.

### *Cherokee Retail Center*

As discussed above, the Kmart in this center is at risk of closure just from the Lodi Shopping Center, due to current poor performance and increased competition from the enlarged Wal-Mart general merchandise space. The OSH store, while not directly competitive with the Lodi Shopping Center, has reported a decline in sales subsequent to the opening of Lowe's. An additional home improvement center, particularly in relatively close proximity to the existing OSH, would cause an additional decline of sales and place the Lodi OSH at risk of closure. The Kmart would likely see some reduction in sales under cumulative conditions with ~~due to other stores in~~ Reynolds Ranch, if it were to include such as a warehouse club store or a major apparel outlet. Thus the two major anchors of this older center could face substantial risk of closure due to the combined impacts of the Lodi Shopping Center and Reynolds Ranch. If these stores were to close and the spaces could not be re-tenanted, many of the smaller retailers might also close or move to other locations.

### *Sunwest Plaza*

This center would lose its primary tenant, Wal-Mart, to the Lodi Shopping Center, and its supermarket tenant, Food 4 Less, would face stiff competition from the Supercenter's added grocery offerings. However, as discussed above in the discussion of direct project impacts, this Food 4 Less is showing extremely strong performance as the only discount warehouse-type supermarket in Lodi. Under cumulative conditions, ~~With the addition of~~ if Reynolds Ranch included a warehouse club store, it would offer some additional competition for Food 4 Less, and a major apparel outlet could adversely affect the JC Penney store and increase its risk of closure. Furthermore, the new large anchor spaces in Reynolds Ranch might capture tenants who might otherwise re-tenant the vacated Wal-Mart space. Thus, per the assumed condition of approval for the Lodi Shopping Center (which would require demolition of the existing Wal-Mart space if it is not substantially

retenanted within a specified time), this increases the potential that this space would be demolished if it is not re-tenanted in a relatively short period of time.

#### *Vineyard Shopping Center*

The cumulative impacts of the two proposed projects puts Mervyns particularly at risk of closure if a retailer such as Kohl's locates at Reynolds Ranch. The Ace Hardware store would also face new competition ~~from~~ if a home improvement center were to locate at Reynolds Ranch, thereby increasing its risk of closure.

#### *Vintner's Square Center*

The major anchor of this center is Lowe's, which could lose sales to a competing home improvement center in Reynolds Ranch. However, Lowe's and its primary competitor, Home Depot, compete head-to-head in many markets, without resulting store closures. For instance, they are located in close proximity in Stockton on Hammer Lane and in Antioch/Brentwood on Lone Tree Way. Thus it is not expected that Lowe's would be at risk of closure with the opening of a Home Depot at Reynolds Ranch.

#### *Lodi and Hutchins*

This center includes the former Albertsons, which is now an S-Mart, and Rite Aid. Although the analysis of direct project impacts above indicates that the S-Mart is unlikely to close due to the opening of the Lodi Shopping Center alone, the cumulative impacts of substantial ~~new~~ retail space ~~added by~~ at Reynolds Ranch would place it at greater risk of closure and may make it ~~more~~ difficult to re-tenant vacated space if the supermarket closes.

#### *Westgate Shopping Center*

The primary anchor of this center is Raley's, which is more of a local-serving store than the retailers expected to locate at Reynolds Ranch. As a result, this center's anchor is not likely to be at greater additional risk under cumulative conditions, with limited if any closures of secondary tenants expected to result from ~~cumulative impacts~~ the combined competition from the Lodi Shopping Center and Reynolds Ranch.

#### *Lakewood Mall*

As with the Westgate Shopping Center, this center is occupied for the most part by local-serving tenants, and should not face substantially greater impacts under cumulative conditions than from the Lodi Shopping Center alone. Thus no business closures would be expected to result at this center under cumulative conditions. ~~from the opening of the Reynolds Ranch project.~~

#### *Lockeford Payless IGA/True Value Hardware*

This small center is local-serving and distant enough from the developments in Lodi that it is unlikely to be subject to substantial impacts from Reynolds Ranch or the Lodi Shopping Center.

### *Downtown Lodi*

As discussed previously, in the face of competition from existing region-serving and local-serving shopping centers developed over the last few decades, Downtown, with financial and other assistance from the City of Lodi, 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 would take the form of some reduction in sales, and some additional limitation on Downtown's ability to expand in its niche. However, no closures of downtown businesses, including the downtown Long's Drugstore, are anticipated to occur under cumulative conditions with the general tenant mix assumed for Reynolds Ranch in this analysis. The greatest risk to Downtown would be if Reynolds Ranch developed partially or fully around a "lifestyle center" concept focused on boutique-style stores and restaurants catering to an upscale clientele that would compete with some of the offerings available Downtown.

### *Impacts Outside the Lodi Shopping Center Trade Area*

Because of a different retail mix and anchor tenants, Reynolds Ranch is likely to have a larger trade area than the Lodi Shopping Center, particularly if it includes a major warehouse club such as Costco, or a major electronics outlet. This larger market area could stretch into southern Sacramento County to include Galt and surrounding areas, as well as communities in Amador and Calaveras Counties such as Jackson, Mokelumne Hill, San Andreas, and Valley Spring. Plans currently call for a Supercenter in Galt that would attract shoppers from Galt and nearby areas. So while Reynolds Ranch may draw shoppers from that area, it is not expected that the Lodi Shopping Center Trade Area would extend to Galt. The Lodi Shopping Center and its anchor Supercenter are expected to only draw a minimal number of shoppers from communities to the east of its Trade Area, since they are already served by a much closer Wal-Mart in Jackson. In addition, the Lodi Shopping Center is unlikely to attract many shoppers across the sizeable distances involved in reaching a Wal-Mart expansion consisting largely of grocery items. Further, all of these communities to the east would be slightly closer to the proposed Supercenter in Galt, and not much farther from the existing Supercenter in Stockton.

Additionally, the combined leakage recapture and capture from customers beyond the Lodi Shopping Center Trade Area would represent a small percentage of total sales in the communities affected, i.e., less than five percent. Moreover, by the time the Lodi Shopping Center opens, population growth in these other areas should generate demand to replace much if not all of this projected reduction in sales.

Thus, because of a limited sales capture from outlets outside the Trade Area, the distance and dispersed geography of those outlets, and the population growth in the areas served by those outlets, it is reasonable to conclude that the Lodi Shopping Center would not contribute in a measurable way to any potential economic impacts in these communities cumulatively with the Reynolds Ranch project.

### *Analysis of Cumulative Urban Decay Impacts*

It should be emphasized at the outset that this analysis of cumulative urban decay is based on the foregoing cumulative economic impact analysis which is in turn largely based on general assumptions regarding the future tenant mix at Reynolds Ranch. As such, the following discussion should be considered hypothetical based on the underlying assumptions, and therefore somewhat speculative.

The cumulative economic impacts resulting from the Lodi Shopping Center, in combination with the Reynolds Ranch retail center, could result in the closure of existing retail outlets in Lodi, and make it more difficult to re-lease vacated space due to the large addition to the inventory in the relatively slow-growing Lodi area. As a result, some existing shopping centers could be subject to long-term vacancies. In the case of the largest potential vacant space, the existing Wal-Mart at Sunwest Plaza, the anticipated conditions of approval would require demolition of the space if it is not re-tenanted in a relatively short period of time. However, even with the potential closure of the JC Penney in this center, this center is unlikely to be subject to long-term vacancies since it is relatively new, and will be in close proximity to the new Supercenter and the existing Target and Lowe's as well as other regional retail draws, and thus may attract tenants from some of the other centers in Lodi.

For other centers, an oversupply of retail space could result in difficulties in re-tenanting vacant retail space in a reasonable period of time. The vacant space could then be at risk of entering a cycle of long-term vacancies, secondary business closures, the inability to re-tenant existing stores, and the eventual possibility of physical deterioration or urban decay.

With respect to downtown, the above 'Analysis of Cumulative Economic Impacts' stated that no business closures are anticipated to occur downtown under cumulative conditions for the general tenant mix assumed for Reynolds Ranch. In the absence of anticipated store closures, there is no potential for urban decay in the downtown under cumulative conditions.

The actual potential for physical deterioration to occur at a specific property will depend on the actual mix of tenants planned for the Reynolds Ranch, the details of which are not currently known. However, once a concrete development proposal is submitted for Reynolds Ranch, the EIR for that project would include a detailed analysis of economic impacts and the resulting potential for urban decay to occur at specific competing centers.

If such an analysis concludes that there is a potential for urban decay, the The actual potential for physical decay to occur at any specific location under cumulative conditions will also be largely dependent on the commitment from the property owner to maintain the property, which could be more challenging in the case of multiple ownership or control. However, in the event of an owner's failure to maintain vacated properties in a condition suitable for releasing, it will be incumbent on the City of Lodi to prevent such conditions from occurring through active and aggressive enforcement of its Code provisions relating to the abatement of public nuisances due to lack of property maintenance and management. As discussed previously, the City of Lodi has amply demonstrated its commitment to preventing physical deterioration of commercial properties within the City through its successful revitalization efforts in Downtown,

which involved a multi-faceted long-term program including large expenditures of City funds. In 2006, the City Council was emphatic in its direction to staff to proactively enforce compliance with its building codes. In addition to proactive code enforcement, and if conditions warrant, staff is prepared to apply the receivership provisions of the California Health and Safety Code to ensure that the corrective action is taken. As such, it is fully expected that the City will continue to be aggressive in the enforcement of its nuisance ordinances relating to building maintenance. Based on ~~the~~ its past performance and policy commitments, it is reasonable to expect that the City will not allow any commercial properties which may become vacant under cumulative conditions to deteriorate physically. Therefore, while there is a remote possibility that certain properties such as the Vineyard Shopping Center and Cherokee Retail Center could be subject to a causal chain ultimately resulting in potential urban decay under cumulative conditions, such outcomes are considered highly unlikely given that the City can be counted on to take aggressive action to prevent such conditions from occurring.

In conclusion, the limited project definition available for the revised Reynolds Ranch project precludes the preparation of a definitive analysis of potential urban decay impacts under cumulative conditions at this time. Therefore, the analysis presented above is largely qualitative and should be considered somewhat speculative. However, even under general assumptions of reasonable worst-case conditions, as discussed above, and with diligent code enforcement as has been specifically directed by City Council, it is expected that the cumulative economic effects of the Lodi Shopping Center, when combined with the economic effects of an expanded Reynolds Ranch project, would result in a *less-than-significant cumulative urban decay impact.*

**Mitigation A4. No mitigation required.**

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Page 56

**B. AGRICULTURAL RESOURCES**

Revise Mitigation B1 as follows:

**Mitigation B1. The applicant shall obtain a permanent Agricultural Conservation Easement(s) over 40 acres of prime farmland. ~~within 15 miles of the project site~~ The agricultural conservation easement(s) may shall consist of involve one or more a single parcel of land ~~within an aggregate land area of~~ at least 40 acres. This These easements shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement and 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 or will as a result of the conservation easement ~~transaction be put into agricultural production.~~ The lands subject to the easement(s) 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 easements 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. ~~If the easements are located in an area desired by the City~~**

~~(i.e., a designated greenbelt area) the City may include an incentive such as counting each acre of mitigation as two acres.~~

**VI. COPIES OF COMMENT LETTERS RECEIVED ON THE DREIR**

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*Comment letters commence on the following page.*

**DEPARTMENT OF TRANSPORTATION**

P.O. BOX 2048 STOCKTON, CA 95201  
(1976 E. CHARTER WAY/1976 E. DR. MARTIN  
LUTHER KING JR. BLVD. 95205)  
TTY: California Relay Service (800) 735-2929  
PHONE (209) 941-1921  
FAX (209) 948-7194



*Flex your power!  
Be energy efficient!*

October 25, 2007

**10-SJ-12-PM 15.1  
SCH#2003042113  
Revisions to DEIR  
Lodi Shopping Center**

Randy Hatch  
City of Lodi  
Planning Division  
221 West Pine Street  
Lodi, CA 95241-1910

Dear Mr. Hatch:

The California Department of Transportation (Department) appreciates the opportunity to have reviewed the Draft Revisions to the Environmental Impact Report for the proposed Lodi Shopping Center located at the southwest corner of West Kettleman Lane/State Route 12 and Lower Sacramento Road in west Lodi. The Department has the following comment:

1-1

An Encroachment Permit will be required for work (if any) done within the Department's right of way. This work is subject to the California Environmental Quality Act. Therefore, environmental studies may be required as part of the encroachment permits application. A qualified professional must conduct any such studies undertaken to satisfy the Department's environmental review responsibilities. Ground disturbing activities to the site prior to completion and/or approval of required environmental documents may affect the Department's ability to issue a permit for the project. Furthermore, if engineering plans or drawings will be part of your permit application, they should be prepared in standard units.

If you have any questions or would like to discuss our comments in more detail, please contact Kathy Selsor at 948-7190 (e-mail [Kathy\\_selsor@dot.ca.gov](mailto:Kathy_selsor@dot.ca.gov)) or me at 941-1921.

Sincerely,

TOM DUMAS, CHIEF  
OFFICE OF METROPOLITAN PLANNING

c: SMorgan State Clearinghouse

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 942360001  
(916) 653-5791

**RECEIVED**

NOV 05 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

October 29, 2007

Randy Hatch  
City of Lodi  
221 West Pine Street  
Lodi, California 95271-1910

Lodi Shopping Center  
State Clearinghouse (SCH) Number: 2003042113

2-1

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris L. Huitt".

Christopher Huitt  
Staff Environmental Scientist  
Floodway Protection Section

Enclosure

cc: Governor's Office of Planning and Research  
State Clearinghouse  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

## Encroachment Permits Fact Sheet

### **Basis for Authority**

State law (Water Code Sections 8534, 8608, 8609, and 8710 – 8723) tasks the Reclamation Board with enforcing appropriate standards for the construction, maintenance, and protection of adopted flood control plans. Regulations implementing these directives are found in California Code of Regulations (CCR) Title 23, Division 1.

### **Area of Reclamation Board Jurisdiction**

The adopted plan of flood control under the jurisdiction and authority of the Reclamation Board includes the Sacramento and San Joaquin Rivers and their tributaries and distributaries and the designated floodways.

Streams regulated by the Reclamation Board can be found in Title 23 Section 112. Information on designated floodways can be found on the Reclamation Board's website at [http://recbd.ca.gov/designated\\_floodway/](http://recbd.ca.gov/designated_floodway/) and CCR Title 23 Sections 101 - 107.

### **Regulatory Process**

The Reclamation Board ensures the integrity of the flood control system through a permit process (Water Code Section 8710). A permit must be obtained prior to initiating any activity, including excavation and construction, removal or planting of landscaping within floodways, levees, and 10 feet landward of the landside levee toes. Additionally, activities located outside of the adopted plan of flood control but which may foreseeable interfere with the functioning or operation of the plan of flood control is also subject to a permit of the Reclamation Board.

Details regarding the permitting process and the regulations can be found on the Reclamation Board's website at <http://recbd.ca.gov/> under "Frequently Asked Questions" and "Regulations," respectively. The application form and the accompanying environmental questionnaire can be found on the Reclamation Board's website at <http://recbd.ca.gov/forms.cfm>.

### **Application Review Process**

Applications when deemed complete will undergo technical and environmental review by Reclamation Board and/or Department of Water Resources staff.

### Technical Review

A technical review is conducted of the application to ensure consistency with the regulatory standards designed to ensure the function and structural integrity of the adopted plan of flood control for the protection of public welfare and safety. Standards and permitted uses of designated floodways are found in CCR Title 23 Sections 107 and Article 8 (Sections 111 to 137). The permit contains 12 standard conditions and additional special conditions may be placed on the permit as the situation warrants. Special conditions, for example, may include mitigation for the hydraulic impacts of the project by reducing or eliminating the additional flood risk to third parties that may caused by the project.

Additional information may be requested in support of the technical review of

your application pursuant to CCR Title 23 Section 8(b)(4). This information may include but not limited to geotechnical exploration, soil testing, hydraulic or sediment transport studies, and other analyses may be required at any time prior to a determination on the application.

#### Environmental Review

A determination on an encroachment application is a discretionary action by the Reclamation Board and its staff and subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.). Additional environmental considerations are placed on the issuance of the encroachment permit by Water Code Section 8608 and the corresponding implementing regulations (California Code of Regulations – CCR Title 23 Sections 10 and 16).

In most cases, the Reclamation Board will be assuming the role of a “responsible agency” within the meaning of CEQA. In these situations, the application must include a certified CEQA document by the “lead agency” [CCR Title 23 Section 8(b)(2)]. We emphasize that such a document must include within its project description and environmental assessment of the activities for which are being considered under the permit.

Encroachment applications will also undergo a review by an interagency Environmental Review Committee (ERC) pursuant to CCR Title 23 Section 10. Review of your application will be facilitated by providing as much additional environmental information as pertinent and available to the applicant at the time of submission of the encroachment application.

These additional documentations may include the following documentation:

- California Department of Fish and Game Streambed Alteration Notification (<http://www.dfg.ca.gov/1600/>),
- Clean Water Act Section 404 applications, and Rivers and Harbors Section 10 application (US Army Corp of Engineers),
- Clean Water Act Section 401 Water Quality Certification, and
- corresponding determinations by the respective regulatory agencies to the aforementioned applications, including Biological Opinions, if available at the time of submission of your application.

The submission of this information, if pertinent to your application, will expedite review and prevent overlapping requirements. This information should be made available as a supplement to your application as it becomes available. Transmittal information should reference the application number provided by the Reclamation Board.

In some limited situations, such as for minor projects, there may be no other agency with approval authority over the project, other than the encroachment permit by Reclamation Board. In these limited instances, the Reclamation Board

may choose to serve as the "lead agency" within the meaning of CEQA and in most cases the projects are of such a nature that a categorical or statutory exemption will apply. The Reclamation Board cannot invest staff resources to prepare complex environmental documentation.

Additional information may be requested in support of the environmental review of your application pursuant to CCR Title 23 Section 8(b)(4). This information may include biological surveys or other environmental surveys and may be required at anytime prior to a determination on the application.

**DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

3330 Ad Art Road  
Stockton, CA 95208  
(209) 943-8666  
(800) 735-2929 (TT/TDD)  
(800) 735-2922 (Voice)

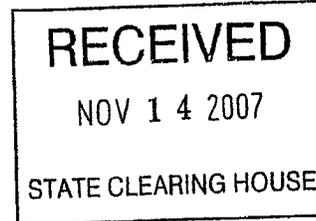


October 26, 2007

File No.: 265.11012.Lodishoppingcenter2007

SCH# 2003042113

State Clearinghouse  
1400 Tenth Street  
Room 121  
Sacramento, CA 95814



*clear*  
~~11-29-07~~  
*C*  
12-7-07

To whom it may concern:

3-1

Thank you for the opportunity to review the revisions to the Environmental Impact Report (EIR) and Notice of Completion for the Lodi Shopping Center Project located at the southwest corner of the intersection of West Kettleman Lane/State Route 12 and Lower Sacramento Road (#2003042113). The development area is in the northern half of San Joaquin County and within the City of Lodi. In addition, the development borders West Kettleman Lane/State Route 12 to the south, which is commonly used by commuters to access State Route 99 to the east, Interstate 5 to the west, and Interstate 80 in Solano County.

A project of this size will have an impact on traffic utilizing the surrounding county roads, as well as the commuters utilizing West Kettleman Lane/State Route 12, State Route 99, and Interstate 5. The California Highway Patrol (CHP) has the primary responsibility for traffic enforcement on the above mention roadways. These roadways will see an increase in the average daily traffic volumes. Specifically, the increase will primarily be felt during the hours of operation for the proposed Wal-Mart store.

The project plan includes approximately 40 acres and in excess of 1600 parking spaces. In addition, the EIR includes mitigation plans to reduce the impact on local traffic. The CHP has concerns that even with such planning; the project will impact local traffic and commuters. As such, it is important the San Joaquin County Department of Public Works, the City of Lodi and the California Highway Patrol work together in developing long range plans that are beneficial to all the citizens utilizing the transportation system.

Lodi Shopping Center

Page 2

October 26, 2007

3-1  
(cont'd)

The CHP believes this project will create challenges for daily commuters on an already busy roadway system in the area. As such, this development will directly impact the Stockton CHP's ability to effectively manage traffic without an increase in resources. Should you have any questions, please feel free to call me or Lieutenant Scott Lynch of my staff at (209) 943-8666.

Sincerely,

A handwritten signature in black ink, appearing to read "S. M. Coutts". The signature is stylized and cursive.

S. M. COUTTS, Captain  
Commander

cc: Special Projects Section

**RECEIVED**

DEC 10 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

4



**S J C O G, Inc.**

555 East Weber Avenue • Stockton, CA 95202 • (209) 468-3913 • FAX (209) 468-1084

*San Joaquin County Multi-Species Habitat Conservation &  
Open Space Plan (SJMSCP)*

**SJMSCP RESPONSE TO LEAD AGENCY  
ADVISORY AGENCY NOTICE TO SJCOG, Inc.**

**To:** Randy Hatch, City of Lodi Community Development Department  
**From:** Anne-Marie Poggio-Castillou, SJCOG, Inc.  
**Date:** December 4, 2007  
**Re:** **Lead Agency Project Title:** N/A  
**Lead Agency Project Number:** Lodi Shopping Center Draft EIR  
**Assessor Parcel Number(s):** Multiple

**Total Acres to be converted from Open Space Use:** approximately 40 acres

**Habitat Types to be Disturbed:** Agriculture/Multi-Purpose Land

**Species Impact Findings:** Findings to be determined by SJMSCP biologist.

Dear Mr. Hatch:

SJCOG, Inc. has reviewed application for the Draft EIR for the Lodi Shopping Center. This project involves the construction of approximately 339,966 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 13 buildings of varying sizes. The primary user will be Wal-Mart which will occupy which will approximately 226,868 square feet. The project is located at the southwest corner of West Kettleman Lane and South Sacramento Road. The project site is located entirely within the incorporated boundary of the City of Lodi.

The SJMSCP is requesting a revision on section E3 of the Draft EIR (Biological Resources). This section states that no mitigation is required. This project is subject to a site visit by a SJMSCP Biologist to perform a pre-construction survey prior to any ground disturbance. The project will also have to sign and return Incidental Take Minimization Measures to SJMSCP staff. This project will also have to pay current fees 30 prior to pulling permits (attached is 2008 fee schedule).

The City of Lodi is a signatory to San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Participation in the SJMSCP satisfies requirements of both the state and federal endangered species acts, and ensures that the impacts are mitigated below a level of significance in compliance with the California Environmental Quality Act (CEQA). Although participation in the SJMSCP is voluntary, lead agents should be aware that if project applicants choose against participating in the SJMSCP, they will be required to provide alternative mitigation in an amount and kind equal to that provided in the SJMSCP.

4-1

**4-1**  
**(cont'd)**

***This Project is subject to the SJMSCP.*** This can be up to a 30 day process and it is recommended that the project applicant contact SJMSCP staff as early as possible.

Please contact SJMSCP staff regarding completing the following steps to satisfy SJMSCP requirements:

- Schedule a SJMSCP Biologist to perform a pre-construction survey ***prior to any ground disturbance***
- Sign and Return Incidental Take Minimization Measures to SJMSCP staff (given to project applicant after pre-construction survey is completed)
- Pay appropriate fee based on SJMSCP findings
- Receive your Certificate of Payment and release the required permit

If you have any questions, please call (209) 468-3913.



# S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202

(209) 468-3913 • FAX (209) 468-1084

## San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

Victor Mow  
CHAIR

Ed Chavez  
VICE CHAIR

Andrew T. Chesley  
PRESIDENT

Member Agencies  
CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTECA,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

### 2008 Updated Habitat Fees\*

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$6,165
Natural	\$ 12,329
Agriculture	\$ 12,329
Vernal Pool - uplands	\$ 35,143
Vernal Pool - wetted	\$ 71,125

\* Effective January 1, 2008 – December 31, 2008

### 2008 Endowment Fees for In-lieu Land\*\*

Type of Preserve	Enhancement Cost/acre	Land Management Cost/acre	TOTAL PER ACRE ENDOWMENT
Agricultural Habitat Lands	\$2,737.47	\$1,543.30	\$4,280.77
Natural Lands	\$2,737.47	\$1,543.30	\$4,280.77
Vernal Pool Habitat			
Vernal Pool Grasslands	\$515.51	\$5,647.82	\$6,163.33
Vernal Pool Wetted	\$36,497.43	\$5,647.82	\$42,145.25

\*\* Effective January 1, 2008 – December 31, 2008 in lieu of fees to be used as the endowment for the preserve (Category B & C)

## LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2  
 Davis, California 95616  
 Telephone: (530) 758-2377  
 Facsimile (530) 758-7169  
 dbmooney@dcn.org

December 7, 2007

**VIA ELECTRONIC MAIL  
 AND REGULAR MAIL**

Randy Hatch  
 Community Development Director  
 City of Lodi  
 221 West Pine Street  
 Lodi, California 95241-1910

Re: Draft Revisions to the Environmental Impact Report for the Lodi  
 Shopping Center, State Clearinghouse No. 2003042113

Dear Mr. Hatch:

On behalf of the Citizens for Open Government ("Citizens"), we provide these comments on the City of Lodi's ("City") Draft Revisions to the Environmental Impact Report ("DREIR") for the Lodi Shopping Center project (or the "Project").

A. Background

5-1

The Lodi Shopping Center will be constructed on 40 acres of prime agricultural land on the west side of the City on the southwest corner of West Kettleman Lane and Lower Sacramento Road. The main purpose of the Project is to substitute a new 227,000 square foot Wal-Mart Supercenter for the existing Wal-Mart across the street. The Project also contains approximately 110,000 square feet of additional smaller scale commercial space.

The City considered an EIR for this Project once before and certified it as in full compliance with the California Environmental Quality Act ("CEQA") in early 2005. The Superior Court for the County of San Joaquin found otherwise. In litigation commenced by Lodi First, The Superior Court determined that the City made numerous errors in the analysis and remanded the EIR for an overhaul should the City desire to proceed with the Project. In the DREIR, the City takes a second shot at these areas analysis.

5-2

The Citizens also sued the City over the same EIR, asserting a range of additional CEQA errors. After prevailing on appeal to establish its right to sue, the Citizens agreed to dismiss its case when the City released a Notice of Preparation for the DREIR that included a reexamination of the CEQA issues the Citizens sought to litigate. For example, the City represented that it would revise the EIR's alternatives analysis to

5-2  
(cont'd)

incorporate revised project objectives and the inclusion of up to two additional project alternatives. (See April 19, 2006 City of Lodi Council Communication, April 10, 2006 letter from Pacific Municipal Consultants to Mr. Randy Hatch, appended thereto, at 4.) The DREIR produced by the City therefore represents an amalgam of analysis required by the Superior Court and voluntarily undertaken by the City. Because the City has expanded the scope of the revisions to the EIR beyond the mandate of the Superior Court, it cannot pick and choose; it must address the merits of all comments raised.

B. Applicable CEQA Requirements

5-3

CEQA generally requires that an agency analyze the potential environmental impacts of its proposed action in an EIR. (Pub. Resources Code § 21000.) The EIR is the heart of CEQA compliance and in preparing the document public agencies must interpret CEQA so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory scope.

The City's RDEIR must accomplish two fundamental purposes – which, as discussed below, it fails to do. First, the RDEIR must adequately inform the public and decision-makers about the potential, significant environmental effects of a proposed project prior to a commitment to the project. Thus, the EIR serves not only to provide protection to the environment but also for self-informed government. This informational requirement becomes vitally important if a public agency desires to approve a project notwithstanding unmitigated significant effects. CEQA Guidelines demand that as precondition to an agency's use of a "Statement of Overriding Consideration," its decision be "fully informed." (CEQA Guidelines § 15043.)

Second, an EIR must provide the City with information possible to avoid or reduce environmental damage whenever possible. (CEQA Guidelines § 15002(a)(2) and (3).) The identification of feasible alternatives and mitigation measures form the core of an EIR as CEQA requires that a public agency deny a project with significant adverse impacts when feasible alternatives and mitigation measures can avoid or substantially lessen those impacts. Similarly, before an agency adopts a statement of overriding considerations it must find that "there is no feasible way to lessen or avoid the significant effect. (CEQA Guidelines § 15043(a).)

C. Comments

1. Land Use – Urban Decay

5-4

We attach a report from Economic & Planning Systems ("EPS") critiquing the conclusions of the DREIR's conclusions regarding the urban decay impacts associated with Project. (Attachment 1.) In summary, the EPS Report undermines the ability of the City to rationally conclude that approval of the Lodi Shopping Center, together with the

5-4 (cont'd) | recently approved Reynolds Ranch retail project, will not result in business closures leading to urban decay.

5-5 | As described in greater detail therein, EPS also confirmed that the economic impacts of the Project, both individually and cumulatively, would be almost an exclusive reshuffling of existing retail dollars within Lodi. The consequences of this finding not only undermines the City's economic justification for the Project but also stands in direct conflict with the City's investment of time and money into revitalizing the downtown.

5-6 | Furthermore, we question the ability of the City to rely on "heightened" enforcement of its nuisance ordinance to forestall urban decay impacts. As noted in the DREIR (at Appendix A), substantial decay currently exists downtown. The City's "emphatic direction" to its staff nearly two years ago has apparently not resulted in any change or alternations to exiting conditions. Instead of focusing on correcting these blighted conditions, the City is choosing to place more economic pressure likely to lead to more closures. Given that the City has not been successful in abating decayed conditions existing downtown it cannot rationally conclude it will be able to abate such conditions in the future. Indeed, such hollow representations of future actions cannot serve as mitigation. (*Federation of Hillside & Canyon Assoc. v. City of Los Angeles* (2000) 83 Cal.App.4<sup>th</sup> 1252.)

5-7 | Finally, we note that the City's cumulative impacts analysis, particularly with respect to the Reynolds Ranch development, fails to address the additive effects on the downtown core. This is especially true where (1) the City has conducted no urban decay impacts arising from its approval of Reynolds Ranch project (in either its old or double-sized versions), and (2) both the Supercenter and the Reynolds Ranch project contain drug stores that will compete directly with the downtown Longs Drugstore. The City must assess the impact of the closure of the largest retailer downtown on the remaining downtown retailers. It also appears to us that the City failed to consider the additional impacts associated with retenanting the existing Wal-Mart. This required element of the Project (arising from a condition previously imposed) will add to the overall commercial space created by the Project and must be included in the analysis.

5-8 |

2. Agricultural Resources

5-9 | The DREIR concludes correctly that conversion of a 40-acre block of prime farmland constitutes a significant adverse impact that requires mitigation, if not outright avoidance. (DREIR, at 56.) As mentioned above, once the City made this determination it became obligated to adopt all feasible mitigation measures to reduce the impact to insignificance.

The DREIR proposes to mitigate the loss of prime farmland by requiring the Project proponent to purchase a conservation easement over up to 40 acres of prime farmland within 15 miles of the Project site. (RDEIR, at 56.) The value of this

5-9  
(cont'd)

mitigation, however, is substantially, if not totally, undermined by the City allowing the Project proponent to (1) purchase easements over an unlimited number of parcels that in the aggregate 40 acres, (2) reducing the amount of acres by 50% if the property is within an undefined area described only as "an area desired by the City." (*Id.*) It is of little surprise, therefore, that the City concludes this measure will only "somewhat" mitigate the impacts to agriculture and the significant effects remain. (*Id.*)

5-10

The City must do more. The City must explore options to minimize the loss of acreage (see comments on the DREIR's alternative analysis below). Next, the City must explore potential options to replace the lost acreage as direct mitigation. If significant impacts remain after the City exhausts the above options, the City must substantially tighten the conditions of the use on conservation easements. First, the City can feasibly increase the mitigation ratios to at least two acres conserved for every acre lost since the conservation of prime land is not directly offset by preserving existing prime farmland. Next, the City must drastically limit the number of parcels the Project proponent may in order to replace to the extent feasible the block acreage lost. The goal of agricultural land preservation should not be the fragmentation of prime farmland but the preservation of large blocks to maintain its economic viability and enhance its associated values. Under the current wording of the mitigation measure, nothing prevents the developer from purchasing 40 one-acre easements.

In order to adequately disclose to the public and decision-makers, the City must also define the areas "desired by the City" for conservation. If that area is the greenbelt, then the City should require the conservation to occur in that area in order to maximize the effect of the mitigation or produce an analysis that indicates such a direction is infeasible.

By mandating that the easement purchase occur in preferred areas, the City can also maximize the available mitigation value by deleting the reduced ration (0.5:1) incentive. Given that the City has concluded that significant adverse affects to agricultural resources will remain, it may only consider approving the Project if the City exhausts all available feasible mitigation measures. (CEQA Guidelines § 15043(a).) Given the high rate of conversion of prime farmland in and around Lodi, the City must require mitigation to the point of infeasibility, namely ratios of at least 2:1 or greater.

5-11

Finally, the City's cumulative impacts analysis for agricultural resources is woefully deficient and illustrates the City's constricted attitude towards its CEQA responsibilities. (DREIR, at 62.) In a conclusory one paragraph statement, the City's entire disclosure of cumulative impacts is this: "Similarly, other pending and approved projects in the City of Lodi sphere of Influence would result in the conversion of prime farmland to urban uses." The City thereafter notes that while conservation easements may mitigate this impact to a degree, the resultant adverse effect will both significant and unavoidable. (*Id.*)

5-11  
(cont'd)

CEQA demands more. The City must undertake a good-faith effort to fully disclose impacts. (CEQA Guidelines § 15151.) It may not simply declare an impact significant without informing the public and decision-makers of the nature, degree and significance of the impact. (*Berkeley Keep Jets Over the Bay Committee. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1370-1371.) In addition, the CEQA Guidelines Section 15130 provides detailed directions for an adequate cumulative impacts discussion. At a minimum, the City must disclose a project list or planning substitute and a summary of impacts. (*Id.*) The City's one sentence cumulative effects analysis fails to meet these minimum disclosure criteria.

5-12

3. Energy

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Over the last decade, global warming has become one the most critical environmental problems that humans must confront. Global warming is the subject of intensive international, national and state attention. The Summary for Policymakers of the Synthesis Report of the Intergovernmental Panel on Climate Change Fourth Assessment Report (Attachment 2) confirms that global warming is real, has substantial environmental consequences and has anthropogenic causes in the release of greenhouse gasses ("GHG"). Closer to home, the State of California recognizes the dramatic consequences of climate change, the impact is has and will have for the State and the critical importance of providing leadership in addressing the necessary steps to address the issue. (See *Our Changing Climate, Assessing the Risks to California: A Summary Report from the California Climate Change Center* (2006) (Attachment 3) ([www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF](http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF)).

The City's DREIR energy analysis stands in stark contrast to these international and state efforts. In response to the Superior Court remand order, the City prepared a new "Energy" impact analysis section in the DREIR. The energy analysis generally discusses energy requirements and the infrastructure systems in place to service the Project. (DREIR, at 66-72.) The analysis then discusses legislation directed at energy conservation efforts (*Id.*, at 72-74.) In three short paragraphs, the DREIR summarizes three pieces of legislation directed towards global warming and the production of GHG. (*Id.*, at 66, 73-74.) In fact, the DREIR dedicates more discussion to describing local zoning ordinances than addressing global warming issues. (*Id.*, at 75-77.)

5-14

Next, the City bases its energy effects analysis upon significance criteria chosen to avoid having to address global warming issues. The City's two significance criteria consist of (1) whether the Project will "[r]esult in the wasteful, inefficient or unnecessary consumption of energy; or (2) result in the need for "new or expanded sources of energy or new or expanded energy delivery systems or infrastructure" by creating so substantial a demand for energy or transmission capacity. (DREIR, at 78.) Under the first criteria, the City concluded that no significant impact will occur because construction of the Project will likely be efficient and not wasteful due to market incentives to reduce energy costs, and despite a 500 fold increase in operational energy consumption, the Project will

5-14  
(cont'd)

comply with California Energy Code Title 24 energy conservation requirements and a few project elements intended to add opportunities for alternative transit use. (DREIR, at 79-84.) Using the second criteria, the City likewise concluded no significant energy impacts because sufficient energy supplies and infrastructure exists to handle the massive energy consumption increases associated with the Project. (*Id.*, at 84-85.) Based on these conclusions, the City determines that no mitigation to the environment from this project's energy consumption is necessary. (*Id.*, at 84, 85.) Finally, in a one-paragraph cumulative effects analysis, the City concludes no significant cumulative energy impact from all pending and approved projects because "[t]here is no evidence" that these projects would use energy inefficiently or "would be subject to energy infrastructure constraints." (*Id.*, at 86)

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The City's energy CEQA analysis described above suffers from a slew of fundamental failures almost too numerous to describe. We summarize the most important ones here:

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- The City's introductory discussion fails to describe the nature, causes, and consequences of global warming in order to fully inform the public and decision-makers.
- The City must include a full description of the applicable statutory context including an accurate description of, *inter alia*, Governor Schwarzenegger's June 2005 Executive Order S-03-05. (Attachment 4.) The DREIR fails to disclose the aggressive goals of the State of California to reduce GHG emissions to ultimately 80% of 1990 levels – not just use more energy efficiently.
- The DREIR fails to disclose all sources of energy use/GHG emissions associated with the Project, including but not limited to inventory manufacture, inventory distribution, fugitive emissions, waste disposal, and water supply and delivery.
- The DREIR fails to disclose GHG emissions and instead just focuses on BTU consumption. Many tools exist to estimate GHG emissions from land use projects. (See K. Siegel, M. Vespa, B. Nowicki; *The California Environmental Quality Act, On the Front Lines of California's Fight Against Global Warming* (September 2007), at 14 (Attachment 5).)
- The DREIR uses meaningless standards of significance for assessing climate change impacts. The DREIR's significance criterion defines wasteful, inefficient or unnecessary consumption of energy as principally whether the building complies with Title 24 energy conservation requirements. Since the building must do so by the law, the significance criterion is meaningless. Moreover, the criterion is not an environmental standard but a policy one; it is divorced entirely from any measurement of environmental impact. For example, a project may be "efficient" but produce large amount of GHG. Given that California has set goals to significantly rollback GHG production, the City should use as a

- 5-20 (cont'd) | significance criteria whether the proposed project will result in an increase in consumption of nonrenewable energy. (See e.g., November 2007 Final Environmental Impact Report for the 2030 San Diego Regional Transportation Plan, at 4.7-21-4.7-22 (Attachment 6).) The City used a similar significance criterion in its air quality analysis for nonattainment criteria pollutants. (See August 2004 Lodi Shopping Center DEIR, at 120.)
- 5-21 |
- 5-22 |
- Even using the wrong significance criteria, the City's conclusion of no significant is not support by substantial evidence. For example, the DREIR concludes that no inefficient use of energy will result form the construction of the Project because fuel prices provide "a strong financial incentive to avoid wasteful, inefficient and unnecessary consumption of energy during construction." (DREIR, at 79.) Similarly, the DREIR speculates "construction materials could include recycled materials and products originating from nearby sources in order to reduce costs of transportation." (*Id.*) Different fiscal imperatives (e.g., contractual obligations), however, could just as easily pressure contractors to elevate speed over efficient fuel usage or to purchase the most inexpensive or readily available materials rather than those that emphasize a reduced carbon footprint. The DREIR conclusions regarding "bound energy" in construction materials are similarly facile. The DREIR states that it is "reasonable to conclude" that the production of construction materials would not use energy inefficiently because of the fiscal incentive to conserve. The City's blind reliance on market forces to maximize energy efficiency is not rational given that many factors, not just energy costs, drive how such materials are produced.
  - The City's conclusions regarding the operational energy requirements likewise lack a rational basis. The analysis reveals that the Project will increase energy consumption by 162 billion BTU, with about 90% of that amount coming from car trips (representing an approximate 6% increase in transportation fuel consumption in Lodi). (DREIR, at 82-83.) The City then determines that all of this fuel consumption will be efficient because car fuel standards may increase and the Project has a mix of types of commercial business that may result in employees not going off site for meals. (DREIR, at 83.) The City then asserts that as an automobile-oriented "regional commercial center," the Project will not include any efforts to provide alternative modes of transportation aside from bus stops and new sidewalks. (DREIR, at 83.) The City therefore concludes that all energy use will be efficient. This conclusion rests almost entirely on the assumption that continued patterns of land use development and auto mileage standards are de facto efficient. Moreover, the City's assertion that no alternative traffic modes are available does not render the Project energy efficient or not wasteful; it is rather a pro forma attempt at CEQA compliance couple with an uninspiring surrender to the status quo.
- 5-23 |

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- The DREIR's abbreviated cumulative impacts analysis fails to meet the minimum CEQA requirements. The City provides no list of projects or summary of cumulative impacts. Instead, the City's cumulative impacts energy analysis illustrates the absurdity of the selected significance criteria: since all projects will use energy efficiently because of legal requirements and fiscal incentives, no cumulative impacts will occur. (DREIR, at 86) The DREIR contains evidence of significant cumulative impact given the 6% percent rise in fuel consumption from this project alone. If the similar size Reynolds Ranch development has similar trip rates and distances, then these two projects will alone lead to a 12% increase in fuel consumption in Lodi.

5-25

Using the appropriate significance criteria and fully disclosing GHG emissions, and undertaking a meaningful cumulative effects analysis, the City will likely find that the Project will significantly affect the human environment. Once it does, it must consider a full range of alternatives and mitigation measures. (See below for a critique of the DREIR's analysis of project alternatives.) The City should first consider a range of alternatives to reduce energy consumption, including but not limited to mandating the use of recycled and salvaged materials, requiring the installation of photovoltaic arrays to meet the Project's energy needs, using all feasible building construction techniques to decrease energy demands, mandating use of the highest efficiency possible for cooling and heating equipment, and aggressively mandating measures to encourage alternative modes of transportation (e.g., increasing level of bus service), and reduction of vehicles trips (e.g., carpooling). Once the City has exhausted all feasible measures to reduce the GHG output of the Project, it should then require the Project proponent to offset the remaining new emissions.

5-26

Because the flaws associated with the DREIR's energy analysis are so egregious, widespread and fundamental, the City should undertake a new analysis and recirculate it for public review and comment.

#### 4. Air Quality

5-27

In response to the City's Notice of Preparation for the DEIR, the San Joaquin Valley Air Pollution Control District ("District" or "SJVAPCD") informed the City that the District had recently adopted Rule 9510 (Indirect Source Review, effective January 2006). (DREIR, Appendix A (unpaginated pages).) Rule 9510 requires disclosure of PM10 and NOx emissions for all phases of the Project. Rule 9510 also requires specific mitigation to reduce emissions of both pollutants. The District also commented that it could not find support for the City's conclusion in the EIR that the Project's loading docks would not pose a threat to sensitive receptors. The District requested that the City prepare a Health Risk Assessment ("HRA") to in order to document the Project's impacts on the health of local citizens. (DREIR, Appendix A.)

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(cont'd)

In response to the SJVAPCD's human health concerns, the City asserts that it has no obligation to conduct any of the suggested analyses. "[N]one of the subjects raised in the agency letters involve issues that the Superior Court identified for reanalysis in this document and therefore do not involve subjects that are open for review." (DREIR, at 30.) The City's hyper-legalistic position is untenable. For example, Rule 9510 applies to the Lodi Shopping Center because it involves discretionary approval of a new development project larger than 2,000 square feet. (DREIR, Appendix A.) The City simply lacks discretion to ignore applicable law. Moreover, Rule 9510 provides the City with an opportunity to disclose to the public the PM10 and NOx construction emissions and require emissions reduction to improve the health of its citizens.

5-28

Similarly, the City may not turn a blind eye to the District's not so subtle suggestion that the toxic pollutant analysis in the EIR was not adequate to support the conclusions reached. While the air quality analysis was not directly part of the Superior Court's remand, the City lost the ability to arbitrarily limit the scope of the DREIR when it expanded that scope beyond the remand topics. In this vein, we note that the City failed to disclose the Project's construction and operational PM2.5 emissions. We attach a recent report from the Union of Concerned Scientists that address the pernicious impacts from these ultra-fine particles. (Attachment 7.) The City should correct the EIR by providing a complete air quality analysis in response to these concerns.

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#### 5. Alternatives

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The alternatives analysis of any EIR plays a critical rule in implementing CEQA's twin goals of informing and avoiding or lessening environmental degradation. When the public and decision-makers are exposed to a range of feasible alternatives that offer substantial environmental benefits, an informed discussion weighing the full detriments and benefits of the proposed Project and alternatives may occur.

5-31

As set forth in detail in Citizen's lawsuit, the original EIR's alternative analysis was deeply flawed. (See Petitioner's Opening Brief, copy attached, at 12-18.) Because the EIR presented no feasible alternative that offered environmental benefits over the proposed project, it deprived the City of a "reasoned choice" between the proposed project and meaningful options. (*Id.*) Recognizing that its initial attempt at an adequate alternatives analysis fell short, the City took steps to provide a meaningful range. It represented to the public that its consultants would include in the DREIR up to two additional project alternatives. (See April 19, 2006 City of Lodi Council Communication, April 10, 2006 letter from Pacific Municipal Consultants to Mr. Randy Hatch, appended thereto, at 4.)

Somewhere, however, the wheels came off the track. At some point the City, or the developer paying for the new analysis, directed that no new alternatives be considered. Thus, the DREIR presents no additional alternatives and seeks through crafty edits only to bolster the "non" alternatives presented in the old document. (DREIR, at

**5-31** | 91-107.) The Citizens therefore incorporate as comments on the DREIR the arguments  
(cont'd) | made at pages 12-18 in its Opening Merits Brief. (Attachment 8.)

**5-32** | The City should reconsider carefully its decision to reverse its earlier direction to  
| provide a meaningful range of feasible options to the Project as proposed. As noted  
| above, the proposed Project offers little if any fiscal benefits to the City, creates severe  
| economic pressures on the downtown core directly contrary the City's efforts to nurture  
| and expand the downtown Lodi's commercial viability, only redistributes the existing  
| retail pie rather than "meeting unmet retail demand," and has significant unresolved  
| environmental issues. The task before the City therefore is to think creatively about what  
| alternatives exist to the Wal-Mart Supercenter and associated retail as proposed.

**5-33** | The Citizens offer the following considerations in aid of developing a legally  
| adequate range of alternatives:

**5-34** | • A Wal-Mart exists across the street. What project elements resulting  
| super-sizing the existing store are (1) necessary and (2) in the interest of  
| the Lodi community given the range of adverse economic and  
| environmental effects caused thereby?  
| • The City unnecessarily constrains alternative by asserting that only full-on  
| retail meets the "C-S Commercial Shopping" zoning overlay. (DREIR, at  
| 92.) Given that the City recognizes that an excess supply of retail exists,  
| and that the Project will duplicate retail options already or planned to be in  
| existence, the City should consider whether it should provide the  
| landowner with a broader array of development options instead of either  
| full retail or the existing agricultural use.

**5-35** | • Re-examine its unsupported conclusions that a reduced density alternative  
| is would not be "economically feasible." (DREIR, at 92.) The City also  
| rejected any reduced density alternative by asserting that any reduction in  
| density would not reduce to insignificance the significant environmental  
| impacts caused the Project as proposed. (Id.) To be feasible, an  
| alternative need only provide a substantive environmental improvement,  
| rather than resolving all significant impacts. We also urge the City to  
| closely consider the remaining objections to a reduced density alternative.  
| The policy justifications presented regarding "inefficient use of land"  
| would lead to the rejection of all alternatives for all development projects  
| that do not fully develop the entire parcel – an irrational position. It is also  
| difficult to conceive how a reduced size alternative would not promote  
| "compact and efficient" development is designed sensibly and consistently  
| with "smart growth" principles.

**5-36** | Pursuant to CEQA's mandate of providing the public and decision-makers with a  
| reasoned choice among feasible alternative, the Citizens urge the City to stick to its prior

5-36  
(cont'd)

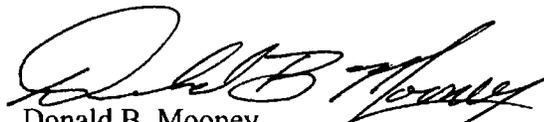
decision to formulate a viable alternative taking into consideration the needs of the entire community and heightened environmental protection

D. Conclusion

5-37

As described above, fundamental flaws pervade the City's DREIR. Substantial work must be done in order to provide the public and the City's decision-makers with a CEQA document that meets minimum obligations. The City must revamp its urban decay analysis, it must substantially increase and rethink its mitigation for loss of prime farmland, it must provide a complete disclosure and analysis of impacts to global warming, it must revise and bolster its air quality analysis and mitigation measures consistent with direction from the SJVAPCD, and it must present a range of feasible alternatives so a reasoned choice may be made. On behalf of the Citizens for Open Government, we urge the City staff and Planning Commission to withdraw the DREIR, conduct the necessary analysis and recirculate the new document.

Sincerely,



Donald B. Mooney  
John L. Marshall  
Attorneys for Citizens for Open Government

Attachment 1: Economic & Planning Systems Memorandum to Law Offices of Donald B. Mooney, December 7, 2007

Attachment 2: Summary for Policymakers of the Synthesis Report of the Intergovernmental Panel on Climate Change Fourth Assessment Report, Draft Copy, 16 November 2007

Attachment 3: *Our Changing Climate, Assessing the Risks to California: A Summary Report from the California Climate Change Center (2006)*

Attachment 4: Governor Schwarzenegger's June 2005 Executive Order S-03-05

Attachment 5: K. Siegel, M. Vespa, B. Nowicki; *The California Environmental Quality Act, On the Front Lines of California's Fight Against Global Warming (September 2007)*,

Attachment 6: November 2007 Final Environmental Impact Report for the 2030 San Diego Regional Transportation Plan, at 4.7-21-4.7-22

Attachment 7: *Digging Up Trouble: The Health Risks of Construction Pollution in California*, Union of Concerned Scientists

Attachment 8: Petitioner's Opening Merits Brief

6

**Randy Hatch**

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**From:** AAAdkins [AAACOMPSVC@SBCGLOBAL.NET]  
**Sent:** Sunday, November 11, 2007 05:17 PM  
**To:** Randy Hatch  
**Subject:** Wal-Mart vs. Downtown Lodi  
**Importance:** High  
**Sensitivity:** Confidential

My husband and I received your flyer regarding the above topic and I would like to respond on behalf of both of us.

We are FOR the new Wal-Mart store, which we understand is to be built on the west side of Lodi, for the following reasons:

1. There is not enough adequate parking downtown. Since downtown Lodi thought more of the visual aspects when remodeling the downtown area a few years back, (i.e., the ridiculous placement of trees in the parking areas), as opposed to convenience (at least for the elderly) we do not shop downtown often. At least the movie theater has a number of disable parking spots so we can go there from time-to-time; but the trees took the stores disable spots. We do understand that the parking garage is supposedly accessible to the downtown area, but in reality it is far to far away at least for the elderly. Wal-Mart on the other hand has ample disabled parking close to the front of the store.
2. Do you see any grocery stores downtown? No. When we go shopping, it is far more convenient to do all our shopping in one area and park only once. Hence we tend to go to malls where all the stores are condensed in one area.

We are sorry that having the new Wal-Mart in Lodi might have a negative affect on the downtown area, but we really think most of the shop owners would be able to find shops in any number of the new malls around Lodi.

Maybe it would be nice if downtown Lodi focused on more reasonably priced eating establishments and bring in some of the more affordable restaurants such as Olive Garden, Black Angus, Outback, etc, etc.

We really feel downtown Lodi is trying to appeal to the waaaayyy upper class citizen and we really don't think the wealthy are going to be shopping, on a regular basis, on basically a one street shopping area. They go to SF or Sacramento where the big stores are located.

We think it was a waste of money to renovate the downtown area the way it was. The

11/14/2007

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**6-1**  
(cont'd)

arch on School and Lodi Ave was way overpriced and completely unnecessary as we already have an arch on Pine & Sacramento Streets; the trees get better parking than the citizens and it is impossible for two cars to pass on any of the East/West streets when the diagonal parking is filled.

Don't get me wrong, we love Lodi and we do not want to see the downtown streets go to shambles, but keeping Wal-Mart out of Lodi is not the solution.

Sincerely,

James & Alice

11/14/2007

7

Mr. Randy Hatch  
Community Development Office  
City of Lodi  
PO Box 3006  
Lodi, CA 95241

**RECEIVED**  
DEC 07 2007  
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

RE: Revisions to the Lodi Shopping Center EIR

Dear Mr. Hatch:

7-1

While I like the idea of people riding bikes or walking to the stores in the Lodi Shopping Center and the Wal-Mart, it's quite unrealistic that this will be the case. People buy in bulk at big box stores, especially if they are buying groceries at the Supercenter. They're going to need cars and trucks to bring their goods back home. Just looking at the vehicles we drive here in the city, those will be SUVs, pick up trucks and minivans.

Since it is mentioned in the Energy Section, you'll need to revise the draft to reflect the reality that it will be almost 100% dependent on personal vehicle traffic.

Thank you,

Ken Allen  
Signature

Ken Allen  
Print Name

807 Westwind Dr.  
Address

Lodi

334-2181  
Phone

cc: Lodi City Council

8

**Randy Hatch**

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**From:** Alex Aliferis [aaliferis@ahiworld.org]  
**Sent:** Thursday, October 18, 2007 01:31 PM  
**To:** Randy Hatch  
**Subject:** Why does Lodi need a bigger Walmart?

Dear City of Lodi,

As a person who has roots in Lodi, it is absurd that the city of 60,000 will allow a huge store be built. Lodi for a proportion of its population can't afford to lose more existing retail base. The present Walmart is fine and we don't need another super-size Walmart.

The negatives outweigh the positives. What Lodi needs are more companies coming to Lodi to give good jobs to people such as manufacturing, call centers, distribution centers, etc. What does Lodi need another huge retail store, when you have alot for small city? Davis, CA does not have a Walmart, Target, K-mart and does just find because its downtown is vibrant.

Sincerely,

Alex Aliferis

8-1

9

**Randy Hatch**

**From:** Mark Anaforian [mjanaforian@sbcglobal.net]  
**Sent:** Friday, November 09, 2007 04:16 PM  
**To:** Randy Hatch  
**Subject:** Wal Mart project

Richard,

I feel I am uniquely qualified to discuss the proposed Wal Mart supercenter project now being discussed again in Lodi.

9-1

When the original Wal Mart opened in Lodi, I was a manager at the Lodi Avenue Longs Drug. When that store opened we saw our sales drop by almost one half. The consequences of such a dramatic drop off in business made us have to lay off employees or drastically reduce their hours. My experience flies directly in the face of Wal Marts claims that they only add jobs to the market not take them away. Longs Drugs also valued their employees by offering health care, 401K's and profit sharing. Most folks that work for Wal Mart are not offered those benefits. As a result you have a work force that is struggling to make ends meet and less likely to have the extra dollars to patronize Lodi's other business establishments.

9-2

Another point that needs to be addressed is Wal Mart's assertion that other businesses will not be affected by a supercenter. For the definitive debunking of that argument we need only look a few miles to the south. When the Wal Mart supercenter opened in Stockton, the S.Mart on the corner of Hammer and West Lane was forced to close. My present position as a salesman selling product in all the major drug and grocery chains makes me uniquely aware of the current market conditions. I can guarantee you that if a Wal Mart is allowed to be built in Lodi, Safeway, Food 4 Less and the S.Mart on Kettleman Lane would suffer a major loss in business and either be forced to close or lay off workers.

A final point that must be made is to the general look of Lodi. If a supercenter is allowed to be built, what will happen to the existing store. In Stockton they were told that another store would occupy that spot. Well it finally happened, but it took over 2 years. I don't know if you ever went by that empty store but it was an eyesore. Fortunately for Stockton it is tucked back off of Hammer Lane. Lodi does not have that luxury as that shopping center is very open. Do we want the first thing that people see when they drive in on Highway 12 or Lower Sacramento Rd. to be an empty store that is home to trailers, used cars and mobile homes? As a lifelong resident of Lodi, my answer is a big no!

So I urge you and the council to do what's right for Lodi and their current resident employees. Say no to Wal Mart and say yes to all the folks that work in Lodi and pay their taxes. The prize that Wal Mart is suggesting is nothing more than fools gold.

Thank You for your time  
 Mark Anaforian  
 625 Black Oak Way  
 Lodi, CA 95242

11/14/2007

10-1



RECEIVED

October 19, 2007

OCT 22 2007

Community Development Dept

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

I have lived in Lodi for 45 years. Lodi has grown quite a lot since then. We still have a lovely town with small shops a nice downtown area and a K Mart and Walmart. Why do we need a larger Walmart? It definitely will take business away from existing stores downtown and elsewhere in Lodi. Let's keep our small town atmosphere. We don't need our small business shops to close. Our town will be absolutely awful.

Please do not let the giant Walmart in.

*Gerri Arrigale*



Ms. Gerri Arrigale  
512 Connie St.  
Lodi, CA 95240



11

**Randy Hatch**

---

**From:** Deb Bacon, Costume/Party [debbacon@sbcglobal.net]  
**Sent:** Thursday, November 08, 2007 09:24 PM  
**To:** Randy Hatch  
**Subject:** No on Wal-Mart Superstore

11-1

I do NOT want to perpetuate a slum at Lower Sac & Hwy 12 with a Wal-Mart superstore, especially at the expense of our wonderful Downtown! The most I've seen Wal-Mart do in Lodi is send out beautiful, glossy propaganda in favor of Wal-Mart building their superstore.

The store they have is just fine for Lodi. Why do they need a superstore? There isn't enough business in Lodi, apparently, to warrant keeping their current store open 24 hours. I think that speaks volumes for why we DON'T need a Wal-Mart superstore in Lodi.

Regards,

Debra Bacon

11/14/2007

12

December 4, 2007

Randy Hatch  
Community Development  
P O Box 3006  
Lodi CA 95241

**RECEIVED**

DEC 05 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

re: proposed revised draft EIR to the City

Dear Randy:

The yellow flyer that has been circulated should, at the least , been honest and not presented a distorted view of what may or may not take place.

If the "taxpayers" put up \$16 million in downtown improvements, then we got taken to the cleaners. I have been under the impression that the Downtown Association" has paid for a lot of the work that has been done.

Competition has made this country what it is. There are a few "local stores" that do much to improve our community. You know where the sales tax revenue is generated – and this is from "outsiders" type companies.

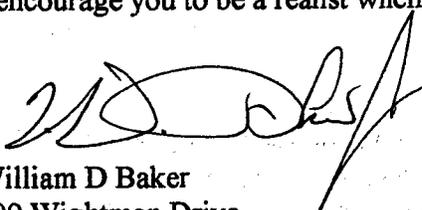
Wal-Mart is here. That is a fact. So they want to enlarge their ability to sell more merchandise. I have been lead to believe that the store would not exist if people did not buy from them. We shop there as a sort of last resort because they will usually have what we are looking for. Therefore, you can see that we are not necessarily "pro Wal-Mart" but then we are not opposed to them either.

Trying to protect the Unions is not what the majority of us want.

The "Lodi First" group should be compelled to reveal who is putting up the money for their campaign.

As to the possibility of the City requiring a mitigation fee of something like \$1 million – well, in the real business world, this equates to extortion.

I encourage you to be a realist when it comes to stifling competition.

  
William D Baker  
809 Wightman Drive  
Lodi CA 95242

13

1158 West Armstrong Road

Lodi, Ca. 95242

November 10, 2007

RECEIVED

NOV 12 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Randy Hatch  
Community Development Office  
City of Lodi  
221 West Pine Street  
P.O.Box 3006  
Lodi, Ca. 95241 Re: WAL MART

Randy Hatch:

We live outside the city limits of Lodi. WE are retired and live on a fixed income. Because we live outside the city limits we have no say as to what

the city decides for us.

We are very disappointed that with the fact that the city is more concerned about downtown business than the revenue that Wal Mart would bring

to our community.

The downtown stores are mostly specialty shops which are more expensive and with our present economy , putting more money into the downtown

area will not solve the problems of parking, security, and increased rent to the shop owners.

A Super Wal Mart would be convenience for general shopping but if its groceries that you want you will still continue to go to the grocery store.

Therefore there would be very little impact to grocery stores in Lodi.

We have lived in Lodi for 9 years . I was born in Lodi and returned because of our love for the area. Presently we do our shopping at Wal Mart

and Costco stores in Stockton. We do our grocery shopping in the local grocery stores in Lodi.

We hope that the city of Lodi will reconsider a Wal Mart for our community and the revenue that it will bring into Lodi.

In the future Lodi needs to consider a Hof Brau and an American Buffet. There are a lot of seniors that would love to have this in our community.

Sincerely,  
Mr and Mrs John Ballantine

13-1

14

RECEIVED

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Lodi Community Development Office  
221 W Pine Street  
Lodi, CA 95241

Re: Lodi Shopping Center DEIR

Dear Randy Hatch,

14-1

I am a member of the community group, Lodi First. As such, I would like the city to define more clearly where there is leakage in retail, enough so that it justifies building an entirely new shopping center. Has the city conducted a retail leakage study? The city should conduct a retail leakage study as part of the approval process. If the city cannot prove there is significant leakage in the proposed area of the new shopping center, then it should require all new retail development to occur in the areas least served, such as the East Side. How can the city look at approving a new shopping center in a shopping district with an over-abundance of retail when the East Side of Lodi is without? The East Side residents already have to drive across town to shop. There are only a few stores existing in the East Side, yet the city is considering a proposal to build more commercial retail at southwest Kettleman? It doesn't make sense. Urban decay already exists in the East Side and it will continue as long as the city continues to approve big box stores like a Wal-Mart Supercenter! The DEIR should determine whether or not there is significant loss of sales in the proposed area of the Lodi Shopping Center compared with the East Side. Please take all of these into consideration and address them in your final report. Thank you.

Sincerely,

  
Signature

Jesse Barnett  
Print Name

2441 Ivory Ln.  
Address

Lodi CA 95242

327-5745  
Phone

cc: Lodi City Council

15

**Randy Hatch**

---

**From:** Jeanette Bedford [sjmmbedford@yahoo.com]

**Sent:** Tuesday, November 13, 2007 08:42 AM

**To:** Randy Hatch

**Subject:** No Wal-Mart!

What more can I say?

15-1

**No more Wal-Mart under any  
conditions!**

Jeanette Bedford

---

Never miss a thing. [Make Yahoo your homepage.](#)

11/14/2007

16

Mr. Randy Hatch  
Community Development Director  
City of Lodi  
221 West Pine Street  
PO Box 3006  
Lodi, CA 95241

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Dear Mr. Hatch:

16-1

I am writing regarding the revision to the Lodi Shopping Center EIR. As a long time Lodi resident, I'm worried about the impact the project will have on Lodi's downtown revitalization efforts. What can be done to make sure Wal-Mart will pay their fair share if downtown businesses close as a result of the Supercenter opening?

Thank you,

*Dorah Blankenship*  
1846 Robin Lane  
Lodi 95240

17

Mr. Randy Hatch  
Lodi Community Development Office  
221 West Pine Street  
Lodi, CA 95241

RECEIVED

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Randy,

17-1

Reading the Energy section of the Wal-Mart Supercenter revised EIR, it discusses transportation fuel and that California's production and use. It mentions that gasoline, while plentiful in the Central Valley, is transported by tractor trailer truck. The shopping center will contain a mix of retail uses. Are there any plans for a gas station/minimart in the shopping center? If yes, will fuel deliveries be factored in when determining energy usage?

Thank you,

Lynette L Brewer  
Signature

Lynette L Brewer  
Print Name

847 Tilden Dr  
Address

Lodi CA 95242

209-567-9335  
Phone

cc: Lodi City Council

18

Mr. Randy Hatch  
City of Lodi  
PO Box 3006  
Lodi, CA 95241

RECEIVED

DEC 07 2007

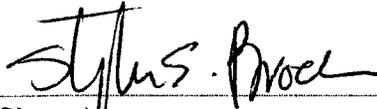
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch:

18-1

Did the energy section in the new Lodi Shopping Center EIR factor in the other stores which would be on the site, or did it only focus on the Wal-Mart Supercenter? While the Supercenter maybe considered a "green building", what about the other retailers? Will they be held to the same standards at Wal-Mart? I don't believe that was discussed in the new EIR.

Thank you,



Signature

Stephen Brock

Print Name

859 Westwind Dr

Address

Lodi, CA 95242

209 - 369 - 4385

Phone

cc: Lodi City Council

11-15-2007  
RECEIVED

NOV 19 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

To the Community Development Department of Lodi,

19-1

My name is Brenda Burghardt I am a citizen of Lodi, a wife and mother of three. I save a shocking amount of money when I have the time to shop at Wal-Mart Supercenter in Stockton. If I had the time and energy to shop there once a week I could save enough money to enroll my children in the athletic and arts programs that Lodi has to offer. I really am surprised that the people who oppose the Supercenter use downtown Lodi as an example of what Wal Mart would hurt financially. The shops downtown are really overpriced and I believe benefit from tourists, not parents of small children. Therefore, I do not shop there on a regular basis. When I have family or friends who come to visit we go downtown for lunch and to window shop, because it is the nicest part of Lodi. We would never take our guests to Wal Mart; that's just silly. I think the taxes collected from a Wal Mart Supercenter could do a lot for Lodi like: beautify downtown, build a delta college extension, support art programs in our schools, beautify Kettleman and Cherokee roads, after all that is our first impression we give to our visitors.

And what do we do with the old Wal Mart building? Invite The Wal Mart people to put one of their Sam's Clubs there. But let's go back to downtown, how do we get our citizens of Lodi to spend more money in our beautiful downtown? Easy! Invite Blue Tomatoes Restaurant to occupy one of the vacant buildings. It is a family friendly healthy dining experience. Look into Tot Drop, it's a successful chain business that caters to parents who would like to drop their children off at a safe fun place that would allow a parent to meet a friend for lunch or visit one of our many fine beauty salons we have downtown.

There are lots of things Lodi can do to generate more business for their downtown merchants. If the Community Development Department of Lodi would develop more family friendly businesses, the moms and dads of Lodi would spend more of their money here! Restricting a Wal Mart Super Center isn't thinking outside the box or protecting our lovely, charming, downtown.

Sincerely

Brenda Burghardt who is full of ideas and really wants the Wal Mart Supercenter in Lodi!

Brenda Burghardt  
1120 S. Lee Ave  
Lodi CA 95240

Ann M. Cerney  
900 W. Vine Street  
Lodi California, 94240

**RECEIVED**

**DEC 07 2007**

**COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI**

December 6, 2007

Randy Hatch  
City of Lodi  
Community Development Director  
221 West Pine St.  
Lodi, CA 95241

Dear Mr Hatch:

Re: Draft Revisions to the Environmental Impact Report for the Lodi Shopping Center

This letter provides my comments on the Draft Revisions to the Environmental Impact Report ("DREIR") for the Lodi Shopping Center ("Project"). As noted below, the DREIR still has several deficiencies that must be addressed prior to certification of the RDEIR and Project approval.

**Construction Emissions Must Be Minimized**

20-1

The DREIR does not contain any information responsive to the comments of the San Joaquin Valley Air Pollution Control District ("District") on the Notice of Preparation ("NOP"). As pointed out by the SJVAPCD, Rule 9510 now provides very detailed guidance to projects to quantify and mitigate construction related emissions. The RDEIR should be updated to include analysis of how the Project will reduce construction exhaust emissions by 20 percent for nitrogen oxides (NOx) and 45 percent for PM10 when compared to the statewide fleet average, as required by Rule 9510.

20-2

### **Health Risk from Diesel Exhaust Emissions Must be Addressed**

As pointed out by the SJAPCD NOP comment letter, delivery truck trips to the Project will also expose individuals along delivery truck transportation routes and near loading docks to diesel particulate exhaust, which is a carcinogen. The Project will require a large number of delivery trucks, maintenance vehicles, and refuse haul trucks. Trucks, which are typically diesel-powered, emit diesel exhaust particulates while driving along haul roads, maneuvering into loading docks on site, idling at the loading docks. In addition, refrigerated trucks keep their auxiliary power unit (“APU”) running while at the loading dock to keep refrigerated goods cool.

A health risk analysis conducted in connection with just a 92,677 square foot *expansion* of a Wal-Mart in Redding, for instance, indicated that the addition of three truck trips per day would result in a health risk of 13 cases of cancer per million.<sup>1</sup> The approximately 340,000 square foot overall Project (including a 227,000 square foot Wal-Mart) will entail many more truck trips than the Wal-Mart expansion example, potentially posing a significant health risk to sensitive receptors.

This new impact must also be analyzed and disclosed by conducting a health risk analysis for the Project. The HRA should take into account the residential uses that have been approved to the south of the Project. Additionally, mitigation measures should prohibit trucks from idling and require that trucks turn off APU’s and transportation refrigeration units (“TRUs”) while at the loading docks.

### **Agricultural Mitigation Lands Require an Adequate Endowment and Must Be Placed on Suitable Lands**

20-3

The DREIR has been revised to now include a requirement to purchase agricultural conservation easements to partially mitigate for the Project’s impacts related to agricultural land conversion (Mitigation Measure B1). This mitigation measure must require that the conservation easement be accompanied by an adequate endowment to ensure that the conservation values of the easement can be maintained in perpetuity.

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<sup>1</sup> / Final EIR for Wal-Mart Expansion Project, State Clearinghouse No. 2005042143 (February 2007), at pp. 2-6 to 2-7.

20-3  
(cont'd)

As recognized in the San Joaquin County Agricultural Mitigation Ordinance,<sup>2</sup> every easement must be accompanied by an adequate fee or endowment to cover the costs of administering, monitoring and enforcing the easement. (Ordinance Code of San Joaquin County, § 9-1080.3(d)(1).) According to San Joaquin's nexus study supporting the agricultural mitigation fee, the non-acquisition portion of the calculated mitigation fee was \$1,775.00 per acre, or about 5 percent of the transaction value. This is consistent with the policy of the Central Valley Farmland Trust ("CVFT") to require a contribution of 5 percent of the appraised value of the conservation easement, with a minimum contribution of \$10,000.

In past transactions where the City agreed to hold the conservation easement, a one-time negotiated easement endowment fee was required. If the City ultimately holds the easement(s) for this Project, the City should require an endowment similar to the San Joaquin County Ordinance and the CVFT policy, which is based on the transaction value. It is important that applicants pay their full share of the easement mitigation and monitoring costs, rather than burdening future City taxpayers with those costs.

Mitigation Measure B1 should also be revised to require that the conservation easements meet basic guidelines to ensure that they provide the best possible mitigation values. To this end, CVFT has adopted easement selection guidelines. (Attached as Exhibit A.) The San Joaquin County Agricultural Mitigation Ordinance also includes criteria for acceptable mitigation lands. (Ordinance Code of San Joaquin County, § 9-1080.5.) These or similar selection guidelines should be incorporated into Mitigation Measure B1.

#### **Energy Use and Contributions to Global Climate Change Must be Minimized**

20-4

The United States contributes the greatest percentage of greenhouse gas ("GHG") emissions worldwide.<sup>3</sup> The State of California is the second largest contributor of GHG in the United States, and the sixteenth largest in the world.<sup>4</sup> Although the RDEIR mentions statewide legislation to reduce the GHG emissions that contribute to global climate change, the RDEIR does not disclose the carbon footprint of the project nor require mitigation of the intense energy use of the project. The RDEIR also fails to analyze the Project's cumulative contribution to global climate change. The Project's GHG emissions must be quantified, disclosed, and evaluated to ensure that the Project will not impede the legislative mandate to reduce statewide GHG emissions to 1990 levels by 2020.

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<sup>2</sup> / Ordinance Code of San Joaquin County, § 9-1080 et seq.

<sup>3</sup>/ U.S. Environmental Protection Agency, Office of Atmospheric Programs (April 2006) The U.S. Inventory of Greenhouse Gas Emissions and Sinks: Fast Facts:

20-4  
(cont'd)

Energy demand for the Project will be in the range of 162 billion BTU of electricity, natural gas and transportation fuel per year. The RDEIR discloses that the project would increase overall energy use 500 times the energy demand of current agricultural practices. Given the seriousness of global climate change and regional air quality issues, energy consumption must be analyzed and reduced with enforceable mitigation measures.

Oddly, the RDEIR only discusses the energy conserving features expected to be included in the Wal-Mart portion of the project. The overall project includes 13 buildings and 339,966 square feet of retail space. Energy conserving measures should be required throughout the project, not just within Wal-Mart.

Moreover, the City must consider feasible alternatives and mitigation measures for Project contributions to global climate change.<sup>5</sup> For instance, the Project should have an “integrated” or “whole building” design, which considers the interrelation of all aspects of building, including the structural components, heating and cooling systems, lighting, window, walls and interior finishes. Integrated design would include incorporation of up to date, modern mitigation measures to reduce energy consumption. As stated by the California Energy Commission, “using energy efficiently is a far-reaching strategy that can make an important contribution to the reduction of greenhouse gasses.”<sup>6</sup> Moreover, energy conservation will increase comfort levels, and help to create and maintain a healthy environment.<sup>7</sup>

20-5

Many feasible mitigation measures are available to reduce impacts relating to energy demand and consumption, which would also reduce the carbon footprint of the Project. The following measures should be required throughout the Project to reduce the Project’s energy use, which will also reduce the Project’s air quality impacts as well as its contribution to global climate change:

- (a) Follow minimum ratings of the LEED system for construction of the Project.<sup>8</sup> Potentially applicable LEED standards include: LEED for Commercial Interiors, LEED Core and Shell Development and LEED for Retail-New Construction.

---

<http://epa.gov/climatechange/emissions/downloads06/06FastFacts.pdf> (as of June 27, 2007).

<sup>4/</sup> California Coastal Commission (Discussion Draft, Dec. 2006) Global Warming and the California Coastal Commission, p. 7.

<sup>5/</sup> See Pub. Resources Code, § 21166, subds. (a) and (c).

<sup>6/</sup> California Energy Commission, 2005 Nonresidential Compliance Manual (2005) Introduction, pp. 1-5.

<sup>7/</sup> *Id.*

<sup>8/</sup> See, e.g., <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=298>.

- (b) Increase energy efficiency above California Title 24 Requirements,<sup>9</sup> such as energy efficient lighting (e.g., light-emitting diodes (“LEDs”)), heating and cooling systems, increased wall and ceiling insulation, energy efficient windows, high-albedo (reflecting) roofing material,<sup>10</sup> radiant heat barriers, and cool paving.<sup>11</sup>
- (c) Include a solar power component to reduce the site’s power consumption.<sup>12</sup>
- (d) Install low energy consuming devices.
- (e) Acquire emission reduction credits.
- (f) Include transit-enhancing infrastructure such as a transit shelter, benches, turnouts and signs.
- (g) Impose programs that would encourage or mandate employee transit ridership such as distribution of subsidized transit passes.
- (h) Pay for fleet vehicle conversions to alternative fuels.
- (i) Provide bicycle-enhancing infrastructure to the site, including bike paths, bike parking, and employee lockers and showers.
- (j) Include solar power and water heating systems to reduce the site’s power consumption.<sup>13</sup>
- (k) Include electric vehicle charging stations and/or infrastructure for neighborhood electric vehicles.
- (l) Reflective surface treatments of parking lots to reduce “heat island effect.”

\* \* \*

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<sup>9</sup>/ See <http://www.energy.ca.gov/title24/>.

<sup>10</sup>/ See <http://eetd.lbl.gov/coolroof/>.

<sup>11</sup>/ See <http://eande.lbl.gov/heatiland/>.

<sup>12</sup>/ See <http://www.findsolar.com/index.php?page=rightforme> (calculator program for solar panel’s ability to offset greenhouse gas emissions, taking into account local characteristics).

<sup>13</sup>/ See <http://www.dsireusa.org/>, <http://tredc.nrel.gov/>.

I look forward to the City's response to these comments. Please contact me if any further information is needed to assess the feasibility of implementing the mitigation measures suggested in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann M. Cerney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ann M. Cerney

# Central Valley Farmland Trust

## Guidelines for the Selection of Agricultural Conservation Easements

1. Soils: Farmland evaluated by the California Department of Conservation Farmland Mapping and Monitoring Program as being “Prime farmland” or “Farmland of Statewide Significance” will receive the highest priority. The Central Valley Farmland Trust might also consider farmland designated as property that has significant value to the regional agricultural industry regardless of soil characteristics.
2. Water: The property has a dependable and sustainable supply of high quality water for irrigation.
3. The property is agriculturally viable:
  - a. The land is large enough to sustain commercial agricultural production.
  - b. The property is not substantially surrounded by urban development such that its continued agricultural viability is threatened.
4. Urbanization pressure. The property may be subject to urbanization pressure within the foreseeable future.
5. Consistent with Community plans and goals. Existing community goals, plans, and political boundaries are compatible with permanent agricultural use of the property:
  - a. The property is currently zoned for agriculture.
  - b. The property is outside the primary sphere of influence of a city or a community service district.
  - c. An agricultural easement on the property would have the potential to have a long term impact on urban growth in the area and encourage growth on less productive farmland.

21

Law Offices of

**Ann M. Cerney**

45 Hunter Square Plaza  
Stockton, California 95202-2703

Telephone: (209) 948-9384

Lodi: (209) 369-1333

Facsimile: (209) 948-0706

acerney@inreach.com

Lodi Office:

104 North School Street, Suite 205

Lodi, California 95240

**RECEIVED**

DEC 19 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Peter Pirnejad  
Lodi Planning Manager  
P.O. Box 3006  
Lodi, CA 95241-1910

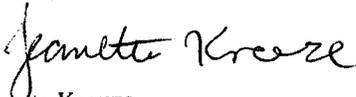
Dear Mr. Pirnejad,

21-1

Attached please find a Peer Review by Economic & Planning Systems (EPS) of the Lodi Shopping Center Economic Impact/Urban Decay Analysis completed by Bay Area Economics (BAE) in October 2007, as requested by attorney Donald Mooney.

If you have any questions or concerns, please do not hesitate to contact this office.

Sincerely,



Jeanette Kreuze  
Office Assistant

11-13-07

MR. & MRS. CONSTANTINE M. COPULOS  
12773 HIBBARO RD.  
LODI, CA. 95240

RECEIVED

NOV 14 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

MR. HATCH,

THIS LETTER IS IN RESPONSE TO THE MAILER  
WE RECEIVED RE. THE PROPOSED WAL-MART SUPERCENTER  
FOR LODI.

22-1

WE BOTH ARE AGAINST ALLOWING WAL-MART TO  
BUILD A SUPERCENTER IN LODI. IT WOULD BE  
DETRIMENTAL FOR OTHER GROCERY STORES IN LODI  
AND INCREASE CONGESTION AT THE PROPOSED LOCATION.

SINCERLY,  
Constantine M. Copulos  
Connie D. Copulos

23

**Randy Hatch**

**From:** Jamie Cunningham [j\_cunningham@pacfic.edu] **Sent:** Wed 11/28/2007 11:45 AM  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Lodi Shopping Center's Revised Draft Environmental Impact Report on the City  
**Attachments:**

Dear Mr. Hatch,

23-1

I am writing to you in regards to the Lodi Shopping Center's Revised Draft Impact Report on the City. As a life-long citizen of Lodi, I am deeply troubled by the proposed Wal-Mart Supercenter. As you know, in the recent past, our downtown was a veritable ghost town: vacant buildings, little consumer traffic-- the quirky local color that had always made Lodi livable and loveable all but vanished. However, investment in downtown and the city's commitment to turn the area into a vibrant area for families to shop, dine, and be entertained managed to return the area (for the most part) to its previous luster. Given the millions that have been pumped into the downtown restoration it seems counterproductive to give Wal-Mart the green light to further "box up" South Lodi.

23-2

We must also consider the chilling environmental implications a Super Wal-Mart will have on Lodi. The New York Times and the Associated Press (on 04/13/05 and 05/12/04 respectively) reported that the company had been fined for violating environmental laws in nine different states (California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas and Utah). In 2004, The Business Journal reported that the giant retailer had been forced to pay \$400,000 in fines for defying federal air pollution regulations in eleven states. In 2001, the EPA and Department of Justice fined Wal-Mart \$5.5 million dollars for violating storm runoff standards-- the first time a company had been fined. If these startling reports tell the citizens of Lodi anything, it is that Wal-Mart believes itself to be above local and federal regulations. The health and welfare of communities means nothing to a company hell bent on bottom lines.

Furthermore, I can't help but consider what allowing Wal-Mart to expand its grip on Lodi would mean in terms of tacit understandings. Wal-Mart is notorious for not paying its employees a living wage, forcing employees to work off the clock and violating child labor laws by having minors complete prohibited tasks such as operating fork lifts (US Department of Labor 02/14/05). If we allow Wal-Mart to expand, we as a community are sending the company a message via our complacency: we're willing to tolerate the maltreatment of our townspeople. We're willing to turn a blind eye when high schoolers are illegally operating heavy machinery. Sadly, we are willing to give up on the prospect of Lodi residents having jobs that will allow them to prosper, allow them to feed their families and get them medical care when they are ill.

Mr. Hatch, Wal-Mart's "value" pricing are not in sync with the VALUES of our community! Low prices come at a cost, Mr. Hatch. Please don't allow that cost be our city!

Sincerely,

Jamie Cunningham  
Masters of Education Candidate  
University of the Pacific  
& Life Long Lodi Resident

NOV 19 2007

Yesterday we received a pamphlet in the mail about people who were against  
 a Super Wal Mart. Guess whose name was on the bottom in real small print?  
 Lodi FIRST! They are the same people who was against Wal Mart before.  
 They changed their name after "Saying let the people vote on it." Well we  
 voted most people voted for the Super Mal Mart. All they did was change  
 their name but not their minds.

Super Wal Mart is not going to take away from downtown. There is nothing  
 to take away. We already have a Wal Mart but this one will be bigger and  
 have more groceries. It will not affect downtown because it does not  
 sell antiques, beer or liquor, like the stores downtown. It will give  
 Lodi more taxes and make more jobs. If Food 4 Less is against Super  
 Wal Mart then they should think about lowering their prices. Because they  
 are not union either.

San Joaquin County has lost tax money the last 2 years.

All everyone wants to rebuild downtown. Do you know that most people  
 shop in Stockton because there is nothing here? You should make Lower  
 Sacramento Rd. a 4 Lane Road all the way to Stockton. That is where all  
 your tax money is going.

City Manager Blair King wants Wal Mart to pay a one Million dollar fee  
 to keep downtown healthy. All he has on his mind is to get money to  
 fix up the east side, where some of the Council members own Real Estate.  
 Who is going to pick which properties are going to be fixed? What  
 about the poor people on the North, West and south sides? I guess they  
 do not count. Give us the SUPER WAL MART WE VOTED FOR AND DESERVE!

Thank You  
 Marge Degenstein  
 2935 Rosewood DR.  
 Lodi, Ca. 95242  
 209- 368- 4813

*Marge Degenstein*

25

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch:

25-1

I am a member of Lodi First, a community group here in Lodi who wants to protect downtown businesses. I am surprised to read in the revised EIR that the potential for urban decay is not significant. I would look first at the existing Wal-Mart store, which still lacks a future occupant. Everyone assumed that Home Depot would be coming in, but I saw in a Sentinel article a few weeks back that Home Depot is planning being build in the Reynolds Ranch shopping center. Please study the impact the empty existing Wal-Mart will have on the shopping center once the Supercenter and the Lodi Shopping Center is built. The shopping center will find it difficult to find an anchor tenant once the new shopping center is built. What chain store will want to try competing against a Supercenter? We need to reject this proposed Supercenter!

Thank you,



Signature

Christy Deschamps

Print Name

1860 Wren Ct

Address

Lodi CA 95240

Phone

209-366-0174

cc: Lodi City Council

26

November 16, 2007

**RECEIVED**

NOV 19 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

City of Lodi  
Community Development Department  
221 W. Pine  
Lodi, California 95241

Attn: Randy Hatch

Dear Mr. Hatch:

26-1

I am writing this letter in support of the proposed WalMart Supercenter. The citizens of Lodi have voted in support of this project and have waited patiently to see it to its completion.

I find the latest concerns in the revised EIR both misleading and flawed. As a Lodi consumer I cannot see how the current WalMart or a new WalMart will compete in any way with downtown business. There is nothing that I purchase downtown that will be duplicated by the Super Center. I will still go to the downtown area to find high end clothing, shoes, furniture, and cookware and to Walmart for my everyday needs to save money.

Retail business is good for our local economy and should not be dismissed since this project is estimated to bring new jobs and additional sales tax. Lodi has outgrown the existing WalMart store and it is time to provide the updated version in spite of those few that are opposed.

Sincerely,



Marilyn Domingo  
877 Dorchester Circle  
Lodi 95240

C: Manager, Walmart  
2350 W. Kettleman Lane  
Lodi 95240

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DEC 07 2007

COMMUNITY DEVELOPMENT DEP  
CITY OF LODI

Leo B. Duncan  
35 River Pointe Circle  
Lodi, CA 95240-0566  
(209) 470-9002

December 5, 2007

City of Lodi  
Community Development Department  
Attn: Randy Hatch  
221 W. Pine Street  
Lodi, CA 95241

Dear Sir,

27-1

With regard to the Wal-Mart Super Center development, I feel it is a project long overdue. Since it was approved long ago by the City Council and with a full Environmental Impact Study, it was then high-jacketed by special interest to delay the development.

In my opinion, Environmental Impact Studies are essential, but have ruined many good projects in the name of a clean environment when it turns out to be special interest.

The City of Lodi needs the income. Anything that is not growing is dying – that includes cities. I encourage you to allow the Wal-Mart Super Center to go forward to completion.

Sincerely,



Leo B. Duncan

28

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NOV 15 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

11-15-07

28-1

Dear Randy:

Just a short note to let you know, I am a 100% in favor of the new Super Wal-Mart here in Lodi. Have lived here for over 30 yrs. I worked for J.C. Penney's for along time. We love Lodi. Have visited the Supercenter in Stockton, and is very nice one stop center. Surely hope it will come into Lodi. Cast my vote for sure for this.

Thank you for reading my note. Thinking and Hoping the Super Center comes here.

Sincerely,

Helen Ellis

11-15-07

29-1

Dear Mr. Hatch,

The city of Lodi took a survey and then had an election to find out if the public wanted a Wal Mart. Both of the above were in favor. The environmental report should not affect the above.

The city council should be reminded that they were elected to represent the people.

yours truly,  
Lee Enright

P.S. My wife and I will shop where we <sup>can</sup> get the best deal. If you haven't visited the Wal Mart in Stockton, check it out!

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NOV 19 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

30

City of Lodi  
Community Development Department  
P.O. Box 3006  
221 West Pine Street  
Lodi, California 95241-1910

**RECEIVED**

DEC 04 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Attention: Randy Hatch

November 29, 2007

RE: REVISED ENVIRONMENTAL IMPACT REPORT FOR LODI  
SHOPPING CENTER (WAL-MART SUPERCENTER PROJECT)

I have several questions concerning the Wal-Mart Supercenter Project draft revisions to the Environmental Impact Report.

**Agricultural Resources Page 22:**

The applicant shall be required to obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland within 15 miles of the project site. Furthermore, restrictions are required to ensure its continued agricultural production capacity. An additional clause states the City may (not shall) count each acre as two acres if the easement is located in a designated greenbelt area.

30-1

1. When must the applicant meet this requirement?
2. What do the restrictions say? Can we see the text?
3. Considering California's demand for water, how do you guarantee water is available to the proposed 40 acres and that water rights will be maintained?
4. How and why did you come up with the formula of 1 acre for every two acres if the easement is located in a designated greenbelt area?
5. Where are the current greenbelt areas located?
6. The City of Galt is located only 10 miles north of Lodi and is in Sacramento County. Technically based on this proposed mitigation, a 40-

30-1  
(cont'd)

acre parcel could be located just south of the Sacramento County Line. How do the citizens of Lodi benefit from a parcel of land 15 miles away when they are losing land located right on the city border? Wouldn't a more sensible mitigation place the easement nearer to the City of Lodi?

**Traffic and Circulation Page 28**

30-2

On Wednesday November 28, 2007 Justice George Nicholson of the 3rd District Court of Appeals ruled that the 2004 Stockton City Council's approval of a Wal-Mart Supercenter in Spanos Park West (I-5 and Eight Mile Road) was illegal. Stockton City Council has since banned stores that exceed 100,000 square feet and contain full-sized grocery stores.

This raises serious and significant concerns about where residents of northwest Stockton will go to shop because that supercenter will not be built. Since the intersection of Lower Sacramento Road and Eight Mile Road is only 4.12 miles from Lower Sacramento Road and Kettleman Lane, maybe they will now drive north to Lodi.

7. If those residents come to the Lodi supercenter does your analysis of traffic and circulation consider the added vehicle trips from and to north Stockton along Lower Sacramento Road?
8. Have you considered the traffic impacts that may occur along Devries Road, Davis Road and possibly North West Lane?
9. Does your analysis consider additional trips that may occur for weekend and holiday shoppers?
10. Assuming greater peak hour traffic will the holding lanes be adequate to prevent vehicle backup?

Thank you for reviewing my questions and answering them with facts and technical data.



Robert Evans  
315 Bella Vista Drive  
Lodi, California 95242

31

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Randy Hatch  
Director  
Lodi Community Development  
221 West Pine Street  
PO Box 3006  
Lodi, CA 95241

Randy,

31-1

I'm curious as to how the opening of the Lodi Shopping Center will affect the potential redevelopment zone Lodi is looking to create on the east side of town. The revised EIR says that area will be most hit by the opening of the shopping center. Seems to me that by pulling shoppers from a potential redevelopment zone on the other side of town, you'll eventually end up with less revenue at both sites after all the projects are said and done because shoppers on the west side of the city will stay in the west and shoppers in the east side of the city will stay east. If think the city should look into what results having two competing commercial centers will have and if large stores would start closing on the west side of the city as a result of newer stores opening on the east side. Not to mention, what will happen to the downtown? Will it be squeezed out of existence?

Thank you,

*Betsy Fiske*  
Signature

*Betsy Fiske*  
Print Name

*727 S. Lee Ave.*  
Address

*Lodi CA 95240*

*369-4489*  
Phone

cc: Lodi City Council

Randy Hatch  
Lodi Community Development Office  
City Hall  
221 West Pine Street  
Lodi, CA 95241

**RECEIVED**

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

RE: Revised EIR for the Lodi Shopping Center

Dear Mr. Hatch:

32-1

I am a resident of Lodi and a member of Lodi First. I am concerned because it has been reported in the news that Wal-Mart's recycling program might actually harm the environment. Unfortunately, the revised EIR on the Lodi Shopping Center Project never discusses the shopping center's impact on our landfill or the environment. Please make the final EIR account for how much waste and recycling the Wal-Mart and the other tenants of the Lodi Shopping Center will generate and how this will impact the landfill.

Thank you,

*Betsy Fiske*  
Signature

Betsy Fiske  
Print Name

727 S. Lee Ave.  
Address

Lodi 95240

369-4489  
Phone

cc: Lodi City Council

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Randy Hatch  
Director, Community Development  
City of Lodi  
PO Box 3006  
Lodi, CA 95241

Mr. Hatch:

33-1

I am writing in regards to the Lodi Shopping Center, Supercenter project and I am concerned about energy conservation. The revisions to the EIR point out many ways the Supercenter can conserve energy, but how will the City make sure Wal-Mart will adhere to them? How can the City make sure Wal-Mart is held to these standards?

Thank you,

*Ethelene Fisher*

727 S. Lee Ave.

Lodi, CA 95240

34

Mr. Randy Hatch  
Community Development Office  
Lodi City Hall  
221 West Pine Street  
Lodi, CA 95241

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DEC 07 2007  
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch,

34-1

I am a resident of Lodi and a member of Lodi First. I am concerned that Wal-Mart never quantified how much waste they were going to generate, where it goes, and what the effect is to the landfill and how much is recycled. Please make sure this is addressed in the final version of the revised EIR of the Lodi Shopping Center.

Sincerely,

*Etheleen Fiske*

Signature

*Etheleen Fiske*  
Print Name

*727 S. Lee Ave.*  
Address

*Lodi, CA 95240*

*(209) 369-4489*  
Phone

cc: Lodi City Council

RECEIVED

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Randy Hatch  
Community Development Office  
City of Lodi  
PO Box 3006  
Lodi, CA 95241

RE: Draft Revisions to the Environmental Impact Report, Lodi Shopping Center

Dear Mr. Hatch:

35-1

There is a lot of discussion about the Wal-Mart Supercenter in the Lodi Shopping Center EIR, but little to no mention of the other stores who would be a part of the shopping center. Wouldn't the revised EIR be required to take a look at those stores as well? Please make sure the impacts of the other stores on our downtown and east side, energy consumption and air quality are studied before this report moves forward. Thank you for your time.

Sincerely,

Carla Fletcher  
Signature

CARLA FLETCHER  
Print Name

832 Westwind Dr  
Address

Lodi CA 95242

367-4237  
Phone

cc: Lodi City Council

36

**Randy Hatch**

---

**From:** Liz Galbreath [Liz.Galbreath@genmills.com] **Sent:** Fri 12/7/2007 8:00 AM  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Super Center  
**Attachments:**

Dear Mr. Hatch,

36-1

I am writing in regards to the Lodi Shopping Center's Revised Draft Environmental Impact Report. I am concerned about the impact that a new Wal-Mart Super Center will have on Downtown Lodi. I am a frequent shopper to the many unique stores in our beautiful, renovated downtown area. If the Wal Mart store is built, I am 90% certain that many of these stores will need to close due to lack of business....and we certainly do not need more vacancies.

36-2

Another case in point is the environmental factor.....increased traffic on Kettleman and Lower Sacramento Road. The emissions from trucks and cars will be horrendous, not to mention very unhealthy.

I have been a citizen of Lodi for 34 years and I have seen many improvements made to this town. A Wal-Mart Super Center would not be an improvement for Lodi, maybe a convenience to some, but certainly not for the betterment of this town.

Thank you for your attention to this matter Mr. Hatch.

Sincerely,

Elizabeth Galbeath  
824 Westwind Drive  
Lodi, CA 95242

37

**Randy Hatch**

**From:** Gerry and Jane Gandt [gerjane@sbcglobal.net]  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Urban Blight Attn: Tim Mattheis and Randy Hatch  
**Attachments:**

**Sent:** Mon 12/3/2007 3:06 PM

37-1

I was in the audience during the planning commission meeting of November 14, 2007, and I was shocked when Economic Development Director Randy Hatch expressed so little concern over the prospect of valued businesses closing as a result of bringing a new superstore to town.

I was also appalled when Mr. Hatch stated there will be no significant urban decay because other businesses will go into the buildings emptied by Wal-Mart. When asked what type of businesses he was referring to, he mentioned dance studios and martial arts centers which leads me to wonder just how much thought has he given to this question that is so important to Lodi's future. His remark that the city will have to endure temporary urban blight until the population catches up with the vacant buildings is ludicrous and callous.

Lodi already has a Wal-Mart. I shop there and I also shop at K-Mart, Mervyn's, Ace Hardware, Target and other businesses throughout the city. I like the variety offered by different retailers. If the city is concerned that Kettleman Lane shopping centers are experiencing a downward slide, why is the introduction of a Wal-Mart superstore reasonable?

37-2

Lodi is a city with significant urban renewal plans that is looking ahead to a future as a tourist destination. But if the city council is truly taking a long term view of Lodi's future, they should be aware of the intangibles offered by Lodi's small town ambience. If we hope to be an attraction for Bay area tourist dollars, I think we should consider what kind of gateway to Lodi these tourists will encounter as they approach town on Highway 12. A Wal-Mart superstore with its attendant traffic and huge parking lot will not be a welcoming first impression. I don't visit Napa and Sonoma expecting to see huge chain stores.

In closing, I would like to mention that upon Lowe's arrival, the local paint stores discontinued their wallpaper departments. Big box store effects show up in very subtle ways, don't they?

Please don't let a new, unnecessary Wal-Mart superstore come to town.

Jane Gandt

38

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DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

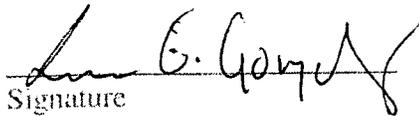
Mr. Randy Hatch  
City of Lodi  
Community Development Office  
221 West Pine Street  
PO Box 3006  
Lodi, CA 95241

Mr. Hatch:

38-1

I am part of a group of concerned Lodi residents called Lodi First and many of us have been reading through the revisions to the Lodi Shopping Center EIR. My question is about the Energy section. The project will include the construction of bike lanes along Kettleman Lane and Lower Sacramento Road and racks at the shopping center. I don't think it's realistic to assume that enough shoppers will be coming to do their shopping on bikes, thus reducing the amount of cars traveling to the shopping center to shop. People who shop at Wal-Mart Supercenters buy in bulk. They're going to need to drive their cars and trucks to transport their groceries and goods. That would be impossible to do on a bike! Bikes won't make the impact on reducing the number of cars traveling on the roads that this revised EIR assumes.

Sincerely,

  
Signature

Laura E Gonzalez  
Print Name

700 McCloy Ct #42  
Address

Phone  
209)367-1588

cc: Lodi City Council

39

**Randy Hatch**

---

**From:** Linda Hammons [lhammons@sbcglobal.net]  
**Sent:** Friday, November 09, 2007 07:05 PM  
**To:** Randy Hatch  
**Subject:** New Wal-Mart

Dear Mr. Hatch,

39-1

As you're well aware, Lodi's downtown sets the community apart from so many indistinguishable places characterized by strip mall after strip mall. We would like to see downtown thrive and believe that the key to that is careful planning and well thought-out growth. The proposed Wal-Mart Supercenter could threaten the viability of our unique city center. When our out-of-town guests visit, they want to see downtown Lodi, not a bigger Wal-Mart.

Sincerely,  
Linda, Joe & Bryce Hammons

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

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DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

**Re: Agriculture Conservation Easements**

Dear Mr. Hatch,

40-1

I would like the city to provide further information regarding the proposed agriculture conservation easement as a mitigation tool for the developer of Lodi Shopping Center. For instance, how does allowing the developer to purchase agricultural property benefit Lodi and the residents that will be directly impacted by the developer's project? Does the city gain anything financially through the land easement program? Does the developer get tax breaks or benefits through the purchase of such lands as tools for mitigation? If the land is farmed through this permanent designation, will Lodi taxpayers receive price breaks on the produce from that property? Will Lodi residents pay the property tax bill for this land?

The summaries addressed in the Draft Revisions to the Environmental Impact Report do not address anything regarding the financial aspects of the Agricultural Conservation Easement and it should. The taxpayers should be given more information than what has been provided, which basically says nothing more than 40 acres of land well beyond Lodi shall be permanently designated as agricultural land. What are the cost benefits and risks to the taxpayer or the city with such easements, etcetera? Please address these issues further so the taxpayers of this city can conclude whether or not such a program is viable and useful.

Ultimately, for the record, I am opposed to the proposed Lodi Shopping Center and I see the Agricultural Conservation Easement program as nothing more than the developer buying off the community. Thank you.

Sincerely,

*Terrie Hedden*  
(Terrie Hedden)  
867 Westwind Dr.  
Lodi, CA 95242  
209.334.2181

41

**Randy Hatch**

---

**From:** Daffney Hillis [daffney\_hillis@hotmail.com] **Sent:** Mon 12/3/2007 6:11 PM  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Proposed Wal-Mart SuperCenter  
**Attachments:**

Dear Mr. Hatch,

41-1

As a life long citizen of Lodi, I am writing to you in regards to the Lodi Shopping Center's Revised Draft Impact Report on the City. I am extremely disturbed by the proposed Wal-Mart Supercenter. As you know, it was not so long ago when our downtown area was a veritable ghost town: vacant buildings, little consumer traffic-- the quirky local color that had always made Lodi livable and loveable all but vanished. However, investment in downtown and the city's commitment to turn the era into a vibrant area for families to shop, dine, and be entertained managed to return the area (for the most part) to its previous luster. Given the millions that have been pumped into the downtown restoration it seems counterproductive to give Wal-Mart the green light to further "box up" South Lodi.

41-2

We must also consider the chilling environmental implications a Super Wal-Mart will have on Lodi. The New York Times and the Associated Press (on 04/13/05 and 05/12/04 respectively) reported that the company had been fined for violating environmental laws in nine different states (California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas and Utah). In 2004, The Business Journal reported that the giant retailer had been forced to pay \$400,000 in fines for defying federal air pollution regulations in eleven states. In 2001, the EPA and Department of Justice fined Wal-Mart \$5.5 million dollars for violating storm runoff standards-- the first time a company had been fined. If these startling reports tell the citizens of Lodi anything, it is that Wal-Mart believes itself to be above local and federal regulations. The health and welfare of communities means nothing to a company hell bent on bottom lines.

Furthermore, Wal-Mart is notorious for not paying its employees a living wage, forcing employees to work off the clock and violating child labor laws by having minors complete prohibited tasks such operating fork lifts (US Department of Labor 02/14/05). If we allow Wal-Mart to expand, we as a community are sending the company a message via our complacency: we're willing to tolerate the maltreatment of our townspeople. We're willing to turn a blind eye when high schoolers are illegally operating heavy machinery. Are we willing to give up on the prospect of Lodians having jobs that will allow them to prosper, allow them to feed their families and get them medical care when they are ill?

Mr. Hatch, Wal-Mart's "value" pricing is not in sync with the VALUES of our community! Low prices come at a cost, Mr. Hatch. Please don't allow that cost be our city!

Sincerely,  
Daffney Hillis

---

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42

**Randy Hatch**

**From:** Kalda, Amy [akalda@tUSD.net] **Sent:** Tue 12/4/2007 3:51 PM  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Lodi Shopping Center's Revised Draft Environmental Impact Report to the City- No on Super WalMart  
**Attachments:**

Mr. Hatch,

42-1

**No on the Super Wal Mart store: if we continue to shop in** Lodi we need the competitive diversity offered by Safeway, Raley's, Applemart, Rancho San Miguel, the grocery stores on Lodi Ave., Salisbury's and the neighborhood smaller markets. We need to have our neighborhoods intact, independent and self-sufficient for a stable, safe and satisfying way of life. We don't want to move from our homes to other communities, and we don't want to drive to Stockton or Galt to other grocery stores.

42-2

**Why can't the City envision and make a green strip from that proposed Super Wal Mart site to Stockton and connect it to the Green Strip (that travels west across I-5) on March Lane? An amphitheater in an outdoor setting for public events would be awesome as the beginning of the "Lodi-Stockton Vineyard Trail" or something like that. It would be so cool to be able to bike or walk all the way under shady trees. It could be a visionary's version of the "Iron Horse Trail" type concept to draw people to Lodi to visit. Are you that Visionary?**

Sincerely,

*Amy Kaida, M.A. NCSP*

Villalovoz Elementary School

209-830-3331, ext. 8035

FAX: 209-830-3332

43

**Randy Hatch**

---

**From:** Brian Kortuem [briankortuem@hotmail.com]

**Sent:** Thursday, November 08, 2007 03:21 PM

**To:** Randy Hatch

**Subject:** Super Wal Mart

Mr. Hatch

43-1

My name is Brian. I received your newsletter in regards to the New Super Wal Mart proposal. I agree entirely with the letter and believe that many businesses in Lodi, not just the downtown area will be greatly affected if the super Wal Mart is built. I think Lodi has done a great job with the improvements of Downtown, I enjoy going there as often as I can. If Lodi can continue with improving this area in any way possible I hope it can be done. Good luck with whatever you may have planned with this delicate issue.

Sincerely,  
Brian

---

Help yourself to FREE treats served up daily at the Messenger Café. [Stop by today!](#)

11/12/2007

**Randy Hatch**

---

**From:** Michael Kost [gomichael1@sbcglobal.net]  
**Sent:** Wednesday, November 14, 2007 09:07 AM  
**To:** Randy Hatch  
**Subject:** Oppose Wal Mart Supercenter

Mr. Hatch,

44-1

This letter is to inform you of my opposition to having a Wal-Mart Supercenter built here in Lodi.

Thank you for listening.

Sincerely,

Michael Kost  
1417 Iris Drive  
Lodi

45

RECEIVED

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Randy Hatch  
Community Development Office  
City of Lodi  
221 West Pine Street  
Lodi, CA 95241

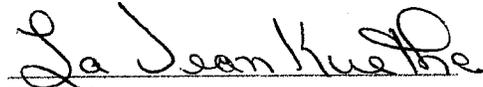
RE: Draft Revisions to the Environmental Impact Report, Lodi Shopping Center

Dear Mr. Hatch,

45-1

The revised EIR for the Lodi Shopping Center mentions that the San Joaquin Valley Air Pollution Control District recommends that a health risk assessment be done before the revised EIR is completed. Will this assessment occur and when? Will there be one during the winter months and one during the summer months? With Valley air quality at it's worst during both periods, I think it would be a good idea to have assessments done during both periods.

Sincerely,

  
Signature

  
Print Name

  
Address

  
Lodi, Ca

  
Phone

cc: Lodi City Council

46

November 29, 2007

RECEIVED

NOV 29 2007

To: Randy Hatch, Community Development Office, City of Lodi

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Re: Lodi Shopping Center's Revised Draft Environmental Impact Report to the City.

46-1

Wal-Mart wants a free ride to create urban decay and blight. "Let the tax payers pick up the bill for the dozens of closed businesses, vacant buildings & further deterioration of down town, lower property values, destroyed neighborhoods, with a redevelopment agency." The EIR assumes = (a statement made with out proof) that the vacant empty businesses will be filled with niche stores and second hand furniture stores. Lodi has seen the closure of 2 retail furniture stores; down town and in the Raley's shopping center. Lodi has spent millions to resurrect the down town businesses only to have Wal-Mart suggest that the citizens pick up the tab again for millions more to keep down town alive. The EIR assumes that by adding a super Wal-Mart we generate more taxes for the city. There is only "X" amount of money in a community. Shifting money from dozens of businesses to only one big box business will not bring in more tax dollars.

There are three big box Wal-Marts in a ten mile area, this proposal will make 4. Keep in mind, an additional Wal-Mart is being built at Grantline in Elk Grove. Do we really need to have a Wal-Mart every 5 miles? Just because we propose a super Wal-Mart center here, doesn't mean customers outside of Lodi will frequent this one being proposed in Lodi? You have to ask yourself, "Why does Stockton not want any more Wal-Marts being built in their community? And why has Galt reacted in the same way?" I assume that there is only so much money in a community to go around. A big box kills small businesses, down towns, & higher paying jobs that often have health and welfare benefits. True, Wal-Mart does create more low paying jobs vs. loss of high paying jobs.

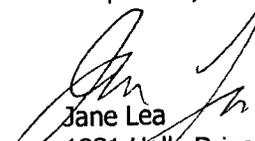
A big box creates vacant buildings, urban decay, blight, loss of jobs, lower wages – less disposable income to be spent in our community, more government intervention and tax dollars to balance crime, the deterioration of neighborhoods, urban decay, unemployment, foreclosures, code enforcement, health and safety.

This is smoke and mirrors. What you think you gain in lower prices you pay in social decay and higher taxes.

Lodi is looking less like the community that attracted people to move here and more like the communities that people migrated away from. We are loosing our identity as a community and looking more like, the rubber stamp of a Wal-mart – Anytown, USA.

I ask that the Lodi Shopping Center's Revised Draft Environmental Impact Report to the City be rejected.

Respectfully submitted,

  
Jane Lea  
1931 Holly Drive  
Lodi, Ca 85242  
209 329-6112

47

**Randy Hatch**

---

**From:** Susan Leasure [suezin@sbcglobal.net]

**Sent:** Tuesday, November 13, 2007 03:27 PM

**To:** Randy Hatch

**Subject:** Wal Mart

47-1

As a citizen of Lodi for *only* 14 years, I escaped LA to get away from mass box stores. Please don't make Lodi another LA!  
Sue & Mark Leasure

11/14/2007

48

**Randy Hatch**

---

**From:** Pamala Levy [paloule@comcast.net]  
**Sent:** Tuesday, November 13, 2007 11:20 AM  
**To:** Randy Hatch  
**Subject:** re/walmart super center

48-1

**NO! Keep Wal-Mart Super Center OUT of  
LODI!!!**

11/14/2007

Mr. Randy Hatch,

Nov. 16, 2007

Shopping Center's Revised Draft Environmental  
Impact Report:

RECEIVED

NOV 18 2007

COMMUNITY DEVELOPMENT DEPT

CITY OF LODI

I don't want to have a Super Wall  
Mart store in Lodi because

49-1

1. I don't want the Super Store taking away business from downtown Lodi especially since:
2. The beautiful development of new businesses, and, having spent so much money on making downtown Lodi to attract more people to shop there. It is so nice to have our downtown Lodi so beautiful again. It would become a "ghost town" again, with a Super Wall Mart. We already have a very nice Wall Mart here why have another one? I think the size of our Wall Mart is very adequate.

~~Sincerely~~ Sincerely

P.S. So, Please no  
Super Wall Mart. Use

Betty Libert  
821 Dianna Dr.  
Lodi, Ca.

50

Lodi Shopping Center Revised draft  
Environmental Impact Report.

Nov. 29, 2007

RECEIVED

DEC 03 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

To whom it concerns:

50-1

Please don't let Downtown Lodi's vitality be lost to Wall Marts Super-Center. I feel it will be a mistake to let a larger wall Mart store into Lodi at this time. Kettleman lane is already so busy because of commute traffic, and it'd cause a lot of headaches for our people driving to that part of town due to the worst congestion, also; our beautiful town of Lodi would then become listless and no life in it as it was before.

Safeway, & Ralley's Grocery Stores would lose out also and probably bite the dust, and they are very nice places to go to where you can't find what you need in other grocery stores.

I believe that our town's people would find out that we have a monster in our town because of so many people coming to wall Mart - need more police, more ambulances - more of everything. We really need to put it off till we have better roads + access to The Super Store.

P.S. on back snow

Sincerely,  
Betty Libert  
329 Diana Dr  
Lodi Ca. 95240

50-1  
(cont'd)

also Food for Less - Penny's, Radio Shack,  
and all the other stores around will be  
effected too, and Target - my list could  
go on and on - Mostly the down town  
Lodi wouldn't have the business that they  
have now, Lodi just isn't big enough yet  
for a WalMart Super Center.

Please consider our Plea and say "no".

With much concern,  
Betty Libert.

City of Lodi

11-13-07

51-1

I believe that a Super Walmart in Lodi will bring about an end to downtown Lodi.

If we want Lodi to remain Livable, Lovable we better say no to the proposal for a Super wall mart store anywhere near Lodi.

It has been struggling for a long time to revitalize downtown and a Super store will put an end to that struggle.

No Super wall mart in Lodi period.

James D. [Signature]

52

**Randy Hatch**

**From:** Randi Johl  
**Sent:** Monday, November 12, 2007 11:45 AM  
**To:** 'jnblocke@sbcglobal.net'; Marty Weybret; Rich Hanner; Bob Johnson; JoAnne Mounce; Larry Hansen; Phil Katzakian; Susan Hitchcock  
**Cc:** Blair King; Steve Schwabauer; Randy Hatch; Jeff Hood  
**Subject:** RE: Wal-Mart again, an Opinion

Thank you for your email. It was received by the City Council and forwarded to the appropriate department(s) for information, response and/or handling.

Randi Johl, City Clerk

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**From:** Jim & Betty Mae Locke [mailto:jnblocke@sbcglobal.net]  
**Sent:** Wednesday, November 07, 2007 9:40 AM  
**To:** Marty Weybret; Rich Hanner; Randi Johl; Bob Johnson; JoAnne Mounce; Larry Hansen; Phil Katzakian; Susan Hitchcock  
**Subject:** Wal-Mart again, an Opinion

November 7, 2007  
 To All my friends of the Lodi City Council:

Subject: Wal-Mart "again"

52-1

I have become aware that there will be yet another meeting this coming Wednesday related to the never ending minority interests in opposition to anything that Wal-Mart wants to do. Since I have a conflict in scheduling, I will not be able to attend the meeting personally. I take this opportunity to pass along my thoughts on the subject..

My challenge to you on the City Council is to step up to the question of whether you are in your position on the Lodi City Council to represent the will of your electorate or are you under the thumb of special interests groups? I am compelled to ask the question because previous City Council members were not willing to live with the political pressures of making decisions about Wal-Mart on their own (some of you current members were associated with that group). The earlier Council decided to put the Wal-Mart expansion issue onto the local ballot. The people of Lodi spoke/voted clearly that they were in favor of the construction of a new Wal-Mart Supercenter.

No more excuses are needed. Let' get on with it. Tax revenues are being lost due to the delaying action. A lot of Lodi shoppers patronize the Hammer Lane & Holman Rd, Stockton "Supercenter". Let's bring that money and convenience (also fuel & pollution wasted) back to Lodi.

Change will happen, be open to new approaches, and move our community towards an expanded employment base and larger city tax revenues. Those that oppose change can vote with their wallets, they have a choice, don't shop there!

Jim Locke  
 511 Willow Glen Drive  
 Lodi, CA 95240-0511  
 209-368-9009

---

A Secondary message because if I add this additional thought to the first message it would make it longer than

11/14/2007

what the News-Sentinel would consider publishing.

Subject: Other community's experience with such Wal-Mart expansions --

52-2

I have a long time friend that relocated from Lodi to Colorado Springs, CO years ago. Those friends have related to me the "cause and affect" relationship that played out in Colorado Springs over the building of a Wal-Mart Supercenter in their community. The drift of their comments are as follows:

After a lengthy debate the "City Fathers" finally went along with the idea of allowing the bigger Wal-Mart to be built. Once the newly expanded Wal-Mart Supercenter was in operation, bringing additional food retailing (competition) to the mix, other markets in the community reduced food prices to stay competitive. What an amazing free enterprise reality!

If you have doubts about this "cause & effect" reality I would suggest that you contact your counterparts in Colorado Springs, Colorado, as a reality check.

Once again, let's allow those that oppose the building of the Wal-Mart Supercenter here in Lodi to vote with their money. **Don't shop there.** They might gain from this whole thing anyway.

Thanks for listening.

Jim Locke  
511 Willow Glen Drive  
Lodi, CA 95240-0511  
209-368-9009

11/14/2007

Randy Hatch  
Community Development  
Lodi City Hall  
221 W Pine Street  
Lodi, CA 95241

**RECEIVED**  
DEC 07 2007  
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch,

53-1

I am a member of Lodi First and someone who is deeply concerned with the water supply in relation to the proposed Lodi Shopping Center. Will there be adequate water supplies once the proposed Lodi Shopping Center is operational since the project has not established entitlements to the remaining capacity? Will the city consider passing a water capacity charge forcing the developer to pay any increased capacity charge as their share of the costs of the additional water supply?

Sincerely yours,

  
Signature

Guillermo Lopez  
Print Name

700 McCoy Ct. #42  
Address

Lodi, CA 95240

Phone

cc: Lodi City Council

54

**Randy Hatch**

**From:** Sue McCombs [osmccombs@sbcglobal.net]  
**Sent:** Wednesday, November 14, 2007 07:53 PM  
**To:** Susan Blackston; Randy Hatch  
**Subject:** PLANNING COMMISSION MEETING 11/14/07

We know that this will not reach anyone before the Planning Commission meeting tonight (11/14) but would really like to voice our feelings on a couple of the subjects being discussed.

54-1

1. My husband and I are OK with the redistricting if the money is used for the good of the whole included area. We are very concerned that the majority will be used to improve Sacramento St. and whatever other area might benefit only the downtown. What safeguards are in place to address this?

54-2

2. The Wal-Mart issue. We, and the rest of Lodi, voted a few years ago to allow the Wal-Mart project to go forward and now after many delays we are hanging on an Impact Report which was put together by "outsiders" and which we believe is so negative as to not be realistic. This report appears to assume that a new monster is trying to come into Lodi. This is not a matter of whether to let Wal-Mart build in Lodi. We have a small Wal-Mart built something like 17 years ago while Lodi has expanded and is still expanding. You all know how crowded it can be and you all have heard of all the people who go to the Stockton location for the benefits while Lodi reaps no benefit from that tax money.

As to the other grocery stores, why wasn't there this kind of rebellion when Safeway built right across the street from Food For Less? You may not want or need to shop at Wal-Mart or buy groceries there but there are many people in Lodi who want and who need any break on prices they can get. Why are you deciding where they should shop? It's their choice. K-Mart has a lot of groceries although not full grocery service and no one cried foul. When the Mexican grocery store opened on Cherokee, no one cried foul. As far as low paying jobs. At least they are jobs. How many of these people would not have any job without these.

54-3

3. The "million or so" dollars that Lodi is forcing developers to pay to improve downtown is not right. There is nothing to do with Wal-Mart that takes away from downtown. We shop downtown and eat at the restaurants. Wal-Mart does not carry the better women's clothes or Burton's shoes and doesn't have upscale restaurants or beer gardens or wine tasting and therefore is not in competition with downtown businesses. This "charge" to improve the downtown is another hoop to jump through in order to do business in Lodi.

Olen and Suzanne McCombs  
 363 S. Sunset Dr.  
 Lodi

11/21/2007

55

**Randy Hatch**

---

**From:** Randi Johl  
**Sent:** Monday, November 12, 2007 04:59 PM  
**To:** 'Jolynn McDonald'; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen  
**Cc:** Blair King; Steve Schwabauer; Jeff Hood; Randy Hatch  
**Subject:** RE: walmart issue

Thank you for your email. It was received by the City Council and forwarded to the appropriate department(s) for information, response and/or handling.

Randi Johl, City Clerk

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**From:** Jolynn McDonald [mailto:jmc.work@sbcglobal.net]  
**Sent:** Monday, November 12, 2007 4:58 PM  
**To:** Randi Johl; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen  
**Subject:** walmart issue

55-1

I would like to thank you for continuing to be cautious regarding the campaign to put a Super Walmart in Lodi. I encourage each of you to go to the Hammer Lane Walmart in Stockton and see the craziness of 'bargain shopping' and mentality of shoppers. I have visited four Super Walmarts and the atmosphere is the same at each one. We still hear 'welcome to Walmart', however the shoppers are single minded and selfish. There is an atmosphere of 'rudeness' and this is why I would hope we do not offer this store in our town. thank you. A concerned voter to keep Lodi's Character!

11/13/2007

56

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NOV 15 2007

420 Howard Street  
Lodi, CA 95242-2505  
November 14, 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

City of Lodi  
Community Development Department  
Attn: Randy Hatch  
221 W. Pine Street  
Lodi, CA 95241

Dear Mr. Hatch:

My wife and I are in favor of the proposed Wal-Mart Supercenter. We, like many others in Lodi, are on a fixed income and look for the best value for our dollars.

We are suspicious of the attorney(s) who represent the organizations, Lodi First and/or Citizens for Open Government. We believe there are individuals in these groups who do want Lodi to retain its small town atmosphere, but think they are being financed by labor unions and competitors.

If this store were turned down, my wife and I would make our purchases at Wal-Mart, in Stockton, in addition to our COSTCO purchases. We would rather see the sales tax revenue remain in Lodi. If the store were to be built, we could consider canceling our COSTCO membership, do all our shopping in Lodi, plus saving on gas.

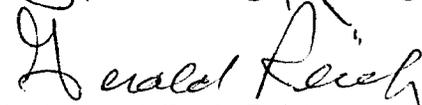
The local newspaper said that if this store were built, the Big KMART would close. The Woolworth Company went out of business because they did not adjust their business model to compete with new organizations.

My wife and I also feel that to force Wal-Mart to pay one million dollars to Lodi comes close to extortion. We live in a country that believes in free enterprise.

The citizens of Lodi made their choice known by the vote we took, lets cut the delay and get on with it.

Neither of us are Wal-Mart employees, past or present, nor do we own stock in this company.

Sincerely,

Darlene and Gerald Reich

56-1

57

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DEC 07 2007

COMMUNITY DEVELOPMENT DEI  
CITY OF LODI

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

Mr. Hatch:

57-1

I am writing with regards to the proposed Lodi Shopping Center and the draft environmental impact report dated this past October. As a member of Lodi First, a grassroots organization comprised of concerned citizens, I feel it is my obligation to comment on the aforementioned report because it does not clearly define Lodi's trade area. What is the Lodi Shopping Center's defined trade area? In other words, what is the geographical area from which 60 to 80 percent of the Lodi Shopping Centers' sales will originate? If the answer is Lodi, then can we assume that the area in which this particular shopping center is being proposed is already over-served? Does the city have proven figures that the neighborhoods around West Kettleman and Lower Sacramento are currently under-served with retail, grocery and restaurants? Or is the city and the applicant simply looking at the median household incomes for the neighborhoods around West Kettleman and Lower Sacramento and seeing dollar signs? Ultimately, the city should clearly define the trade area for the proposed project and successfully argue that this particular area of Lodi is more under-served than other areas of Lodi. If, however, the city cannot prove this and instead shows that other areas of Lodi are in greater need of development such as the Lodi Shopping Center, then the city should mandate the applicant to build in the areas currently under-served or not build at all in Lodi.

Thank you,



Signature

Mat+ Rempfer

Print Name

314 Louise Ave

Address

Lodi, CA 95240

Phone

209-327-6222

cc: Lodi City Council

58

Randy Hatch  
City of Lodi  
Community Development Office  
221 West Pine Street  
Lodi, CA 95241

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COMMUNITY DEVELOPMENT DE  
CITY OF LODI

RE: Lodi Shopping Center EIR

Mr. Hatch:

58-1

Looking at the proposed project alternatives in the revised EIR, I noticed that the other sites looked at would not reduce the impact on the downtown or impacts on air quality. The real issue is the store's size and the numbers of people and cars it will attract. With that in mind, why not build a series of smaller stores and restaurants at that site?

Sincerely yours,

  
Signature

JANIE ROSS  
Print Name

2135 W. Pine  
Address

Lodi, CA 95242

209-334-5966  
Phone

cc: Lodi City Council

59

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Randy Hatch  
Community Development  
Lodi City Hall  
221 W Pine Street  
Lodi, CA 95241

Mr. Hatch,

59-1

As a member of Lodi First, I am very concerned about the energy requirements outlined for the Lodi Shopping Center in the "Draft Revisions to the Environmental Impact Report." Pacific Municipal Consultants discusses on page 82 how Wal-Mart's website states that the store is 'experimenting with new energy saving technologies and has experimental Supercenters in the mid-West...' but it doesn't outline what or where those stores are experimenting. Nor does it state that Wal-Mart is going to implement any new energy saving technologies in Lodi. Why not? What are these technologies? To what specific energy standards is Wal-Mart going to adhere? The study by PMC doesn't provide specifics only discussions. If the city buys into this study, then Wal-Mart can operate at only the bare minimum of its energy conservation/consumption. This isn't good enough for Lodi residents or the region. We have an energy crisis. This is the SECOND big box store this company wants to build in Lodi; they should be required to do the utmost in energy conservation. Wal-Mart should be required to be LEED certified. Any final environmental study should outline how the applicant plans to meet the LEED standards to equivalent.

Sincerely yours,

Tamara Ross  
Signature

TAMARA ROSS  
Print Name

1860 WREN CT  
Address

LODI, CA 95240

Phone  
663-7178

cc: Lodi City Council

60

Mr. Randy Hatch  
Lodi Community Development Office  
City of Lodi  
221 West Pine Street  
Lodi, CA 95241

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DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

RE: Wal-Mart Supercenter on Kettleman Lane

Dear Mr. Hatch,

60-1

I read in the urban blight section that the recommended way to deal with the anticipated closure of other large stores and their vacated property will be strict code enforcement by the city. That's a good theory in practice, but the reality is that code enforcement staff is stretched enough as is. The revised EIR ought to address other alternatives and ways to deal with urban decay.

Sincerely yours,

  
Signature

Mark A. Rubliero  
Print Name  
254 Mulberry Circle  
Lodi CA 95240  
Address

209 333-8150  
Phone

cc: Lodi City Council

61

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DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

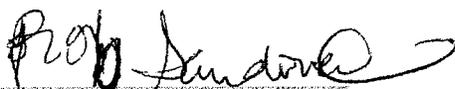
Mr. Randy Hatch  
Lodi Community Development Office  
221 W Pine Street  
Lodi, CA 95241

Dear Mr. Hatch:

61-1

I had the chance to talk with one of my neighbors this past weekend about the proposed Wal-Mart Supercenter. She is part of the Lodi First group and I agree with her and the groups concerns with the Supercenter. I took some time to look at the Lodi Shopping Center EIR. I am surprised to see that the economic analysis in the report does point out the direct threat the shopping center will have on the shops and stores on School Street. What boggles my mind is that the report acknowledges that our downtown businesses are under constant pressure to survive. Why are we pushing for a Wal-Mart Supercenter and another shopping center on the western side of Lodi which will continue to draw shoppers from the downtown to the edge of the city? We already have a Wal-Mart. Why do we need a new one? And don't say "sales tax", because that's not the answer. All a Supercenter is, is a regular Wal-Mart with a grocery component. Groceries are exempt from sales tax to begin with, so all Lodi is really doing is making life harder on our local business owners. This is going to cause more trouble than it's worth.

Sincerely,



Signature

Rob Sandora

Print Name

835 W Harney Ln

Address

Lodi, CA 95240

Phone

209 334-6853

cc: Lodi City Council

**Dennis W. Sattler**

6717 E. Harney Lane  
Lodi CA 95240

H = 209-334-5519  
O = 209-334-3301  
F = 925-934-3378

Email: dwsatt@comcast.net

**RECEIVED**

NOV 18 2007

COMMUNITY DEVELOPMENT  
CITY OF LODI

November 15, 2007

Randy Hatch  
Community Development Department  
City of Lodi  
221 W. Pine Street  
Lodi CA 95241

Dear Mr. Hatch;

I owned and operated Sattlers Appliances in Concord California for 25 years. Over the years, the business grew with the surrounding community into a \$20,000,000 business.

When Circuit City came to town, they were selling appliances at 12% over our cost. Within a two year period Sattlers (60 employees) went broke and I took a personal bankruptcy.

Retail is extremely competitive. Price and location can mean the difference between success and failure. If the Super Walmart is approved, you can expect to see local business failures. Not only will Walmart have lower selling prices, but they will also be in a market intercept position, contributing to the demise of many established small retailers.

Adding more retail square footage doesn't necessarily add tax dollars. It just moves revenue from one location to another.

Most of the City officials are in favor of the Walmart project, but it will prove to be a serious mistake with long term consequences.

Please re-evaluate the City's position on all big box stores. Lodi shouldn't become a knock-off of other local rapidly expanding cities with their faceless identity. Certainly we have viable market alternatives with the rapidly expanding wine industry and boutique shopping and dining that can be exploited.

Sincerely,



Dennis Sattler

- c. Bob Johnson, Mayor
- c. Patrick Johnson, Chamber of Commerce

63

October 26, 2007

RECEIVED

DEC 06 2007

COMMUNITY DEVELOPMENT  
CITY OF LODI

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

**Re: Regional Air Quality**

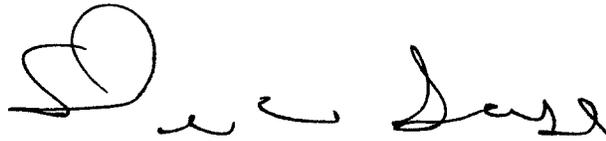
63-1

The Draft Revisions to the Environmental Impact Report for the Lodi Shopping Center conclude that "the emissions associated with the proposed project would substantially exceed applicable standards for ozone precursors and particulate matter, which is a significant and unavoidable regional air quality impact of the project." In Section IV, "Alternatives to the Proposed Project," the report concludes that the only way to not exceed the applicable air quality standards is to not build the project at all. It further states that the applicable air quality standards will still be "far" exceeded even if the project were reduced in size.

The city should further its justification for approving a project that will have a significant and unavoidable impact on our air quality. The EIR report should address asthma risks associated with a project of this size, especially for those residents living in close proximity to the site. It should calculate the particulate matter that will be produced by the total amount of traffic that will be generated by this project and discuss the air flow patterns in or around the project site.

Because this draft report concludes there is no sufficient means of mitigating the impacts to the air quality in Lodi and the greater San Joaquin Valley with the building of this project, the city is responsible and should provide the community with the most detailed facts and justification for endangering our community's health. Will asthma rates increase as a result of this project? Are our children at greater risk of getting asthma as a result of this project? What data can the city provide the community that will ensure us that our families are not in danger from the pollutants generated by this project?

Thank you,



DEANE C. SAVAGE  
316 E. ELM STREET  
LODI, CA 95240

64

Randy Hatch  
Lodi Community Development Office  
221 West Pine Street  
Lodi, CA 95241

RECEIVED

DEC 07 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch,

64-1

I am a resident of Lodi and a member of Lodi First. I have seen Wal-Mart publicizing its green policies. Wal-Mart has even built a green store in Colorado. Why aren't they proposing to build such a store in Lodi? I've read in the EIR many of the environmental precautions the store is taking but, in light of the Global Warming Solutions Act of 2006, we should require the Supercenter to be a green store, like the one built in Colorado.

Sincerely,



Signature

DEANE C. SAVAGE

Print Name

316 E. Elm Street

Address

Lodi, CA 95240

339-1599

Phone

cc: Lodi City Council

65

RECEIVED

DEC 06 2007

COMMUNITY DEVELOPMENT DE  
CITY OF LODI

Mr. Randy Hatch  
Lodi Community Development Director  
221 West Pine Street  
PO Box 3006  
Lodi, CA 95241

Mr. Hatch,

65-1

Thank you for allowing Lodi residents to comment on the revised EIR for the Lodi Shopping Center project. I'm pretty new to this project and while reading the Traffic and Circulation section I was surprised at the need for all the road improvements. Has it been determined who will have to pay that? Will the developer? Seems only fair that those who want their stores built should have to pay for street improvements.

Thank you,

*Marcia L. Savage*

Signature

Marcia L. Savage

Print Name

316 E. Elm St.

Address

Lodi 95240-2308

Phone

339-1599

cc: Lodi City Council

66

**Randy Hatch**

**From:** Jerry & Shirley Schmierer [evencouple@sbcglobal.net]  
**To:** Randy Hatch  
**Cc:**  
**Subject:** vote for the super Walmart  
**Attachments:**

Sent: Thu 11/29/2007 10:48 AM

66-1

Dear Randy:

First, to address the letter sent by Lodi First (whatever that is, the click?) about pollution being a problem with the new super Wal-Mart. There is already an existing Walmart that has to and fro traffic and truck deliveries. What about the pollutions caused by all of the people living in Lodi and surrounding areas that patronize the Super Wal-Mart in Stockton. Why can't Lodi be collecting all the revenue the new store would generate for us? As far as the downtown area....it's great and slowly turning into a beautiful little tourist town for our wine country atmosphere, BUT, where in downtown Lodi right now, can you buy a pair of men's pants, a woman dress and everyday apparels? Some exclusive shops, but not what the average family can afford or retiree's. Think about some of the little towns that we love to go to and just browse and spend the day like Carmel, Napa, Jackson, just to mention a few. They have their "tourist" town but then they also have their shopping centers where local people shop. Who, with a family, can shop downtown Lodi???? Or retiree's.?

As far as losing the Home Depot as being the tenant for the existing Wall-Mart, the dragging of the feet for our new super Wal-Mart caused that. Home Depot seen that the council was not going to stand behind the people of Lodi and give them the super Wal-Mart that THEY HAD ALREADY VOTED IN so they jumped on the Reynolds Ranch for a sure thing....Duh!

66-2

I'm sorry Randy, we are retired seniors living in Lodi for 30 some years and what really discourages me is, it has become a reat problem getting people to come out and VOTE! Most of our young people could care less. Some of us seniors realize just how important a VOTE is. Just one has changed many situations and lives. Well, the people spoke and how long ago was that????? A small, powerful group here in Lodi which wishes to remain anonymous, tied our votes up. HOW IS THIS POSSIBLE?? So you see, what good does it do to vote? What a pity. What is happening to what the government (which is suppose to be the people) wants? What kind of an example does this set for our young people. Does it matter what the people want. Why did we have the election in the first place?? Read the letters from the people in the Sentinel, you might see mine also. THE MAJORITY "WANT'S" THE SUPER WAL-MART. I could go into so many more reasons why but the main reason is just as I just stated.

By the way, how about Buy For Less having this side of town sown up by owning the Mexican Grocery Store on Cherokee? You don't see that mentioned and not too many people know that.. The mom and pop gas stations are gone and so are the mom and pop stores but it is called progress. Galt is just as stagnated today as it was 20 years ago because they are not progressing. Let's not do that to

<https://webmail.lodi.gov/mail/rhatch/Inbox/vote%20for%20the%20super%20Walmart.EM...> 12/4/2007

66-2  
(cont'd)

Lodi. We can have our beautiful downtown and we should also be able to have our wonderful, affordable new Super Wal-Mart!!!! Thank you so much for taking the time to read this and I hope your heart is in the right place for the people of Lodi that has spoken..God Bless you all

Sincerely,  
Shirley Schmierer  
646 N. Loma Dr.  
Lodi, CA 95242  
209 339 8603

67

**Randy Hatch**

---

**From:** Lucille Schnabel [deelucys@earthlink.net]  
**Sent:** Thursday, October 18, 2007 10:25 AM  
**To:** Randy Hatch  
**Subject:** Super Wal-Mart

67-1

We don't think Lodi needs a super Wal-Mart. Lodi would lose its small town felling. That is why people come here.

The idea of people losing their jobs, is not a good thought either, even if they might find something else to do, or some where else. Lodi has enough stores and shopping centers to keep the city going.

Thanks.

**Randy Hatch**

---

**From:** B. Schweigerdt [schweig2@comcast.net]  
**Sent:** Wednesday, November 21, 2007 12:06 PM  
**To:** Randy Hatch  
**Subject:** Lodi First mailer

Greetings, and Happy Thanksgiving:

We just received an unsolicited mailer from an organization called "Lodi First" (address in Woodbridge!), in reference to the Wal-Mart Supercenter. This group, which hides behind a cloak of anonymity, opposes the Supercenter, ostensibly because of a number of emotionally-sounding concerns; but is really opposed to the greatly expanded grocery sections in the SC's, since this would adversely effect (so they claim) the union stores. We know some of the folks in this Lodi First group, and they do not reflect our views!

Apparently they are heading up a letter-writing campaign to commence on 11/27, so you may get some paper or email messages which will oppose, in essence, the Supercenter. So far as I know, there is no such effort on the side of those who support the SC, and if there were, you can be assured that there would be an outcry from Lodi First over matters of fairness (even "tolerance").

We are in support of the newer look of our downtown, but not at the expense of modernity in the community. Although we don't go to Stockton in order to shop at the Supercenter there, we do drive south to shop at Home Depot, and did for Lowes until the local store opened. We have friends and acquaintances who do a great deal of shopping in Stockton, who would rather shop in Lodi and leave tax dollars here (not to mention the added expense of driving to and fro).

Plans should go forward with the building of the Supercenter. Progress should be made with downtown. They should not be mutually exclusive.

K-Mart may close, but that is not a downtown concern. That store had poor service years ago, and we have not shopped there since a bad experience. Penney's is not a viable retail store in Lodi any longer, and should close. Mervyn's is in trouble, and should close. But if these happen, that will not adversely effect downtown, and eventually stores will move in to replace them (witness the old bowling alley property).

Sincerely,

Bruce and Connie Schweigerdt

68-1

RECEIVED

DEC 06 2007

COMMUNITY DEVELOPMENT  
CITY OF LODI

Randy Hatch  
Community Development  
Lodi City Hall  
221 W Pine Street  
Lodi, CA 95241

Mr. Hatch,

69-1

As a member of Lodi First, I wanted to share some comments on the revised EIR on the Wal-Mart Supercenter project. You write that there won't be any mitigation required for urban decay. How about some financial assistance for the downtown businesses? I think the developer should pay some fee to offset the loss to our downtown businesses or to assist in the downtown redevelopment. I think mitigation will be required and that Wal-Mart should pay its fair share in protecting our downtown.

Sincerely yours,



Signature

Lloyd Scott

Print Name

1819 Blackbird Ct

Address

Lodi CA 95240

(209) 224-8304

Phone

cc: Lodi City Council

**Randy Hatch**

---

**From:** Bill Selling [bselling@comcast.net]  
**Sent:** Thursday, November 08, 2007 10:46 PM  
**To:** Randy Hatch  
**Subject:** Wal-Mart

**Dear Sir:**

**I am going to be out of the state during your Nov 14th meeting regarding the Wal-Mart issue in Lodi.**

70-1

**My wife and I are in favor of the proposed new Wal-Mart and I wish you would keep in mind that the people of Lodi voted the same way.**

**I think the Down Town project has done an outstanding job. But NOT worth the cost of \$16 million dollars!!! It is not hard to see that your green flyer is all one sided toward Down Town Lodi. No matter what you do, the tax dollars from the stores in Down Town Lodi will never generate the dollars that the Wal-Mart and the other stores in the area will!!!**

**Bottom line is that people are going to take their tax dollars to the stores they want to shop in! If you think by not approving the new Wal-Mart, that they will take their tax dollars to Down Town Lodi, the Planning Commission is way out in left field!!**

**Thank you for hearing this side.**

**William J. Selling  
715 York St  
Lodi, CA 95240**

**CC: Lodi News Sentinel**

11/14/2007

**Randy Hatch**

---

**From:** Maxine Shear [swetpea@softcom.net]  
**Sent:** Monday, November 12, 2007 11:34 AM  
**To:** Randy Hatch  
**Subject:** Revised Draft Enviroment Impact Report

re: revised draft environment impact report ~ Wal-Mart Supercenter

Dear Mr. Hatch,

I am unable to attend the public forum this Wednesday, November 14th regarding the Lodi Shopping Center project.

71-1

I have read the revisions to the EIR document. I felt compelled as a citizen of Lodi to voice an opinion. I feel very strongly that if the Wal-Mart Supercenter is ultimately allowed to open it will have a devastating effect on our "Downtown" businesses. Securing a towns center, its downtown area, is quickly slipping away from our American fabric of life. These hubs of business allow for small business to survive and contribute in a direct way with the community. This is an important piece of a puzzle that makes our communities function at grass roots. Large box stores chip away at that environment with little regard for the best interests of the community as a whole. Large businesses, Wal-Mart, and other such entities are motivated by profit. If these companies feel they can be successful in our community then it speaks to the fact that our small businesses can be successful as well. It's better to support your neighbor than to support an out of town corporation. Quality in life and in our communities should be more important than square footage.

Thank you for the opportunity to speak. Good luck with this decisive subject and the future of our community.

Maxine Shear  
2211 Orchis Drive  
Lodi, CA 95242

11/14/2007

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

**RECEIVED**

DEC 07 2007

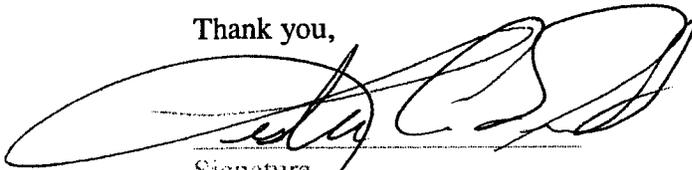
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Mr. Hatch:

72-1

I am writing on behalf of Lodi First. We are a group of Lodi residents who are opposed to Lodi Shopping Center, specifically, the Wal-Mart Supercenter. I was reading the EIR revisions and was surprised to find so much emphasis on the Supercenter itself, but very little mention at all of the other stores who will be also be tenants in the shopping center. It seems to me that not enough attention has been paid to those stores in terms of energy use and consumption. Please make sure the final EIR addresses not only the impact of the Supercenter, but the other tenants as well.

Thank you,



Signature

LESTER C. SMITH

Print Name

1020 Kirkwood Dr

Address

Lodi, CA 95242

209 368-2557

Phone

cc: Lodi City Council

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

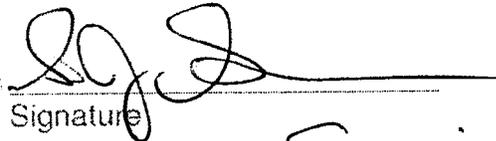
**RECEIVED**  
DEC 07 2007  
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Dear Mr. Hatch,

73-1

As a Lodi resident and a member of Lodi First, I have some concerns with the revised EIR on the Lodi Shopping Center. The Urban Decay section mentions the very real possibility of the Wal-Mart Supercenter putting some grocers out of business. The reality is those jobs which pay a good wage will be replaced by low wage jobs from Wal-Mart and this has a real impact on Lodi. If good paying jobs are replaced by lower wage ones, our downtown businesses will lose a good amount of shoppers who can spend money at their stores. With fewer shoppers who can spend money downtown, the result will trickle down from the chain grocery stores to the Mom and Pop specialty stores and cafes downtown. These are the unforeseen consequences that will result if the Supercenter opens.

Sincerely,



Signature

Sandra Smith

Print Name

1020 Kirkwood Dr

Address

Lodi CA 95242

209-369-2557

Phone

cc: Lodi City Council

A short note to explain why I feel that a Super Walmart is not a good idea at the Highway 12 and Lower Sacramento junction:

74-1

1) Traffic is already a difficult problem at times with the 8 huge stores including discount grocery & clothes & a Walmart. And the many smaller stores which may not survive.

74-2

2) We already have large empty buildings and I would like to have a plan in place for the Walmart building. (in place to put it back in use.)

74-3

3. I feel that we as a town have just started getting together as a downtown shopping area. And would hate to see them have problems.

Z. Dennis Sakao

75

**Randy Hatch**

---

**From:** srctoy@sonic.net  
**Sent:** Wednesday, November 14, 2007 07:38 PM  
**To:** Randy Hatch  
**Subject:** Super Wal-Mart

Hi,

75-1

My response to a Big and New WalMart in Lodi is NO THANK YOU.

Thank you for your attention.

Shelley Toy

**Randy Hatch**

---

**From:** Barbara Transon [btranson@sbcglobal.net]  
**Sent:** Saturday, November 17, 2007 12:17 PM  
**To:** Randy Hatch  
**Subject:** Against supercenter

Dear Mr. Hatch,

76-1 | My husband and I are very proud of how the downtown is coming along. We are both very concerned that a Walmart Supercenter will draw residents away from small businesses around town and create situation that we could have easily avoided by turning away the supercenter. Also, Lodi is hoping to attract tourists and keep its rural flavor. Adding Walmart does nothing to bring us closer to that goal. A city should not act to add a huge store it does not need. Stocktonians hate having one. Let's learn form all of the other cities that are sorry they've allowed such a monstrosity to be built.

Sincerely,

Barbara and Minh Transon

77

This message was sent with high importance.

**Randy Hatch**

**From:** nick trlf [ntrifiro@hotmail.com] **Sent:** Sun 12/2/2007 7:35 PM  
**To:** Randy Hatch  
**Cc:**  
**Subject:** Lodi Shopping Center EIR  
**Attachments:**

Dear Mr. Hatch,

77-1

I am a resident of Lodi and live on 13050 North Alpine Road. I just wanted to inform you of my opposition to the proposed Walmart center (Lodi Shopping Center EIR). I understand that the General Plan had evaluated the impacts to agriculture, traffic, and other pertinent issues for the project and that the Plan had designated the site for commercial development. However, the scale of commercial development that is being proposed for this site is very questionable. Please leave the big box stores in large cities like Stockton that can absorb their development. This is not right for Lodi!!

77-2

The impact to the surrounding area in terms of traffic (already at a LOS F), and compatibility with surrounding land uses and development is clearly more significant than portrayed in the EIR prepared by the City's consultant. What is going to happen to the existing Walmart center? It is obvious from other Walmart supercenter developments in the state and throughout the nation, the impact that it has to surrounding communities, particularly small towns like Lodi.

That is why I urge you. PLEASE TAKE ANOTHER LOOK AT THIS PROPOSAL!!!

As property owner since 1984 and a resident of Lodi for over 10 years, I have appreciated the work that the City has done to rebuild its downtown center. This proposal will only set the downtown and other commercial sections of this town backwards and belly up!

Thank you for giving us the opportunity to comment on this proposal.

Sincerely,

Joe and Olivia Trifiro  
13050 North Alpine Road  
Lodi, CA 95240-9431

Share life as it happens with the new Windows Live. [Share now!](#)

**i** You replied on 12/10/2007 4:15 PM.

**Randy Hatch**

**From:** Pat and Paul Underhill [patundpaul@comcast.net]

**Sent:** Thu 12/6/2007 11:35 PM

**To:** Randy Hatch

**Cc:**

**Subject:** Lodi Shopping Center Draft Revisions to EIR, Oct 2007

**Attachments:**

Dear Mr. Hatch

78-1

We have been concerned about the proposed Wal-Mart Super Center for many reasons. First and foremost, the air quality in San Joaquin Valley is notoriously poor. The potential increase in traffic, both cars and trucks, would add to the health risks of Lodi citizens. More trucks would be traveling along Highway 12, which is already a hazardous route, and truck emissions would further pollute the air.

78-2

The city of Lodi is unique, in that it has maintained a certain charm, which was further enhanced by the downtown improvements along School Street.

One of the primary entrances to Lodi is Highway 12 at Lower Sacramento Road. It is a reasonably inviting first impression (except for the big tacky plastic cup that appeared on the roof of a fast food place.) Adding an enterprise of the size proposed will have a decided impact on that commercial neighborhood. Most certainly, current businesses would suffer under competition from such a big box store. If these stores are forced to close, what will come in to replace them? We worry that it will result in an unpleasant environment, rather than improving our town.

It is our hope that the City will put our concerns to rest by heeding the Revised Environmental Impact Report. There are too many problems inherent in allowing a Wal-Mart Super Center to be built in Lodi. Once and for all, the project should be denied.

Thank you for your attention to this issue.

Sincerely,

Pat and Paul Underhill  
1946 Millbrook Drive  
Lodi, California  
95242

Monday December 3, 2007

Randy Hatch  
 City of Lodi  
 Community Development  
 221 West Pine St.  
 Lodi, CA 95241

**RECEIVED**  
 DEC 04 2007  
 COMMUNITY DEVELOPMENT DEPT  
 CITY OF LODI

Dear Mr. Hatch,

79-1

I am a Lodi resident who voted in favor of allowing big box square footage for the city. However, that does not mean I am in favor of all businesses that wish to build in the city. I wanted to see a Lowe's store in town. It keeps our tax dollars in town and helps with pollution since I do not have to travel to Stockton to purchase building materials. It also allowed for some new car centers to be built within the square footage requirements. OSH drove out Henderson Brothers, but Lowes has not done the same to them. There seems to be room in town, because of their locations in town, for more than one hardware store to serve the public. Again, this helps our tax base. I am wondering if a Super Walmart is an added benefit to the community. It will only add a grocery store and some more square feet of merchandise to what already exists. Lodi has seemed to want to keep a small town image and do what it can to preserve those businesses that are contributing to it needs. It seems, without question, this is what happens when one of them is built. I know that Walmart is the shining example of capitalism, but at what cost to the community.

79-2

Also, the election was sold on the idea that Walmart would be required to give the city two hundred thousand dollars if their old building was not to be occupied. If I have seen correctly, in the paper, they are now backing out of that commitment.

79-3

I requested a copy of the letter from Ann Cerney, to the city, about the Environmental Impact Report for this proposed shopping center. There is no reason for me to add to this since I am not a scientist. However, I will express some concerns about our environment.

Strange as it may seem, continued expansion of housing and shopping centers are disturbing the normal paths for many animals that assist us in maintaining a healthy eco system. I recently attended a meeting of the Sierra Club and Audobon Society in Stockton where it was pointed out that we are loosing habitat for animals that are necessary to maintain agricultural health. Butterflies, like bees, help pollinate all types of living plants; they seem to be on a rapid decline. It is believed, based on scientific evidence, when these new developments are placed in their normal migratory paths; they now longer use them. Consequently crops and urban plants begin to die out. Certainly, Agricultural Mitigation helps to offset some of this, but the need to look at how new developments impact our eco system must be taken into account. We are beginning to realize how fragile and interdependent our environment is.

Respectfully,  
 Norman Walker, Jr.  
 800 Daisy Ave Lodi CA 95240  
 368-6818

RECEIVED

DEC 06 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

October 30, 2007

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

Dear Mr. Hatch,

80-1

I am writing as a resident of Lodi and someone who is particularly concerned and opposed to the proposed Lodi Shopping Center. The Draft Revisions to the Environmental Impact Report for the Lodi Shopping Center may be primarily concerned with energy impacts and economic blight; however, it does highlight issues with regards to air quality.

I would, therefore, ask the city to please address the letter from Arnaud Marjollet, the Permit Service Manager, of the San Joaquin Valley Air Pollution Control District's letter dated December 21, 2006. Mr. Marjollet suggests the need for a health risk assessment (HRA) for the project; however, beyond this letter's reference to an HRA study, there is nothing that I find specifying that an HRA study has been conducted.

If an HRA study has been conducted for the Lodi Shopping Center proposal, then please release the conclusions and summaries for community review. Further, if an HRA study has been completed, then what are the risks the HRA finds for Lodi residents and the greater San Joaquin Valley? Ultimately, if an HRA study has not been conducted, as recommended by Mr. Marjollet, then the city should conduct an one before it moves forward with consideration of the proposal.

The health of our families should be top priority for the city, not the health of the economy. Please address this issue further in your EIR findings. Thank you.

Sincerely,



Lodi, CA

1044 Port Chelsea Circle  
Lodi, CA 95240

81

TO: Randy Hatch  
Community Development Department  
City of Lodi  
221 W. Pine Street  
Lodi, CA  
95241

RECEIVED

NOV 28 2007

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

Sir,

It is incomprehensible to me why you people spent tax money to revitalize the down town and then seek to torpedo all those business owners who put their blood sweat and tears into a business down there.

81-1

Your own EIR tells you that as much as 50% of the down town business will be taken away to the new Wal-Mart Super Center.

The new center will affect nursery, hardware, grocery and dry good sales all over Lodi. You may very well see the collapse of the down town area. Oh yes, it won't happen right away because it will take some time for those poor business to realize they cannot pay their rents with the lack of sales due to the new Wal-Mart. In addition, you are going to allow the placement of fast food restaurants and financial business. These too will compete with existing businesses. Just think of the impact on the Chili's and In and Out burger business just across the street from the planned project. Even business not directly threatened by these new stores will be affected. If I don't go down town to shop I won't see the new eateries like Lodi Beer Company and so its sales will also decrease.

Many other municipalities around including Galt have had the good sense to block the big boxes. Perhaps the city leaders should have a discussion with those leaders to see why they demonstrated such wisdom.

Currently there is a movement a foot to make it appear that most of Lodi is supportive of the new center. Some of us can see through this ruse. Why is it there is suddenly a flurry of new letters to the editor in the Sentinel? And why is it that there just happens to be a flock of people sporting Wal-Mart badges show up to the meeting all at the same time. Who is behind this charade?

The mentality of city leaders today goes something like this: We need more police and firemen! Oh wait! We need a larger tax base. Let's build more houses. But wait then we'll need more policemen and firemen. But wait! And so on ad nauseum.

No my friends, Lodi doesn't need a super center. We do not need anymore big boxes. We do not need more growth. Please come to your senses and turn this plan down.

*Ken Warburton*  
Ken Warburton  
14472 North Davis Road  
Lodi, CA 95242

**Randy Hatch**

---

**From:** Charles Wasmuth [chuckw2901@sbcglobal.net]  
**Sent:** Thursday, November 08, 2007 01:39 PM  
**To:** Randy Hatch  
**Subject:** Wal-Mart Supercenter

Good Day Mr. Hatch,

82-1

I received a flier from Lodi First in the mail today. It told me that I could send you an e-mail and give you my thoughts on the subject of the proposed Wal-Mart project (further referred to as WMP). This group, Lodi First, sounds like it against any growth whatsoever in the city of Lodi. I can remember when Lodi had the least expensive electric rates in California. Now we have one of the highest. Instead of looking at WMP as the ruin of downtown Lodi, look at it as the revenue generator that it will surely be. Saying that WMP will be the demise of downtown is akin to crying wolf. Didn't this group say the same thing about the original Wal-Mart? Think in terms of more jobs, more taxes being collected, more money in the community, more revenue for the City electric service (maybe that will lower our burden). The shops downtown are mostly speciality shops that have withstood the current Wal-Mart and will withstand the new WMP. The only business that will be effected by the new WMP will be Food 4 Less. Safeway is still doing fine going up against Food 4 Less and will continue to serve their loyal customers that have stayed with them. I guess by the tone of this e-mail that I, as a Lodi home owner, in favor of the new WMP. If you are keeping track, count me as a yea vote. Speaking of votes, why not let the residents of Lodi vote on whether we want a Wal-Mart Superstore on that location. Thank you for your time.

Chuck Wasmuth  
1535 Park St 95242-3840  
[chuckw2901@sbcglobal.net](mailto:chuckw2901@sbcglobal.net)

25 NOV 07

To whom it may concern:

I am a new Lodiian - moved here 7 years ago. I think a Wal-Mart Super Center would be a disaster for downtown Lodi. Who are the customers? What do the demographics show? And why build a store that will push out several established businesses? If a Wal-Mart Super center does come to being, there still won't be a decent place to shop in downtown Lodi. Better to improve what we have and try to fill all the empty buildings downtown.

Sincerely

Albert S. Weber

83-1

**Randy Hatch**

---

**From:** Wellsbacher, Karl [Karl.Welsbacher@cambridge-na.com]  
**Sent:** Friday, October 26, 2007 08:26 AM  
**To:** Randy Hatch  
**Subject:** On Wal Mart Shopping Center

84-1

This email address was given in the paper for people who wanted to make comments on the new Wal Mart Shopping Center. Since the new Environmental Impact Report indicates that a new Wal Mart of the size proposed and one that sells groceries would be detrimental to other businesses in town, I think this particular proposal should be rejected.

We already have a nice Wal Mart in Lodi, and building a new one would automatically vacate the present one, and the affect that the new one would have on other businesses in Lodi would be felt for several years to come. For that reason I would recommend that the Wal Mart stay at its present size where it is already located, which is more than adequate.

I am not at all opposed to a shopping center on the southwest corner of Kettleman Lane & Lower Sacramento Rd. On the contrary, I think it would be very appropriate to build a shopping mall on that corner. But I would prefer a mall that had perhaps a large Penny's store, along with maybe Gottschalk's, and Sears. Perhaps Mervyn's would like to relocate there too. We could also have the anchors accompanied by other stores that Lodi does not already have. In that way we could get new retail & tax revenue into the city, and at the same time the new center would not be detrimental to other businesses. And we would still have Wal Mart, Target, and K-Mart competing with one another. If a Wal Mart Supercenter were built, it could conceivably put Target or K-Mart out of business, and again that would be detrimental to the community.

So I am all in favor of a shopping center on that corner, but I would prefer to see more of a traditional mall there, and I would prefer to have Wal Mart stay in their present location. This is my opinion, and I just wanted you to have the benefit of it. Thank you for listening.

Karl M. Welsbacher, Jr.  
1727 Scarborough Dr.  
Lodi, Ca. 95240-6119

209-369-5887

**Randy Hatch**

---

**From:** Randi Johl  
**Sent:** Friday, November 16, 2007 09:04 AM  
**To:** 'Ron Werner'; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen  
**Cc:** Blair King; Steve Schwabauer; Jeff Hood; Randy Hatch  
**Subject:** RE: Wal Mart super store

Thank you for your email, it was received by the City Council and forwarded to the appropriate department(s) for information, response and/or handling.

Randi Johl, City Clerk

---

**From:** Ron Werner [mailto:ronwerner@comcast.net]  
**Sent:** Thursday, November 15, 2007 10:59 PM  
**To:** Randi Johl; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen  
**Subject:** Wal Mart super store

Dear Council members:

I am not against Wal Mart per se. Obviously it serves a need for a great number of people. I am against Wal Mart, however, if it will hurt our downtown merchants. If Wal Mart affects large retailers such as Safeway or Raleys - so be it, but please protect our downtown. I, and I'm sure you do too, want Lodi to be known for its community, not for its Wal Mart Superstore.

Thanks

Ron Werner  
912 Greenwood Drive  
Lodi, CA 95242

85-1

11/21/2007

**Randy Hatch**

---

**From:** John Wixon [johnwixon@sbcglobal.net]  
**Sent:** Sunday, November 11, 2007 01:25 PM  
**To:** Randy Hatch  
**Subject:** Walmart Center

**86-1** |

The voters spoke way back when.....let's get this done now. Way does this city keep delaying .....make a decision and try not to please everyone. A voter who remembers who supports what at election time.

John Wixon  
[johnwixon@sbcglobal.net](mailto:johnwixon@sbcglobal.net)  
639 Hummingbird Dr  
Lodi, Ca 95240

11-9-07  
RECEIVED

NOV 14 2007

To City Planning  
Commissioners  
COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

87-1

I and my husband vote  
for the Walmart Supercenter  
to be built in Lodi. I  
think you have put  
this off long enough. Until  
now we will shop in  
the Stockton Walmart  
Supercenter

Mrs. Cleda + Cyril Wright  
2409 W Elm St  
Lodi, Ca 95242

88

Mr. Randy Hatch  
City of Lodi  
Community Development  
221 W Pine Street  
PO Box 3006  
Lodi, CA 95241

RECEIVED

DEC 06 2007

COMMUNITY DEVELOPMENT DE.  
CITY OF LODI

Mr. Hatch -

88-1

Why doesn't the city look at working on the Lodi's eastside before once again looking to approve another big-box business at southwest Kettleman Lane? Although the city has approved a preliminary redevelopment plan for the eastside, doesn't common sense tell us that a 24-hour/7-day a week Wal-Mart Supercenter will only *cause additional urban blight* in the eastside even before you work on any redevelopment? The downtown we know will be hurt financially by a Wal-Mart Supercenter which is why the ordinance was passed protecting it. But there is nothing that protects the Kmart or other few businesses that exist on the eastside. Your summary regarding the impacts on urban decay in the revision to the draft environmental impact report for the Lodi Shopping Center says there are likely one or more business closures that could result from approving this project. And the report goes on to say that "the Kmart store...already shows poor performance vis-à-vis the other discount general merchandise stores in Lodi." Perhaps the report should address how the city has done nothing to promote Kmart's success! The city should address the urban decay that *will result* when Kmart closes as a result of the new Wal-Mart Supercenter. There is nothing in the report that discusses what steps the city will take to ensure the eastside businesses, particularly the Kmart shopping complex, will survive! As a member of Lodi First, I feel strongly the city should reject the application of the new Wal-Mart Supercenter and instead look at approving any new businesses only on the eastside of town. The Lodi Shopping Center should not be approved given the state of the eastside community.

Thank you,



ROBERT VASQUEZ  
Print Name

2577 PONDROSA DR  
Address

Lodi CA 95242

209 339-8665  
Phone

cc: Lodi City Council

Lodi, CA

Nov, 13, 2007

Shopping Center Revised Draft  
 Environmental Impact Report to the city  
 P.O. Box 2006  
 Lodi, CA 95241  
 Attn: Randy Hatch

RECEIVED  
 NOV 15 2007  
 COMMUNITY DEVELOPMENT DEPT  
 CITY OF LODI

Dear Sir,

In regards to the letter I received recently about the downtown and Wal Mart.

Why should Wal Mart be charged a fee of 1 million dollars to build in Lodi?

Why did you spend 16 million on downtown Lodi? That was a waste of tax payers money. The city parking garage was a big expense and a big mistake. It is too far for the elderly to walk to downtown.

89-1

89-1  
(cont'd)

I never walk the downtown streets. There is no place to buy a loaf of bread or a bottle of milk downtown, since Cottage Bakery closed.

Why are the people of downtown afraid of losing business to Wal-Mart? Over the years several industries have moved some where other than Lodi.

Wal-Mart would employ a lot of people who cannot find a job here now.

Why can the town of Carson City, NV have two supermarkets (Wal-Mart)? We have a population that would benefit from a Superstore.

The Superstore would bring in a lot of tax dollars to the city. If we want to shop at a Wal-Mart store, Stockton store is just a few miles away.

Wal-Mart is the blue collar workers store. The wealthy people can take

To the downtown, businesses,

I don't use The P.O. downtown  
to mail packages or buy postage stamp,  
I patronize the Woodbridge P.O. where  
The wait is short and the clerks <sup>are</sup> kind.

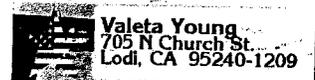
I have lived in Lodi 60 years  
and my thoughts is that Lodi is a  
"Clanish" town was 60 years ago and still is.

I do not believe we will ever see  
a Wal-Mart superstore in Lodi. Thanks  
to a few "city slickers"

Go Wal-Mart!!!

Sincerely,  
Valeta Young

PH 209 368-0181



89-1  
(cont'd)

# **APPENDICES**

## APPENDICES – CONTENTS

### A. ATTACHMENTS TO COMMENT LETTER FROM DONALD B. MOONEY (COMMENT LETTER #5)

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## **APPENDIX A**

**ATTACHMENTS TO COMMENT LETTER FROM DONALD B. MOONEY  
(COMMENT LETTER #5)**

## APPENDIX A - CONTENTS

- Attachment 1 – Memorandum from EPS Re “Lodi Shopping Center Economic Impact/Urban Decay Analysis Peer Review,” December 7, 2007.
- Attachment 2 – International Panel on Climate Change, *Summary for Policymakers of the Synthesis Report of the IPCC Fourth Assessment Report*, Draft 16 November 2007.
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- Attachment 6 – Two page excerpt from *Final Environmental Impact Report – 2030 San Diego Regional Transportation Plan*, pages 4.7-21 and 22.
- Attachment 7 – Union of Concerned Scientists, *Digging Up Trouble – The Health Risks of Construction Pollution in California*, 2006.
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# Attachment 1



**Economic &  
Planning Systems**

*Real Estate Economics  
Regional Economics  
Public Finance  
Land Use Policy*

## MEMORANDUM

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To: Law Offices of Donald B. Mooney  
From: Jason Moody and Shane Melnitzer  
Subject: Lodi Shopping Center Economic Impact/Urban Decay Analysis Peer Review;  
EPS #17166  
Date: December 07, 2007

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Economic & Planning Systems (EPS) was retained by the Law Offices of Donald B. Mooney to review the Lodi Shopping Center Economic Impact/Urban Decay Analysis prepared by Bay Area Economics (BAE) in October 2007. Despite estimating sizable economic impacts on the Lodi trade area and across numerous sub sectors, the BAE Report concludes that the Center will not create conditions conducive to urban decay. This memorandum will review the subject study and assess the methodology, assumptions, data sources, and conclusions of BAE in their analyses.

### SUMMARY OF KEY FINDINGS

The following summarizes our key findings upon reviewing the BAE Report.

- 1. The BAE Report's central conclusion that urban decay is not a likely outcome appears inconsistent with the reports' general research findings which estimate considerable sales losses to existing retailers and documents vulnerable market conditions.**

According to the BAE Report, the proposed Center will capture about \$56 million in annual sales from existing retailers, or about 6 percent of the sales in the Trade Area. In addition, the Report documents the existing under-performance of several major tenants (e.g., Kmart) and even urban decay in several locations (e.g., Sacramento Street) as well as household income and growth levels below the County average. Projected sales losses of this magnitude combined with unfavorable market conditions would, on the face of it, suggest the potential for the Center to precipitate urban decay.

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Indeed, the BAE Report acknowledges that the cumulative or combined impact of the proposed Center and the equally large Reynolds Ranch project will lead to conditions conducive to urban decay. It then relies on considerations outside its own analysis to dismiss this outcome. Specifically, the Report states "an oversupply of retail space could result in... a cycle of long-term vacancies... and the eventual possibility of physical deterioration and urban decay" (page 76). However, BAE concludes that aggressive government intervention will prevent commercial landlords from neglecting their properties. In other words, the BAE's central argument against urban decay appears to be based on a policy rather than an economic rationale.

The Report's presumption of effective government intervention raises several issues. First, it begs the question of the intent of an economic impact analysis to begin with. In other words, the BAE Report appears to argue that its own economic findings are irrelevant because adequate regulatory protections already exist to prevent urban decay regardless of market forces. Though an important consideration, the question of the policy intentions or future capacity of Lodi public officials is external to the economic analysis, and should not change the study's central conclusions. Second, the Report provides little in the way of policy analysis to support its finding that government intervention will be adequate and effective. For example, specific mitigations are not proposed or evaluated. Rather the Report assumes that the City will have the resources and ability to off-set fundamental economic forces (even without addressing the Centers' impact on the City budget, as discussed below). However, their own mapping of existing downtown vacancies and physical deterioration stands in stark contrast to this assumption.

2. **The BAE Report fails to assess the impact of the proposed Center on the City's fiscal health and thus its ability to combat urban decay if it were to occur. Moreover, based on the Report's own calculations, over 90 percent of the sales tax revenues from the Center will be transferred away from existing businesses, and thus will not represent net new revenue to the City.**

Developments of the magnitude of the proposed Center result in fiscal costs in addition to benefits. The BAE Report estimates the project will capture only \$14 million in taxable sales from outside the trade area, or only 8.5 percent of projected \$164 million in taxable sales expected from the project, with the rest captured from businesses currently operating in the trade area. Since sales tax revenue to the City represents 1 percent of the total, this equals only \$140,000 in new revenues. From this must be factored the fiscal costs associated with the project, such as police, fire, road maintenance, administration etc., leaving little to no benefit to the City. Additionally, if costs outweigh benefits, the City is further limited in its ability to undertake efforts to combat urban decay.

3. **The BAE Report consistently underestimates the impact of the project on small and/or specialized retailers, including those in Lodi's downtown, by overstating the importance of product differentiation.**

The BAE report states that, "... smaller food stores... are assumed to have a level of sales that already accounts for supermarket-type competition; an additional large supermarket is unlikely to draw a substantial number of shoppers away from these

small stores..." (page 22). Though it is true that product differentiation is an important means for Lodi's smaller retailers to compete against supermarkets and other large retailers, it is incorrect to assume that such product differentiation protects them from growth in large retailers. Because product differentiation occurs along a continuum, consumers are willing to substitute apparently dissimilar products if there are differences in convenience or price. This is especially likely in the case of Wal-Mart consumers, who may be disproportionately moderate to low income. These customers are more responsive to marginal savings in price and time-cost, and therefore especially likely to forsake specialized retailers.

Retailers like Wal-Mart are also constantly evolving their product lines and market strategies to capture additional demand segments. Indeed, national retailers such as Wal-Mart are increasingly targeting consumers with specialized tastes. The greater visibility and increased diversity of large retailers in niche markets enhances the intensity of competition. By way of example, Wal-Mart operates "stores of the community" which offer specialized product lines tailored to the particular community of their locale, and in 2006 undertook months of new initiatives to reorient their selection to target six key demographic groups. For instance, Wal-Mart has been developing their selection of organic and natural products to increase their appeal to health-conscious consumers.

Another concern relating to the Center's customer appeal is that the BAE Report does not account for the reduced patronage across retailers because of the efficiency savings from combining grocery and retail purchases in the Center's Wal-Mart supercenter. Supercenters, as opposed to a standard Wal-Mart, aim to capture more customers than would either a supermarket or general merchandiser alone by lowering the time cost needed to acquire either of those goods, satisfying both impulse and regular demand. This should amplify the effect of any lower price and enhance willingness to substitute Wal-Mart products for other goods.

Finally, BAE's conclusions regarding the lack of any closures in downtown resulting from the impact of the proposed shopping center appear inconsistent with its own literature review. In projecting impacts of the project upon Lodi's downtown, the BAE analysis reviews six distinct studies, which without exception estimate shifts away from small retail stores to Wal-Mart. The BAE Report estimates a decline of about 7 percent in downtown retail sales, an area which they describe as vulnerable, especially since City funds buffering the area's growth in recent years have dried up. Projecting an economic downturn equivalent to a medium-sized recession in an already "fragile" retail district would appear to put this area at risk of urban decay, contrary to the Report's conclusion.

**4. BAE's conclusion that the Center's impacts on specific retail categories will result in few store closures is not supported by its findings.**

**Supermarkets:** BAE's Report estimates a 16 percent decrease in the City's overall supermarket sales per square foot to \$326, which at \$390 are already found to be slightly below national levels. Of the two supermarkets in the immediate vicinity of the proposed Wal-Mart, the Safeway is in the most precarious position, as "any reduction in sales may put this store... at risk of closure." Despite this finding, the BAE Report

concludes that Safeway's closure is unlikely because of recent attempts to differentiate its product by appealing to a wealthier demographic and the possibility that managers may expect that newly developing residential areas will boost sales. This position seems untenable given that the magnitude of expected losses from the new Wal-Mart (likely close to 30 percent or more given its proximity) would completely deflate already subpar performance, and the fact that Wal-Mart also is attempting to enhance its appeal to attract more affluent customers. The BAE Report's conclusions that the S-mart will not close because of recent change in corporate ownership, and that the Apple Marketplace will not close because it "may" have lower break even requirements, also do not appear justifiable given earlier findings regarding the already poor performance of these establishments. In all of these cases, the BAE Report appears to dismiss its own quantitative analysis based on qualitative or anecdotal considerations that have not been fully evaluated, an approach that reoccurs throughout the Report.

**General Merchandise:** Lodi's general merchandise sector is composed of three major retailers, Wal-Mart, Kmart, and Target. Of these the Kmart is reported as having "extremely poor" sales, to the point that any additional competition risks closure. Although BAE projects a 46 percent decline in sales per square foot in general merchandise over the trade area, it refrains from predicting whether the Kmart will actually close, though it mentions the possibility.

**Other Establishments:** Despite estimating that the Center (with Wal-Mart and other stores) will generate an average 13 percent citywide decrease in sales at existing pharmacies, an 8 percent reduction in sales in existing eating and drinking establishments, and a 6 percent reduction in sales in other existing retail stores, the report predicts *no closures in any of these categories*. This conclusion appears particularly unsupportable given the low profit margins typical of retail markets, and the likelihood of a wide degree of variation around these averages, implying that some stores will face more severe drop-offs. The 13 percent reduction in pharmacy sales is particularly concerning given that the Report notes that an existing drug store is the most successful tenant in a "fragile" downtown retail market.

## Attachment 2

### *Summary for Policymakers of the Synthesis Report of the IPCC Fourth Assessment Report* *DRAFT COPY 16 NOVEMBER 2007 23:04 – Subject to final copyedit*

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#### **Introduction**

This Synthesis Report is based on the assessment carried out by the three Working Groups of the IPCC. It provides an integrated view of climate change as the final part of the IPCC's Fourth Assessment Report.

A complete elaboration of the topics covered in this summary can be found in this Synthesis Report and in the underlying reports of the three Working Groups.

#### **1. Observed changes in climate and their effects**

**Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (Figure SPM.1). {1.1}**

Eleven of the last twelve years (1995-2006) rank among the twelve warmest years in the instrumental record of global surface temperature (since 1850). The 100-year linear trend (1906-2005) of 0.74 [0.56 to 0.92]°C<sup>1</sup> is larger than the corresponding trend of 0.6 [0.4 to 0.8]°C (1901-2000) given in the Third Assessment Report (TAR) (Figure SPM.1). The temperature increase is widespread over the globe, and is greater at higher northern latitudes. Land regions have warmed faster than the oceans (Figures SPM.2, SPM.4). {1.1, 1.2}

Rising sea level is consistent with warming (Figure SPM.1). Global average sea level has risen since 1961 at an average rate of 1.8 [1.3 to 2.3]mm/yr and since 1993 at 3.1 [2.4 to 3.8]mm/yr, with contributions from thermal expansion, melting glaciers and ice caps, and the polar ice sheets. Whether the faster rate for 1993 to 2003 reflects decadal variation or an increase in the longer-term trend is unclear. {1.1}

Observed decreases in snow and ice extent are also consistent with warming (Figure SPM.1). Satellite data since 1978 show that annual average Arctic sea ice extent has shrunk by 2.7 [2.1 to 3.3]% per decade, with larger decreases in summer of 7.4 [5.0 to 9.8]% per decade. Mountain glaciers and snow cover on average have declined in both hemispheres. {1.1}

From 1900 to 2005, precipitation increased significantly in eastern parts of North and South America, northern Europe and northern and central Asia but declined in the Sahel, the Mediterranean, southern Africa and parts of southern Asia. Globally, the area affected by drought has *likely*<sup>2</sup> increased since the 1970s. {1.1}

It is *very likely* that over the past 50 years: cold days, cold nights and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent. It is *likely* that: heat waves have become more frequent over most land areas, the frequency of heavy precipitation events has increased over most areas, and since 1975 the incidence of extreme high sea level<sup>3</sup> has increased worldwide. {1.1}

There is observational evidence of an increase in intense tropical cyclone activity in the North Atlantic since about 1970, with limited evidence of increases elsewhere. There is no clear trend in the annual numbers of tropical cyclones. It is difficult to ascertain longer term trends in cyclone activity, particularly prior to 1970.

Average Northern Hemisphere temperatures during the second half of the 20<sup>th</sup> century were *very likely* higher than during any other 50-year period in the last 500 years and *likely* the highest in at least the past 1300 years. {1.1}

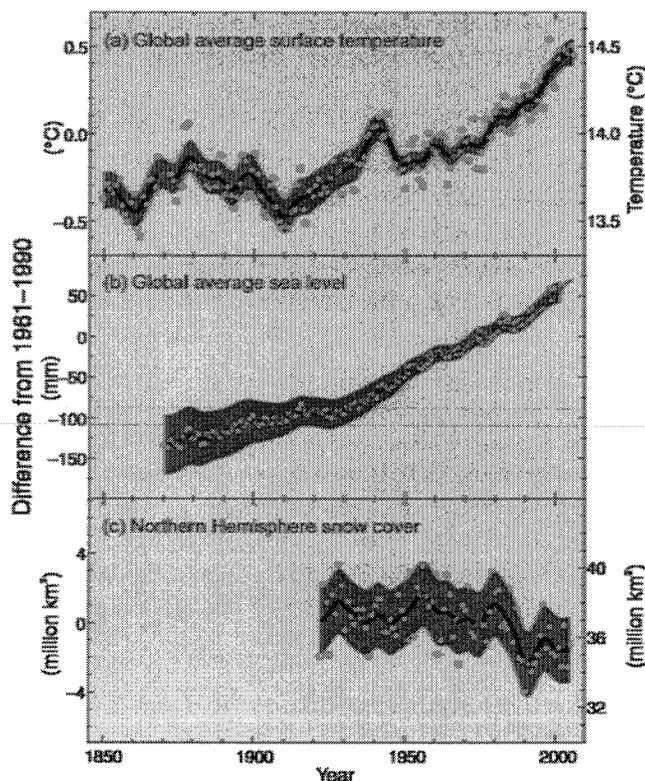
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<sup>1</sup> Numbers in square brackets indicate a 90% uncertainty interval around a best estimate, i.e., there is an estimated 5% likelihood that the value could be above the range given in square brackets and 5% likelihood that the value could be below that range. Uncertainty intervals are not necessarily symmetric around the corresponding best estimate.

<sup>2</sup> Words in italics represent calibrated expressions of uncertainty and confidence. Relevant terms are explained in the Box 'Treatment of uncertainty' in the Introduction of this Synthesis Report.

<sup>3</sup> Excluding tsunamis, which are not due to climate change. Extreme high sea level depends on average sea level and on regional weather systems. It is defined here as the highest 1% of hourly values of observed sea level at a station for a given reference period.

### Changes in temperature, sea level and Northern Hemisphere snow cover



**Figure SPM.1.** Observed changes in (a) global average surface temperature; (b) global average sea level from tide gauge (blue) and satellite (red) data and (c) Northern Hemisphere snow cover for March-April. All differences are relative to corresponding averages for the period 1961-1990. Smoothed curves represent decadal averaged values while circles show yearly values. The shaded areas are the uncertainty intervals estimated from a comprehensive analysis of known uncertainties (a and b) and from the time series (c). {Figure 1.1}

**Observational evidence<sup>4</sup> from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases. {1.2}**

Changes in snow, ice and frozen ground have with *high confidence* increased the number and size of glacial lakes, increased ground instability in mountain and other permafrost regions, and led to changes in some Arctic and Antarctic ecosystems. {1.2}

There is *high confidence* that some hydrological systems have also been affected through increased runoff and earlier spring peak discharge in many glacier- and snow-fed rivers, and effects on thermal structure and water quality of warming rivers and lakes. {1.2}

In terrestrial ecosystems, earlier timing of spring events and poleward and upward shifts in plant and animal ranges are with *very high confidence* linked to recent warming. In some marine and freshwater systems, shifts in ranges and changes in algal, plankton and fish abundance are with *high confidence* associated with rising water temperatures, as well as related changes in ice cover, salinity, oxygen levels and circulation. {1.2}

<sup>4</sup> Based largely on data sets that cover the period since 1970.

Of the more than 29,000 observational data series, from 75 studies, that show significant change in many physical and biological systems, more than 89% are consistent with the direction of change expected as a response to warming (Figure SPM.2). However, there is a notable lack of geographic balance in data and literature on observed changes, with marked scarcity in developing countries. {1.3}

### Changes in physical and biological systems and surface temperature 1970-2004

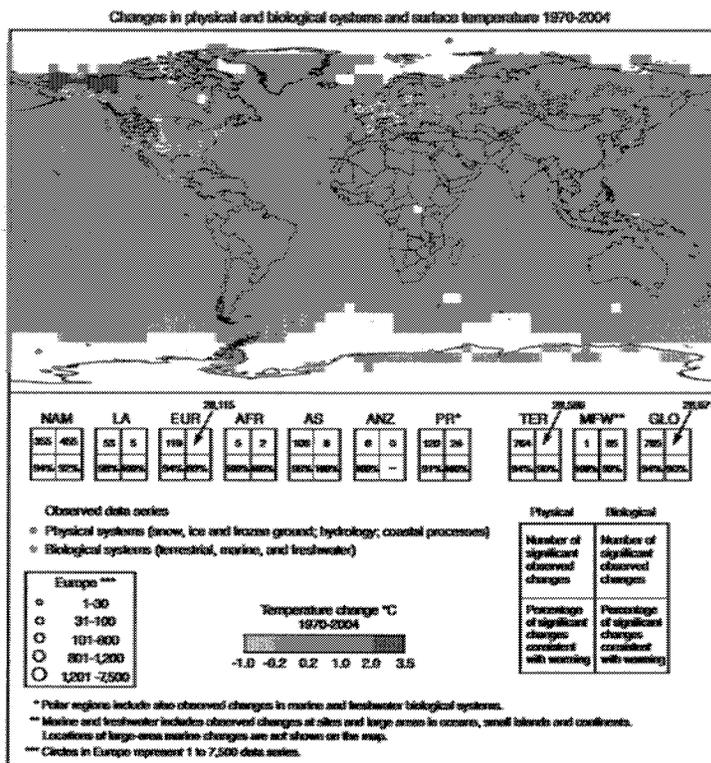


Figure SPM.2. Locations of significant changes in data series of physical systems (snow, ice and frozen ground; hydrology; and coastal processes) and biological systems (terrestrial, marine, and freshwater biological systems), are shown together with surface air temperature changes over the period 1970-2004. A subset of about 29,000 data series was selected from about 80,000 data series from 577 studies. These met the following criteria: (1) ending in 1990 or later; (2) spanning a period of at least 20 years; and (3) showing a significant change in either direction, as assessed in individual studies. These data series are from about 75 studies (of which about 70 are new since the Third Assessment) and contain about 29,000 data series, of which about 28,000 are from European studies. White areas do not contain sufficient observational climate data to estimate a temperature trend. The 2 x 2 boxes show the total number of data series with significant changes (top row) and the percentage of those consistent with warming (bottom row) for (i) continental regions: North America (NAM), Latin America (LA), Europe (EUR), Africa (AFR), Asia (AS), Australia and New Zealand (ANZ), and Polar Regions (PR) and (ii) global-scale: Terrestrial (TER), Marine and Freshwater (MFW), and Global (GLO). The numbers of studies from the seven regional boxes (NAM, EUR, AFR, AS, ANZ, PR) do not add up to the global (GLO) totals because numbers from regions except Polar do not include the numbers related to Marine and Freshwater (MFW) systems. Locations of large-area marine changes are not shown on the map. (Figure 1.2)

There is *medium confidence* that other effects of regional climate change on natural and human environments are emerging, although many are difficult to discern due to adaptation and non-climatic drivers.

They include effects of temperature increases on {1.2}

- agricultural and forestry management at Northern Hemisphere higher latitudes, such as earlier spring planting of crops, and alterations in disturbance regimes of forests due to fires and pests

- some aspects of human health, such as heat-related mortality in Europe, changes in infectious disease vectors in some areas, and allergenic pollen in Northern Hemisphere high and mid-latitudes
- some human activities in the Arctic (e.g. hunting and travel over snow and ice) and in lower-elevation alpine areas (such as mountain sports).

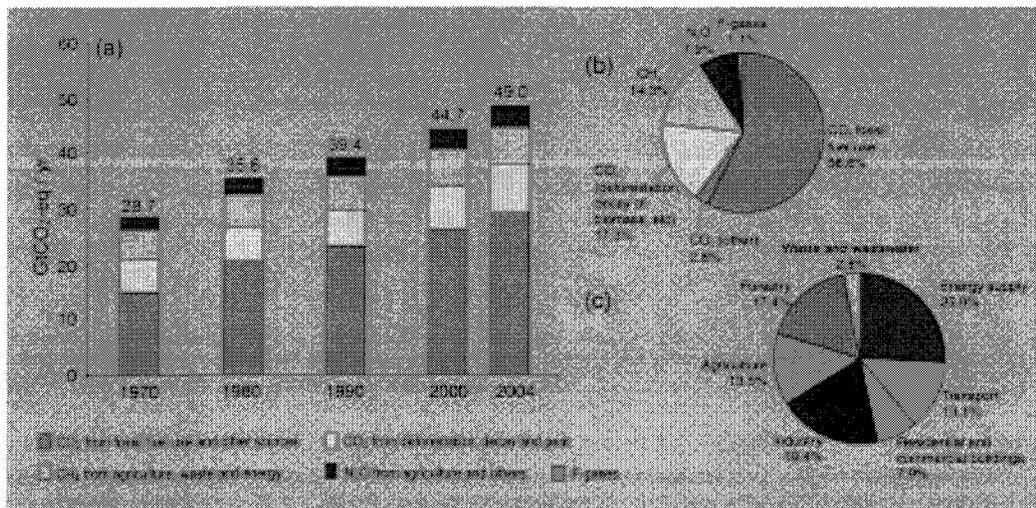
## 2. Causes of change

Changes in atmospheric concentrations of greenhouse gases (GHGs) and aerosols, land-cover and solar radiation alter the energy balance of the climate system.

**Global GHG emissions due to human activities have grown since pre-industrial times, with an increase of 70% between 1970 and 2004 (Figure SPM.3).<sup>5</sup> {2.1}**

Carbon dioxide (CO<sub>2</sub>) is the most important anthropogenic GHG. Its annual emissions grew by about 80% between 1970 and 2004. The long-term trend of declining CO<sub>2</sub> emissions per unit of energy supplied reversed after 2000. {2.1}

### Global anthropogenic GHG emissions



**Figure SPM.3.** (a) Global annual emissions of anthropogenic GHGs from 1970 to 2004.<sup>5</sup> (b) Share of different anthropogenic GHGs in total emissions in 2004 in terms of CO<sub>2</sub>-eq. (c) Share of different sectors in total anthropogenic GHG emissions in 2004 in terms of CO<sub>2</sub>-eq. (Forestry includes deforestation). {Figure 2.1}

**Global atmospheric concentrations of CO<sub>2</sub>, methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O) have increased markedly as a result of human activities since 1750 and now far exceed pre-industrial values determined from ice cores spanning many thousands of years. {2.2}**

Atmospheric concentrations of CO<sub>2</sub> (379ppm) and CH<sub>4</sub> (1774 ppb) in 2005 exceed by far the natural range over the last 650,000 years. Global increases in CO<sub>2</sub> concentrations are due primarily to fossil fuel use, with land-use change providing another significant but smaller contribution. It is *very likely* that the observed increase in CH<sub>4</sub> concentration is predominantly due to agriculture and fossil fuel use. Methane growth rates have declined since the early 1990s, consistent with total emission (sum of anthropogenic and natural sources) being nearly constant during this period. The increase in N<sub>2</sub>O concentration is primarily due to agriculture. {2.2}

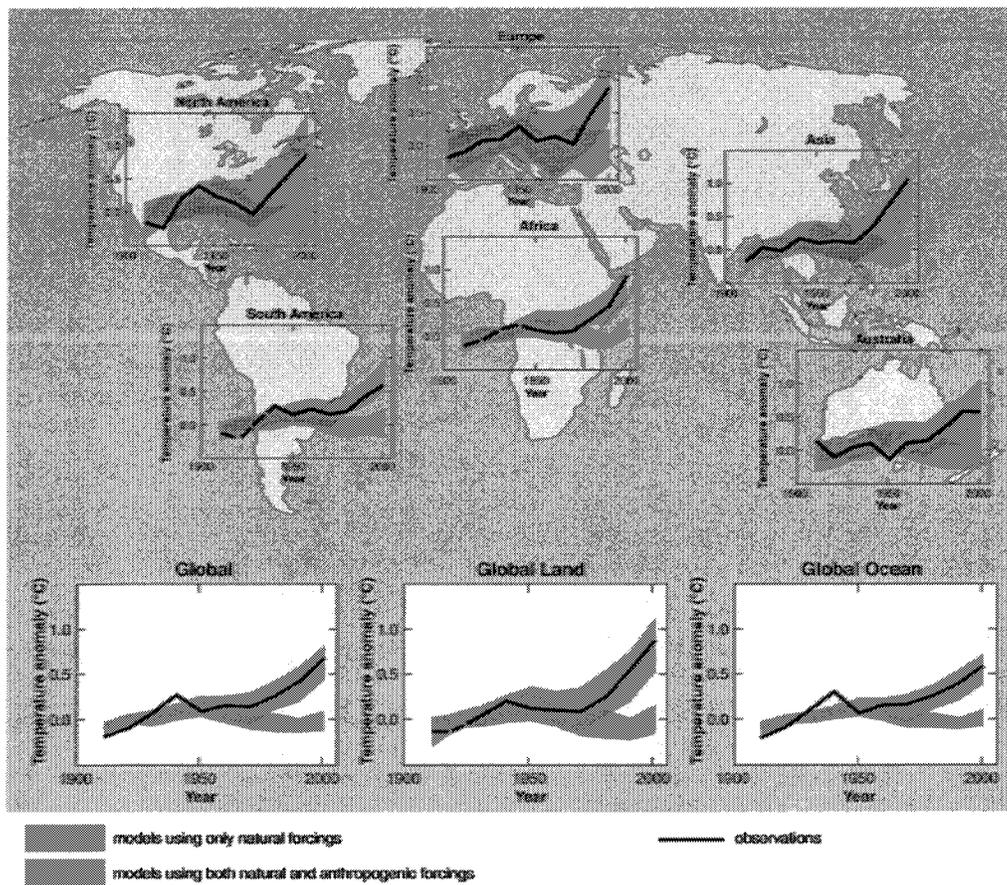
There is *very high confidence* that the net effect of human activities since 1750 has been one of warming.<sup>6</sup> {2.2}

<sup>5</sup> Includes only CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs and SF<sub>6</sub> whose emissions are covered by the UNFCCC. These GHGs are weighted by their 100-year Global Warming Potentials, using values consistent with reporting under the UNFCCC.

Most of the observed increase in globally-averaged temperatures since the mid-20<sup>th</sup> century is *very likely* due to the observed increase in anthropogenic GHG concentrations.<sup>7</sup> It is *likely* there has been significant anthropogenic warming over the past 50 years averaged over each continent (except Antarctica) (Figure SPM.4). {2.4}

During the past 50 years, the sum of solar and volcanic forcings would *likely* have produced cooling. Observed patterns of warming and their changes are simulated only by models that include anthropogenic forcings. Difficulties remain in simulating and attributing observed temperature changes at smaller than continental scales. {2.4}

### Global and continental temperature change



**Figure SPM.4.** Comparison of observed continental- and global-scale changes in surface temperature with results simulated by climate models using either natural or both natural and anthropogenic forcings. Decadal averages of observations are shown for the period 1906–2005 (black line) plotted against the centre of the decade and relative to the corresponding average for the period 1901–1950. Lines are dashed where spatial coverage is less than 50%. Blue shaded bands show the 5–95% range for 19 simulations from 5 climate models using only the natural forcings due to solar activity and volcanoes. Red shaded bands show the 5–95% range for 58 simulations from 14 climate models using both natural and anthropogenic forcings. {Figure 2.5}

<sup>6</sup> Increases in GHGs tend to warm the surface while the net effect of increases in aerosols tends to cool it. The net effect due to human activities since the pre-industrial era is one of warming (+1.6 [+0.6 to +2.4]W/m<sup>2</sup>). In comparison, changes in solar irradiance are estimated to have caused a small warming effect (+0.12 [+0.06 to +0.30]W/m<sup>2</sup>).

<sup>7</sup> Consideration of remaining uncertainty is based on current methodologies.

**Advances since the TAR show that discernible human influences extend beyond average temperature to other aspects of climate. {2.4}**

Human influences have: {2.4}

- *very likely* contributed to sea level rise during the latter half of the 20<sup>th</sup> century
- *likely* contributed to changes in wind patterns, affecting extra-tropical storm tracks and temperature patterns
- *likely* increased temperatures of extreme hot nights, cold nights and cold days
- *more likely than not* increased risk of heat waves, area affected by drought since the 1970s and frequency of heavy precipitation events.

**Anthropogenic warming over the last three decades has *likely* had a discernible influence at the global scale on observed changes in many physical and biological systems. {2.4}**

Spatial agreement between regions of significant warming across the globe and locations of significant observed changes in many systems consistent with warming is *very unlikely* to be due solely to natural variability. Several modelling studies have linked some specific responses in physical and biological systems to anthropogenic warming. {2.4}

More complete attribution of observed natural system responses to anthropogenic warming is currently prevented by the short time scales of many impact studies, greater natural climate variability at regional scales, contributions of non-climate factors and limited spatial coverage of studies. {2.4}

### **3. Projected climate change and its impacts**

**There is *high agreement* and *much evidence* that with current climate change mitigation policies and related sustainable development practices, global GHG emissions will continue to grow over the next few decades. {3.1}**

The IPCC Special Report on Emission Scenarios (SRES, 2000) projects an increase of global GHG emissions by 25-90% (CO<sub>2</sub>-eq) between 2000 and 2030 (Figure SPM.5), with fossil fuels maintaining their dominant position in the global energy mix to 2030 and beyond. More recent scenarios without additional emissions mitigation are comparable in range. <sup>8,9</sup> {3.1}

**Continued GHG emissions at or above current rates would cause further warming and induce many changes in the global climate system during the 21<sup>st</sup> century that would *very likely* be larger than those observed during the 20<sup>th</sup> century (Table SPM.1, Figure SPM.5). {3.2.1}**

For the next two decades a warming of about 0.2°C per decade is projected for a range of SRES emissions scenarios. Even if the concentrations of all greenhouse gases and aerosols had been kept constant at year 2000 levels, a further warming of about 0.1°C per decade would be expected. Afterwards, temperature projections increasingly depend on specific emission scenarios. {3.2}

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<sup>8</sup> For an explanation of SRES emission scenarios, see Box 'SRES scenarios' of this Synthesis Report. These scenarios do not include additional climate policy above current ones; more recent studies differ with respect to UNFCCC and Kyoto Protocol inclusion.

<sup>9</sup> Emission pathways of mitigation scenarios are discussed in Section 5.

Scenarios for GHG emissions from 2000 to 2100 (in the absence of additional climate policies) and projections of surface temperatures

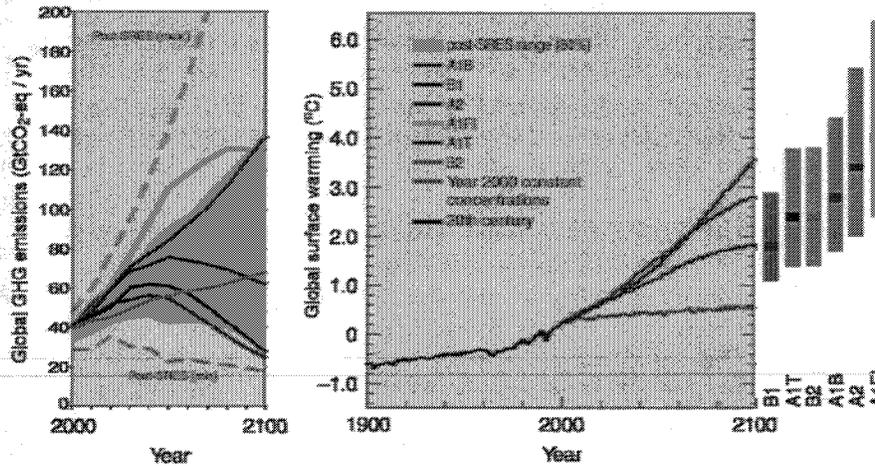


Figure SPM-5. Left Panel: Global GHG emissions (in CO<sub>2</sub>-eq) in the absence of climate policies: six illustrative SRES marker scenarios (coloured lines) and the 80<sup>th</sup> percentile range of recent scenarios published since SRES (post-SRES) (gray shaded area). Dashed lines show the full range of post-SRES scenarios. The emissions cover CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and F-gases. Right Panel: Solid lines are multi-model global averages of surface warming for scenarios A2, A1B and B1, shown as continuations of the 20<sup>th</sup> century simulations. These projections also take into account emissions of short-lived GHGs and aerosols. The pink line is not a scenario, but is for AOGCM simulations where atmospheric concentrations are held constant at year 2000 values. The bars at the right of the figure indicate the best estimate (solid line within each bar) and the *likely* range assessed for the six SRES marker scenarios at 2090-2099. All temperatures are relative to the period 1980-1999. {Figure 3.1, Figure 3.2}

Table SPM.1. Projected global averaged surface warming and sea level rise at the end of the 21st century. {Table 3.1}

Case	Temperature change (°C at 2090-2099 relative to 1980-1999) <sup>a, d</sup>		Sea level rise (m at 2090-2099 relative to 1980-1999)
	Best estimate	Likely range	Model-based range excluding future rapid dynamical changes in ice flow
Constant year 2000 concentrations <sup>b</sup>	0.6	0.3 – 0.9	Not available
B1 scenario	1.8	1.1 – 2.9	0.18 – 0.38
A1T scenario	2.4	1.4 – 3.8	0.20 – 0.45
B2 scenario	2.4	1.4 – 3.8	0.20 – 0.43
A1B scenario	2.8	1.7 – 4.4	0.21 – 0.48
A2 scenario	3.4	2.0 – 5.4	0.23 – 0.51
A1FI scenario	4.0	2.4 – 6.4	0.26 – 0.59

Notes:

- a) Temperatures are assessed best estimates and likely uncertainty ranges from a hierarchy of models of varying complexity as well as observational constraints.
- b) Year 2000 constant composition is derived from Atmosphere-Ocean General Circulation Models (AOGCMs) only.
- c) All scenarios above are six SRES marker scenarios. Approximate carbon dioxide equivalent concentrations corresponding to the computed radiative forcing due to anthropogenic GHGs and aerosols in 2100 (see p. 823 of the TAR) for the SRES B1, A1T, B2, A1B, A2 and A1FI illustrative marker scenarios are about 600, 700, 800, 850, 1250 and 1550 ppm, respectively.
- d) Temperature changes are expressed as the difference from the period 1980-1999. To express the change relative to the period 1850-1899 add 0.5 °C.

The range of projections (Table SPM.1) is broadly consistent with the TAR, but uncertainties and upper ranges for temperature are larger mainly because the broader range of available models suggests stronger climate-carbon cycle feedbacks. Warming reduces terrestrial and ocean uptake of atmospheric CO<sub>2</sub>, increasing the fraction of anthropogenic emissions remaining in the atmosphere. The strength of this feedback effect varies markedly among models. {2.3, 3.2.1}

Because understanding of some important effects driving sea level rise is too limited, this report does not assess the likelihood, nor provide a best estimate or an upper bound for sea level rise. Table SPM.1 shows model-based projections of global average sea level rise for 2090-2099.<sup>10</sup> The projections do not include uncertainties in climate-carbon cycle feedbacks nor the full effects of changes in ice sheet flow, therefore the upper values of the ranges are not to be considered upper bounds for sea level rise. They include a contribution from increased Greenland and Antarctic ice flow at the rates observed for 1993-2003, but this could increase or decrease in the future.<sup>11</sup> {3.2.1}

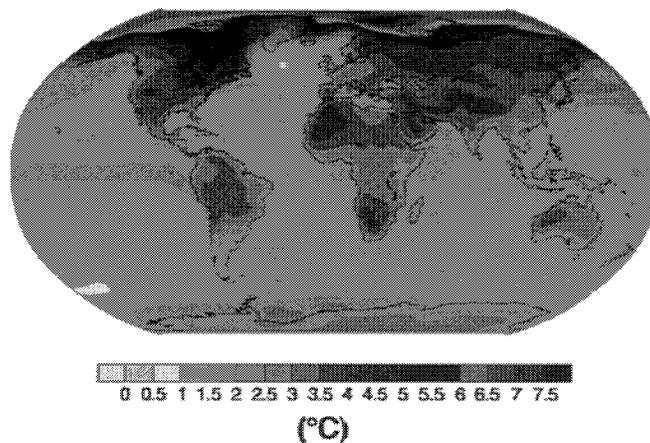
**There is now higher confidence than in the TAR in projected patterns of warming and other regional-scale features, including changes in wind patterns, precipitation, and some aspects of extremes and sea ice. {3.2.2}**

Regional-scale changes include: {3.2.2}

- warming greatest over land and at most high northern latitudes and least over Southern Ocean and parts of the North Atlantic Ocean, continuing recent observed trends (Figure SPM.6) in contraction of snow cover area, increases in thaw depth over most permafrost regions, and decrease in sea ice extent; in some projections using SRES scenarios, Arctic late-summer sea ice disappears almost entirely by the latter part of the 21<sup>st</sup> century
- *very likely* increase in frequency of hot extremes, heat waves, and heavy precipitation
- *likely* increase in tropical cyclone intensity; less confidence in global decrease of tropical cyclone numbers
- poleward shift of extra-tropical storm tracks with consequent changes in wind, precipitation, and temperature patterns
- *very likely* precipitation increases in high latitudes and *likely* decreases in most subtropical land regions, continuing observed recent trends

There is *high confidence* that by mid-century, annual river runoff and water availability are projected to increase at high latitudes (and in some tropical wet areas) and decrease in some dry regions in the mid-latitudes and tropics. There is also *high confidence* that many semi-arid areas (e.g. Mediterranean basin, western United States, southern Africa and northeast Brazil) will suffer a decrease in water resources due to climate change. {3.2; Figure 3.4}

### Geographical pattern of surface warming



**Figure SPM. 6.** Projected surface temperature changes for the late 21<sup>st</sup> century (2090-2099). The map shows the multi-AOGCM average projection for the A1B SRES scenario. All temperatures are relative to the period 1980-1999. {Figure 3.2}

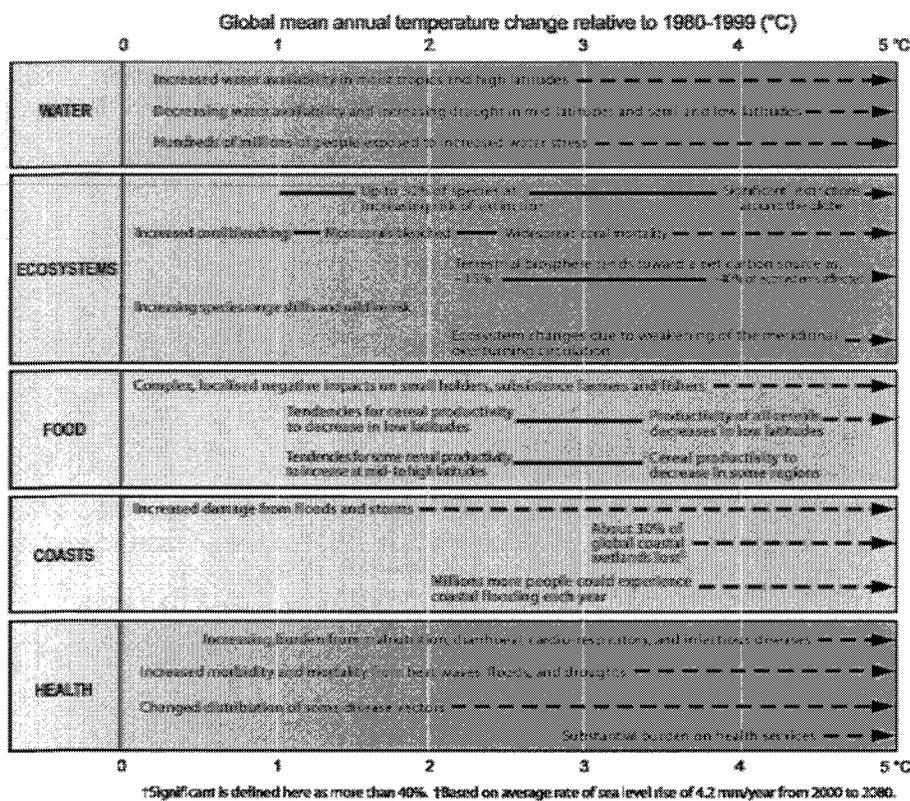
<sup>10</sup> TAR projections were made for 2100, whereas the projections for this report are for 2090-2099. The TAR would have had similar ranges to those in Table SPM.1 if it had treated uncertainties in the same way.

<sup>11</sup> For discussion of the longer term see material below.

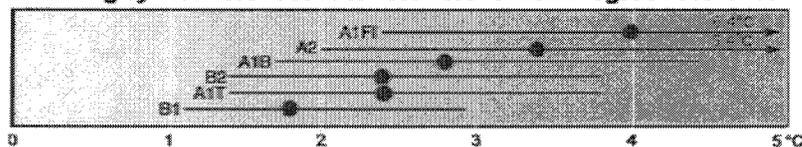
Studies since the TAR have enabled more systematic understanding of the timing and magnitude of impacts related to differing amounts and rates of climate change. {3.3.1, 3.3.2}

Figure SPM.7 presents examples of this new information for systems and sectors. The top panel shows impacts increasing with increasing temperature change. Their estimated magnitude and timing is also affected by development pathway (lower panel). {3.3.1, 3.3.2}

### Examples of impacts associated with global average temperature change (Impacts will vary by extent of adaptation, rate of temperature change, and socio-economic pathway)



#### Warming by 2090-2099 relative to 1980-1999 for non-mitigation scenarios



**Figure SPM.7.** Examples of impacts associated with projected global average surface warming. Upper panel: Illustrative examples of global impacts projected for climate changes (and sea level and atmospheric CO<sub>2</sub> where relevant) associated with different amounts of increase in global average surface temperature in the 21<sup>st</sup> century. The black lines link impacts; broken-line arrows indicate impacts continuing with increasing temperature. Entries are placed so that the left hand side of text indicates the approximate level of warming that is associated with the onset of a given impact. Quantitative entries for water scarcity and flooding represent the additional impacts of climate change relative to the conditions projected across the range of SRES scenarios A1FI, A2, B1 and B2. Adaptation to climate change is not included in these estimations. Confidence levels for all statements are *high*. Lower panel: Dots and bars indicate the best estimate and *likely* ranges of warming assessed for the six SRES marker scenarios for 2090-2099 relative to 1980-1999. {Figure 3.5}

Examples of some projected impacts for different regions are given in Table SPM.2.

Table SPM.2. Examples of some projected regional impacts\*

Africa	<ul style="list-style-type: none"> <li>• By 2020, between 75 and 250 million of people are projected to be exposed to increased water stress due to climate change;</li> <li>• By 2020, in some countries, yields from rain-fed agriculture could be reduced by up to 50%. Agricultural production, including access to food, in many African countries is projected to be severely compromised. This would further adversely affect food security and exacerbate malnutrition;</li> <li>• Towards the end of the 21st century, projected sea-level rise will affect low-lying coastal areas with large populations. The cost of adaptation could amount to at least 5-10% of Gross Domestic Product (GDP);</li> <li>• By 2080, an increase of 5-8% of arid and semi-arid land in Africa is projected under a range of climate scenarios (TS).</li> </ul>
Asia	<ul style="list-style-type: none"> <li>• By the 2050s, freshwater availability in Central, South, East and South-East Asia, particularly in large river basins, is projected to decrease;</li> <li>• Coastal areas, especially heavily-populated megadelta regions in South, East and South-East Asia, will be at greatest risk due to increased flooding from the sea and, in some megadeltas, flooding from the rivers;</li> <li>• Climate change is projected to compound the pressures on natural resources and the environment, associated with rapid urbanization, industrialization and economic development;</li> <li>• Endemic morbidity and mortality due to diarrhoeal disease primarily associated with floods and droughts are expected to rise in East, South and South-East Asia due to projected changes in the hydrological cycle.</li> </ul>
Australia and New Zealand	<ul style="list-style-type: none"> <li>• By 2020, significant loss of biodiversity is projected to occur in some ecologically rich sites including the Great Barrier Reef and Queensland Wet Tropics;</li> <li>• By 2030, water security problems are projected to intensify in southern and eastern Australia and, in New Zealand, in Northland and some eastern regions;</li> <li>• By 2030, production from agriculture and forestry is projected to decline over much of southern and eastern Australia, and over parts of eastern New Zealand, due to increased drought and fire. However, in New Zealand, initial benefits are projected in some other regions.;</li> <li>• By 2050, ongoing coastal development and population growth in some areas of Australia and New Zealand are projected to exacerbate risks from sea level rise and increases in the severity and frequency of storms and coastal flooding.</li> </ul>
Europe	<ul style="list-style-type: none"> <li>• Climate change is expected to magnify regional differences in Europe's natural resources and assets. Negative impacts will include increased risk of inland flash floods, and more frequent coastal flooding and increased erosion (due to storminess and sea-level rise);</li> <li>• Mountainous areas will face glacier retreat, reduced snow cover and winter tourism, and extensive species losses (in some areas up to 60% under high emissions scenarios by 2080);</li> <li>• In Southern Europe, climate change is projected to worsen conditions (high temperatures and drought) in a region already vulnerable to climate variability, and to reduce water availability, hydropower potential, summer tourism and, in general, crop productivity;</li> <li>• Climate change is also projected to increase the health risks due to heat-waves, and the frequency of wildfires.</li> </ul>
Latin America	<ul style="list-style-type: none"> <li>• By mid century, increases in temperature and associated decreases in soil water are projected to lead to gradual replacement of tropical forest by savanna in eastern Amazonia. Semi-arid vegetation will tend to be replaced by arid-land vegetation.</li> <li>• There is a risk of significant biodiversity loss through species extinction in many areas of tropical Latin America;</li> <li>• Productivity of some important crops is projected to decrease and livestock productivity to decline, with adverse consequences for food security. In temperate zones soybean yields are projected to increase. Overall, the number of people at risk of hunger is projected to increase (TS; <i>medium confidence</i>).</li> <li>• Changes in precipitation patterns and the disappearance of glaciers are projected to significantly affect water availability for human consumption, agriculture and energy generation.</li> </ul>
North America	<ul style="list-style-type: none"> <li>• Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over-allocated water resources;</li> <li>• In the early decades of the century, moderate climate change is projected to increase aggregate yields of rain-fed agriculture by 5-20%, but with important variability among regions. Major challenges are projected for crops that are near the warm end of their suitable range or which depend on highly utilized water resources;</li> <li>• During the course of this century, cities that currently experience heatwaves are expected to be further challenged by an increased number, intensity and duration of heatwaves during the course of the century, with potential for adverse health impacts;</li> <li>• Coastal communities and habitats will be increasingly stressed by climate change impacts interacting with development and pollution.</li> </ul>
Polar Regions	<ul style="list-style-type: none"> <li>• The main projected biophysical effects are reductions in thickness and extent of glaciers and ice sheets and sea ice, and changes in natural ecosystems with detrimental effects on many organisms including migratory birds, mammals and higher predators;</li> <li>• For human communities in the Arctic, impacts, particularly those resulting from changing snow and ice conditions are projected to be mixed;</li> <li>• Detrimental impacts would include those on infrastructure and traditional indigenous ways of life;</li> <li>• In both polar regions, specific ecosystems and habitats are projected to be vulnerable, as climatic barriers to species invasions are lowered.</li> </ul>

Table SPM.2. (cont.)

Small Islands	<ul style="list-style-type: none"><li>• Sea-level rise is expected to exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities;</li><li>• Deterioration in coastal conditions, for example through erosion of beaches and coral bleaching is expected to affect local resources;</li><li>• By mid-century, climate change is expected to reduce water resources in many small islands, e.g., in the Caribbean and Pacific, to the point where they become insufficient to meet demand during low-rainfall periods.</li><li>• With higher temperatures, increased invasion by non-native species is expected to occur, particularly on mid- and high-latitude islands.</li></ul>
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*\*Unless stated explicitly, all entries are from WGII SPM text, and are either very high confidence or high confidence statements, reflecting different sectors (Agriculture, Ecosystems, Water, Coasts, Health, Industry and Settlements). The WGII SPM refers to the source of the statements, timelines and temperatures. The magnitude and timing of impacts that will ultimately be realized will vary with the amount and rate of climate change, emission scenarios, development pathways and adaptation.*

Some systems, sectors and regions are *likely* to be especially affected by climate change.<sup>12</sup>

Systems and sectors: {3.3.4}

- particular ecosystems:
  - terrestrial: tundra, boreal forest and mountain regions because of sensitivity to warming; mediterranean-type ecosystems because of reduction in rainfall; and tropical rainforests where precipitation declines
  - coastal: mangroves and salt marshes, due to multiple stresses
  - marine: coral reefs due to multiple stresses; the sea ice biome because of sensitivity to warming
- water resources in some dry regions at mid-latitudes<sup>13</sup> and in the dry tropics, due to changes in rainfall and evapotranspiration, and in areas dependent on snow and ice melt
- agriculture in low-latitudes, due to reduced water availability
- low-lying coastal systems, due to threat of sea level rise and increased risk from extreme weather events
- human health in populations with low adaptive capacity.

Regions: {3.3.4}

- the Arctic, because of the impacts of high rates of projected warming on natural systems and human communities
- Africa, because of low adaptive capacity and projected climate change impacts
- small islands, where there is high exposure of population and infrastructure to projected climate change impacts
- Asian and African megadeltas, due to large populations and high exposure to sea level rise, storm surges and river flooding.

Within other areas, even those with high incomes, some people (such as the poor, young children, and the elderly) can be particularly at risk, and also some areas and some activities. {3.3.4}

### **Ocean Acidification**

The uptake of anthropogenic carbon since 1750 has led to the ocean becoming more acidic with an average decrease in pH of 0.1 units. Increasing atmospheric CO<sub>2</sub> concentrations lead to further acidification. Projections based on SRES scenarios give a reduction in average global surface ocean pH of between 0.14 and 0.35 units over the 21<sup>st</sup> century. While the effects of observed ocean acidification on the marine biosphere are as yet undocumented, the progressive acidification of oceans is expected to have negative impacts on marine shell-forming organisms (e.g. corals) and their dependent species. {3.3.1}

<sup>12</sup> Identified on the basis of expert judgement of the assessed literature and considering the magnitude, timing and projected rate of climate change, sensitivity and adaptive capacity.

<sup>13</sup> Including arid and semi-arid regions.

**Altered frequencies and intensities of extreme weather, together with sea level rise, are expected to have mostly adverse effects on natural and human systems. {3.3.3}**

Examples for selected extremes and sectors are shown in Table SPM.3. {Table 3.2}

**Table SPM.3.** Examples of possible impacts of climate change due to changes in extreme weather and climate events, based on projections to the mid- to late 21<sup>st</sup> century. These do not take into account any changes or developments in adaptive capacity. The likelihood estimates in column 2 relate to the phenomena listed in column 1. {WGII Table SPM.1}

Phenomenon <sup>a</sup> and direction of trend	Likelihood of future trends based on projections for 21 <sup>st</sup> century using SRES scenarios	Examples of major projected impacts by sector			
		Agriculture, forestry and ecosystems (WGII 4.4, 5.4)	Water resources (WGII 3.4)	Human health (WGII 8.2, 8.4)	Industry, settlement and society (WGII 7.4)
Over most land areas, warmer and fewer cold days and nights, warmer and more frequent hot days and nights	Virtually certain <sup>b</sup>	Increased yields in colder environments; decreased yields in warmer environments; increased insect outbreaks	Effects on water resources relying on snowmelt; effects on some water supplies	Reduced human mortality from decreased cold exposure	Reduced energy demand for heating; increased demand for cooling; declining air quality in cities; reduced disruption to transport due to snow, ice; effects on winter tourism
Warm spells/heat waves. Frequency increased over most land areas	Very likely	Reduced yields in warmer regions due to heat stress; increased danger of wildfire	Increased water demand; water quality problems, e.g. algal blooms	Increased risk of heat-related mortality, especially for the elderly, chronically sick, very young and socially isolated	Reduction in quality of life for people in warm areas without appropriate housing; impacts on the elderly, very young and poor
Heavy precipitation events. Frequency increases over most areas	Very likely	Damage to crops; soil erosion, inability to cultivate land due to waterlogging of soils	Adverse effects on quality of surface and groundwater; contamination of water supply; water scarcity may be relieved	Increased risk of deaths, injuries and infectious, respiratory and skin diseases	Disruption of settlements, commerce, transport and societies due to flooding; pressures on urban and rural infrastructures; loss of property
Area affected by drought increases	Likely	Land degradation; lower yields/crop damage and failure; increased livestock deaths; increased risk of wildfire	More widespread water stress	Increased risk of food and water shortage; increased risk of malnutrition; increased risk of water- and food-borne diseases	Water shortage for settlements, industry and societies; reduced hydropower generation potentials; potential for population migration
Intense tropical cyclone activity increases	Likely	Damage to crops; windthrow (uprooting) of trees; damage to coral reefs	Power outages causing disruption of public water supply	Increased risk of deaths, injuries, water- and food-borne diseases; post-traumatic stress disorders	Disruption by flood and high winds; withdrawal of risk coverage in vulnerable areas by private insurers, potential for population migrations, loss of property
Increased incidence of extreme high sea level (excludes tsunamis) <sup>c</sup>	Likely <sup>d</sup>	Salinisation of irrigation water, estuaries and freshwater systems	Decreased freshwater availability due to saltwater intrusion	Increased risk of deaths and injuries by drowning in floods; migration-related health effects	Costs of coastal protection versus costs of land-use relocation; potential for movement of populations and infrastructure; also see tropical cyclones above

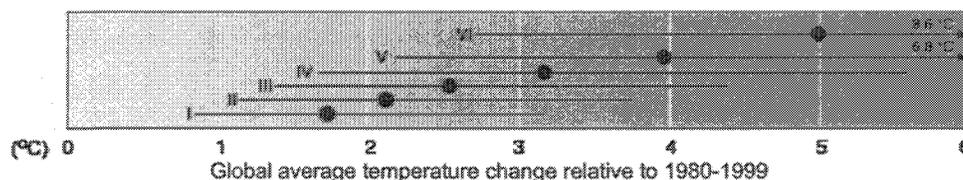
Notes:

- See WGI Table 3.7 for further details regarding definitions.
- Warming of the most extreme days and nights each year.
- Extreme high sea level depends on average sea level and on regional weather systems. It is defined as the highest 1% of hourly values of observed sea level at a station for a given reference period.
- In all scenarios, the projected global average sea level at 2100 is higher than in the reference period (WGI 10.6). The effect of changes in regional weather systems on sea level extremes has not been assessed.

**Anthropogenic warming and sea level rise would continue for centuries due to the timescales associated with climate processes and feedbacks, even if GHG concentrations were to be stabilised. {3.2.3}**

Estimated long term (multi-century) warming corresponding to the six AR4 WG III stabilisation categories is shown in Figure SPM.8.

### Estimated multi-century warming relative to 1980-1999 for AR4 stabilisation categories



**Figure SPM.8.** Estimated long term (multi-century) warming corresponding to the six AR4 WGIII stabilisation categories (Table SPM.3). Temperature scale has been shifted by  $-0.5^{\circ}\text{C}$  compared to Table SPM.3 to account approximately for the warming between pre-industrial and 1980-1999. For most stabilisation levels global average temperature is approaching the equilibrium level over a few centuries. For GHG emission scenarios that lead to stabilisation by 2100 at levels comparable to SRES B1 and A1B (600 and 850  $\text{CO}_2\text{-eq. ppm}$ ; category IV and V) assessed models project that about 65-70% of the estimated global equilibrium temperature increase assuming a climate sensitivity of  $3^{\circ}\text{C}$  would be realised at the time of stabilisation (WGI 10.7.2). For the much lower stabilisation scenarios (category I and II), the equilibrium temperature may be reached earlier (Figure SPM.11).

Contraction of the Greenland ice sheet is projected to continue to contribute to sea level rise after 2100. Current models suggest virtually complete elimination of the Greenland ice sheet and a resulting contribution to sea level rise of about 7 m if global average warming were sustained for millennia in excess of 1.9 to  $4.6^{\circ}\text{C}$  relative to pre-industrial values. The corresponding future temperatures in Greenland are comparable to those inferred for the last interglacial period 125,000 years ago, when paleoclimatic information suggests reductions of polar land ice extent and 4 to 6 m of sea level rise. {3.2.3}

Current global model studies project that the Antarctic ice sheet will remain too cold for widespread surface melting and gain mass due to increased snowfall. However, net loss of ice mass could occur if dynamical ice discharge dominates the ice sheet mass balance. {3.2.3}

**Anthropogenic warming could lead to some impacts that are abrupt or irreversible, depending upon the rate and magnitude of the climate change. {3.4}**

Partial loss of ice sheets on polar land could imply metres of sea level rise, major changes in coastlines and inundation of low-lying areas, with greatest effects in river deltas and low-lying islands. Such changes are projected to occur over millennial time scales, but more rapid sea level rise on century time scales cannot be excluded. {3.4}

Climate change is *likely* to lead to some irreversible impacts. There is *medium confidence* that approximately 20-30% of species assessed so far are *likely* to be at increased risk of extinction if increases in global average warming exceed  $1.5\text{-}2.5^{\circ}\text{C}$  (relative to 1980-1999). As global average temperature increase exceeds about  $3.5^{\circ}\text{C}$ , model projections suggest significant extinctions (40-70% of species assessed) around the globe. {3.4}

Based on current model simulations, the meridional overturning circulation (MOC) of the Atlantic Ocean will *very likely* slow down during the 21<sup>st</sup> century; nevertheless temperatures over the Atlantic and Europe are projected to increase. The MOC is *very unlikely* to undergo a large abrupt transition during the 21<sup>st</sup> century. Longer-term MOC changes cannot be assessed with confidence. Impacts of large-scale and persistent changes in the MOC are *likely* to include changes in marine ecosystem productivity, fisheries, ocean  $\text{CO}_2$  uptake, oceanic oxygen concentrations and terrestrial vegetation. Changes in terrestrial and ocean  $\text{CO}_2$  uptake may feed back on the climate system. {3.4}

#### **4. Adaptation and mitigation options<sup>14</sup>**

**A wide array of adaptation options is available, but more extensive adaptation than is currently occurring is required to reduce vulnerability to climate change. There are barriers, limits and costs, which are not fully understood. {4.2}**

Societies have a long record of managing the impacts of weather- and climate-related events. Nevertheless, additional adaptation measures will be required to reduce the adverse impacts of projected climate change and variability, regardless of the scale of mitigation undertaken over the next two to three decades. Moreover, vulnerability to climate change can be exacerbated by other stresses. These arise from, for example, current climate hazards, poverty and unequal access to resources, food insecurity, trends in economic globalisation, conflict and incidence of diseases such as HIV/AIDS. {4.2}

Some planned adaptation to climate change is already occurring on a limited basis. Adaptation can reduce vulnerability especially when it is embedded within broader sectoral initiatives (Table SPM.4). There is *high confidence* that there are viable adaptation options that can be implemented in some sectors at low cost, and/or with high benefit-cost ratios. However, comprehensive estimates of global costs and benefits of adaptation are limited. {4.2, Table 4.1}

**Adaptive capacity is intimately connected to social and economic development but is unevenly distributed across and within societies. {4.2}**

A range of barriers limit both the implementation and effectiveness of adaptation measures. The capacity to adapt is dynamic and is influenced by a society's productive base including: natural and man-made capital assets, social networks and entitlements, human capital and institutions, governance, national income, health and technology. Even societies with high adaptive capacity remain vulnerable to climate change, variability and extremes. {4.2}

**Both bottom-up and top-down studies indicate that there is *high agreement* and *much evidence* of substantial economic potential for the mitigation of global GHG emissions over the coming decades that could offset the projected growth of global emissions or reduce emissions below current levels (Figure SPM.9, SPM.10)<sup>15</sup>. While top-down and bottom-up studies are in line at the global level (Figure SPM.9) there are considerable differences at the sectoral level. {4.3}**

No single technology can provide all of the mitigation potential in any sector. The economic mitigation potential, which is generally greater than the market mitigation potential, can only be achieved when adequate policies are in place and barriers removed (Table SPM.5).

Bottom-up studies suggest that mitigation opportunities with net negative costs have the potential to reduce emissions by around 6 GtCO<sub>2</sub>-eq/yr in 2030, realizing which requires dealing with implementation barriers. {4.3}

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<sup>14</sup> While this section deals with adaptation and mitigation separately, these responses can be complementary. This theme is discussed in section 5.

<sup>15</sup> The concept of "mitigation potential" has been developed to assess the scale of GHG reductions that could be made, relative to emission baselines, for a given level of carbon price (expressed in cost per unit of carbon dioxide equivalent emissions avoided or reduced). Mitigation potential is further differentiated in terms of "market mitigation potential" and "economic mitigation potential".

**Market mitigation potential** is the mitigation potential based on private costs and private discount rates (reflecting the perspective of private consumers and companies), which might be expected to occur under forecast market conditions, including policies and measures currently in place, noting that barriers limit actual uptake.

**Economic mitigation potential** is the mitigation potential, which takes into account social costs and benefits and social discount rates (reflecting the perspective of society; social discount rates are lower than those used by private investors), assuming that market efficiency is improved by policies and measures and barriers are removed.

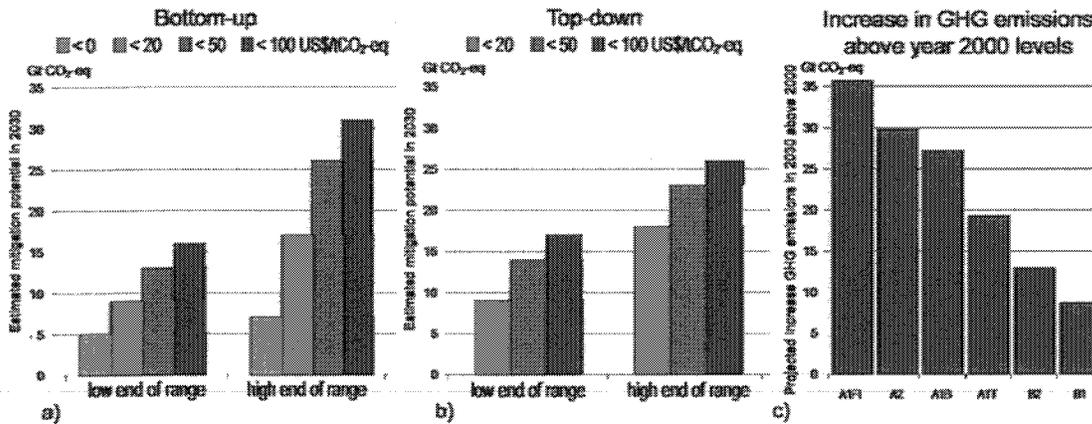
Mitigation potential is estimated using different types of approaches. **Bottom-up studies** are based on assessment of mitigation options, emphasizing specific technologies and regulations. They are typically sectoral studies taking the macro-economy as unchanged. **Top-down studies** assess the economy-wide potential of mitigation options. They use globally consistent frameworks and aggregated information about mitigation options and capture macro-economic and market feedbacks.

**Table SPM-4.** Selected examples of planned adaptation by sector.

Sector	Adaptation option/strategy	Underlying policy framework	Key constraints and opportunities to implementation (Normal font = constraints; <i>italics = opportunities</i> )
<b>Water</b>	Expanded rainwater harvesting; water storage and conservation techniques; water re-use; desalination; water-use and irrigation efficiency	National water policies and integrated water resources management; water-related hazards management	Financial, human resources and physical barriers; <i>integrated water resources management; synergies with other sectors</i>
<b>Agriculture</b>	Adjustment of planting dates and crop variety; crop relocation; improved land management, e.g. erosion control and soil protection through tree planting	R&D policies; institutional reform; land tenure and land reform; training; capacity building; crop insurance; financial incentives, e.g. subsidies and tax credits	Technological & financial constraints; access to new varieties; markets; <i>longer growing season in higher latitudes; revenues from 'new' products</i>
<b>Infrastructure/settlement (including coastal zones)</b>	Relocation; seawalls and storm surge barriers; dune reinforcement; land acquisition and creation of marshlands/wetlands as buffer against sea level rise and flooding; protection of existing natural barriers	Standards and regulations that integrate climate change considerations into design; land use policies; building codes; insurance	Financial and technological barriers; availability of relocation space; <i>integrated policies and managements; synergies with sustainable development goals</i>
<b>Human health</b>	Heat-health action plans; emergency medical services; improved climate-sensitive disease surveillance and control; safe water and improved sanitation	Public health policies that recognise climate risk; strengthened health services; regional and international cooperation	Limits to human tolerance (vulnerable groups); knowledge limitations; financial capacity; <i>upgraded health services; improved quality of life</i>
<b>Tourism</b>	Diversification of tourism attractions & revenues; shifting ski slopes to higher altitudes and glaciers; artificial snow-making	Integrated planning (e.g. carrying capacity; linkages with other sectors); financial incentives, e.g. subsidies and tax credits	Appeal/marketing of new attractions; financial and logistical challenges; potential adverse impact on other sectors (e.g. artificial snow-making may increase energy use); <i>revenues from 'new' attractions; involvement of wider group of stakeholders</i>
<b>Transport</b>	Realignment/relocation; design standards and planning for roads, rail, and other infrastructure to cope with warming and drainage	Integrating climate change considerations into national transport policy; investment in R&D for special situations, e.g. permafrost areas	Financial & technological barriers; availability of less vulnerable routes; <i>improved technologies and integration with key sectors (e.g. energy)</i>
<b>Energy</b>	Strengthening of overhead transmission and distribution infrastructure; underground cabling for utilities; energy efficiency; use of renewable sources; reduced dependence on single sources of energy	National energy policies, regulations, and fiscal and financial incentives to encourage use of alternative sources; incorporating climate change in design standards	Access to viable alternatives; financial and technological barriers; acceptance of new technologies; <i>stimulation of new technologies; use of local resources</i>

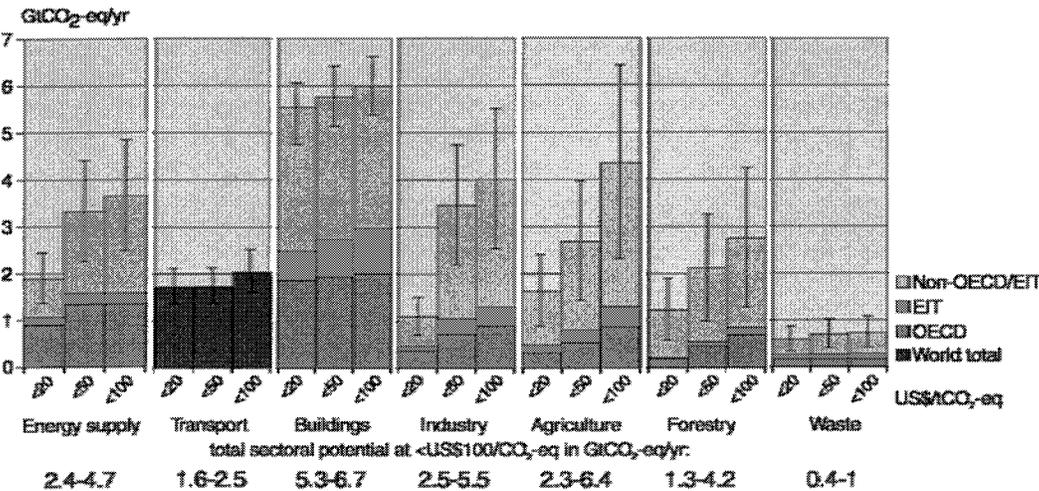
*Note: Other examples from many sectors would include early warning systems.*

### Comparison between global economic mitigation potential and projected emissions increase in 2030



**Figure SPM.9.** Global economic mitigation potential in 2030 estimated from bottom-up (Panel a) and top-down (Panel b) studies, compared with the projected emission increases from SRES scenarios relative to 2000 GHG emissions of 40.8 GtCO<sub>2</sub>-eq (Panel c). Note: GHG emissions in 2000 are exclusive of emissions of decay of above ground biomass that remains after logging and deforestation and from peat fires and drained peat soils, to ensure consistency with the SRES emission results.

### Economic mitigation potential by sector in 2030 estimated from bottom-up studies



**Figure SPM.10.** Estimated economic mitigation potential by sector in 2030 from bottom-up studies, compared to the respective baselines assumed in the sector assessments. The potentials do not include non-technical options such as lifestyle changes. (Figure 4.1)

Notes:

- The ranges for global economic potentials as assessed in each sector are shown by vertical lines. The ranges are based on end-use allocations of emissions, meaning that emissions of electricity use are counted towards the end-use sectors and not to the energy supply sector.
- The estimated potentials have been constrained by the availability of studies particularly at high carbon price levels.
- Sectors used different baselines. For industry the SRES B2 baseline was taken, for energy supply and transport the WEO 2004 baseline was used; the building sector is based on a baseline in between SRES B2 and A1B; for waste, SRES A1B driving forces were used to construct a waste specific baseline; agriculture and forestry used baselines that mostly used B2 driving forces.
- Only global totals for transport are shown because international aviation is included.
- Categories excluded are: non-CO<sub>2</sub> emissions in buildings and transport, part of material efficiency options, heat production and cogeneration in energy supply, heavy duty vehicles, shipping and high-occupancy passenger transport, most high-cost options for buildings, wastewater treatment, emission reduction from coal mines and gas pipelines, fluorinated gases from energy supply and transport. The underestimation of the total economic potential from these emissions is of the order of 10-15%.

**Table SPM-5.** Selected examples of key sectoral mitigation technologies, policies and measures, constraints and opportunities. (WGIII, Tables SPM.3, SPM.7)

Sector	Key mitigation technologies and practices currently commercially available. Key mitigation technologies and practices projected to be commercialised before 2030 shown in italics.	Policies, measures and instruments shown to be environmentally effective	Key constraints or opportunities (Normal font = constraints; italics = opportunities)
Energy Supply	Improved supply and distribution efficiency; fuel switching from coal to gas; nuclear power; renewable heat and power (hydropower, solar, wind, geothermal and bioenergy); combined heat and power; early applications of Carbon Dioxide Capture and Storage (CCS) (e.g. storage of removed CO <sub>2</sub> from natural gas); <i>CCS for gas, biomass and coal-fired electricity generating facilities; advanced nuclear power; advanced renewable energy, including tidal and wave energy, concentrating solar, and solar photovoltaics</i>	Reduction of fossil fuel subsidies; Taxes or carbon charges on fossil fuels	Resistance by vested interests may make them difficult to implement
		Feed-in tariffs for renewable energy technologies; Renewable energy obligations; Producer subsidies	<i>May be appropriate to create markets for low emissions technologies</i>
Transport	More fuel efficient vehicles; hybrid vehicles; cleaner diesel vehicles; biofuels; modal shifts from road transport to rail and public transport systems; non-motorised transport (cycling, walking); land-use and transport planning*; <i>Second generation biofuels; higher efficiency aircraft; advanced electric and hybrid vehicles with more powerful and reliable batteries</i>	Mandatory fuel economy, biofuel blending and CO <sub>2</sub> standards for road transport	Partial coverage of vehicle fleet may limit effectiveness
		Taxes on vehicle purchase, registration, use and motor fuels, road and parking pricing	Effectiveness may drop with higher incomes
		Influence mobility needs through land use regulations, and infrastructure planning; Investment in attractive public transport facilities and non-motorised forms of transport	<i>Particularly appropriate for countries that are building up their transportation systems</i>
Buildings	Efficient lighting and daylighting; more efficient electrical appliances and heating and cooling devices; improved cook stoves, improved insulation; passive and active solar design for heating and cooling; alternative refrigeration fluids, recovery and recycling of fluorinated gases; <i>Integrated design of commercial buildings including technologies, such as intelligent meters that provide feedback and control; solar photovoltaics integrated in buildings</i>	Appliance standards and labelling	Periodic revision of standards needed
		Building codes and certification	<i>Attractive for new buildings.</i> Enforcement can be difficult
		Demand-side management programmes	Need for regulations so that utilities may profit
		Public sector leadership programmes, including procurement	<i>Government purchasing can expand demand for energy-efficient products</i>
		Incentives for energy service companies (ESCOs)	<i>Success factor: Access to third party financing</i>
Industry	More efficient end-use electrical equipment; heat and power recovery; material recycling and substitution; control of non-CO <sub>2</sub> gas emissions; and a wide array of process-specific technologies; <i>Advanced energy efficiency; CCS for cement, ammonia, and iron manufacture; inert electrodes for aluminium manufacture</i>	Provision of benchmark information; Performance standards; Subsidies, tax credits	<i>May be appropriate to stimulate technology uptake.</i> Stability of national policy important in view of international competitiveness
		Tradable permits	Predictable allocation mechanisms and stable price signals important for investments
		Voluntary agreements	Success factors include: clear targets, a baseline scenario, third party involvement in design and review and formal provisions of monitoring, close cooperation between government and industry
Agriculture	Improved crop and grazing land management to increase soil carbon storage; restoration of cultivated peaty soils and degraded lands; improved rice cultivation techniques and livestock and manure management to reduce CH <sub>4</sub> emissions; improved nitrogen fertiliser application techniques to reduce N <sub>2</sub> O emissions; dedicated energy crops to replace fossil fuel use; improved energy efficiency; <i>Improvements of crop yields</i>	Financial incentives and regulations for improved land management, maintaining soil carbon content, efficient use of fertilisers and irrigation	<i>May encourage synergy with sustainable development and with reducing vulnerability to climate change, thereby overcoming barriers to implementation</i>

Table SPM-5. (cont.)

Sector	Key mitigation technologies and practices currently commercially available. Key mitigation technologies and practices projected to be commercialised before 2030 shown in italics.	Policies, measures and instruments shown to be environmentally effective	Key constraints or opportunities (Normal font = constraints; italics = opportunities)
Forestry/ forests	Afforestation; reforestation; forest management; reduced deforestation; harvested wood product management; use of forestry products for bioenergy to replace fossil fuel use; <i>Tree species improvement to increase biomass productivity and carbon sequestration. Improved remote sensing technologies for analysis of vegetation/ soil carbon sequestration potential and mapping land use change</i>	Financial incentives (national and international) to increase forest area, to reduce deforestation, and to maintain and manage forests; Land-use regulation and enforcement	Constraints include lack of investment capital and land tenure issues. <i>Can help poverty alleviation.</i>
Waste	Landfill CH <sub>4</sub> recovery; waste incineration with energy recovery; composting of organic waste; controlled waste water treatment; recycling and waste minimisation; <i>biocovers and biofilters to optimise CH<sub>4</sub> oxidation</i>	Financial incentives for improved waste and wastewater management	<i>May stimulate technology diffusion</i>
		Renewable energy incentives or obligations	Local availability of low-cost fuel
		Waste management regulations	Most effectively applied at national level with enforcement strategies

Future energy infrastructure investment decisions, expected to exceed 20 trillion US\$<sup>16</sup> between 2005 and 2030, will have long-term impacts on GHG emissions, because of the long life-times of energy plants and other infrastructure capital stock. The widespread diffusion of low-carbon technologies may take many decades, even if early investments in these technologies are made attractive. Initial estimates show that returning global energy-related CO<sub>2</sub> emissions to 2005 levels by 2030 would require a large shift in investment patterns, although the net additional investment required ranges from negligible to 5-10%. {4.3}

**A wide variety of policies and instruments are available to governments to create the incentives for mitigation action. Their applicability depends on national circumstances and sectoral context (Table SPM5). {4.3}**

They include integrating climate policies in wider development policies, regulations and standards, taxes and charges, tradable permits, financial incentives, voluntary agreements, information instruments, and research, development and demonstration (RD&D). {4.3}

An effective carbon-price signal could realise significant mitigation potential in all sectors. Modelling studies show global carbon prices rising to 20-80 US\$/tCO<sub>2</sub>-eq by 2030 are consistent with stabilisation at around 550 ppm CO<sub>2</sub>-eq by 2100. For the same stabilisation level, induced technological change may lower these price ranges to 5-65 US\$/tCO<sub>2</sub>-eq in 2030.<sup>17</sup> {4.3}

There is *high agreement* and *much evidence* that mitigation actions can result in near-term co-benefits (e.g. improved health due to reduced air pollution) that may offset a substantial fraction of mitigation costs. {4.3}

There is *high agreement* and *medium evidence* that Annex I countries' actions may affect the global economy and global emissions, although the scale of carbon leakage remains uncertain.<sup>18</sup> {4.3}

<sup>16</sup> 20 trillion = 20,000 billion = 20×10<sup>12</sup>

<sup>17</sup> Studies on mitigation portfolios and macro-economic costs assessed in this report are based on top-down modelling. Most models use a global least cost approach to mitigation portfolios, with universal emissions trading, assuming transparent markets, no transaction cost, and thus perfect implementation of mitigation measures throughout the 21<sup>st</sup> century. Costs are given for a specific point in time. Global modelled costs will increase if some regions, sectors (e.g. land-use), options or gases are excluded. Global modelled costs will decrease with lower baselines, use of revenues from carbon taxes and auctioned permits, and if induced technological learning is included. These models do not consider climate benefits and generally also co-benefits of mitigation measures, or equity issues. Significant progress has been achieved in applying approaches based on induced technological change to stabilisation studies; however, conceptual issues remain. In the models that consider induced technological change, projected costs for a given stabilisation level are reduced; the reductions are greater at lower stabilisation level.

<sup>18</sup> Further details may be found in Topic 4 of the Synthesis Report.

Fossil fuel exporting nations (in both Annex I and non-Annex I countries) may expect, as indicated in the TAR, lower demand and prices and lower GDP growth due to mitigation policies. The extent of this spill over depends strongly on assumptions related to policy decisions and oil market conditions.

There is also *high agreement* and *medium evidence* that changes in lifestyle, behaviour patterns and management practices can contribute to climate change mitigation across all sectors. {4.3}

**Many options for reducing global GHG emissions through international cooperation exist. There is *high agreement* and *much evidence* that notable achievements of the UNFCCC and its Kyoto Protocol are the establishment of a global response to climate change, stimulation of an array of national policies, and the creation of an international carbon market and new institutional mechanisms that may provide the foundation for future mitigation efforts. Progress has also been made in addressing adaptation within the UNFCCC and additional international initiatives have been suggested. {4.5}**

Greater cooperative efforts and expansion of market mechanisms will help to reduce global costs for achieving a given level of mitigation, or will improve environmental effectiveness. Efforts can include diverse elements such as emissions targets; sectoral, local, sub-national and regional actions; RD&D programmes; adopting common policies; implementing development oriented actions; or expanding financing instruments. {4.5}

**In several sectors, climate response options can be implemented to realise synergies and avoid conflicts with other dimensions of sustainable development. Decisions about macroeconomic and other non-climate policies can significantly affect emissions, adaptive capacity and vulnerability. {4.4, 5.8}**

Making development more sustainable can enhance mitigative and adaptive capacities, reduce emissions, and reduce vulnerability, but there may be barriers to implementation. On the other hand, it is *very likely* that climate change can slow the pace of progress towards sustainable development. Over the next half-century, climate change could impede achievement of the Millennium Development Goals. {5.8}

## **5. The long-term perspective**

**Determining what constitutes “dangerous anthropogenic interference with the climate system” in relation to Article 2 of the UNFCCC involves value judgements. Science can support informed decisions on this issue, including by providing criteria for judging which vulnerabilities might be labelled “key”. {Box ‘Key Vulnerabilities and Article 2 of the UNFCCC’, topic 5}**

Key vulnerabilities<sup>19</sup> may be associated with many climate sensitive systems including food supply, infrastructure, health, water resources, coastal systems, ecosystems, global biogeochemical cycles, ice sheets, and modes of oceanic and atmospheric circulation. {Box ‘Key Vulnerabilities and Article 2 of the UNFCCC’, topic 5}

**The five “reasons for concern” identified in the TAR remain a viable framework to consider key vulnerabilities. These “reasons” are assessed here to be stronger than in the TAR. Many risks are identified with higher confidence. Some risks are projected to be larger or to occur at lower increases in temperature. Understanding about the relationship between impacts (the basis for “reasons for concern” in the TAR) and vulnerability (that includes the ability to adapt to impacts) has improved. {5.2}**

This is due to more precise identification of the circumstances that make systems, sectors and regions especially vulnerable, and growing evidence of the risks of very large impacts on multiple century time scales. {5.2}

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<sup>19</sup> Key Vulnerabilities can be identified based on a number of criteria in the literature, including magnitude, timing, persistence/reversibility, the potential for adaptation, distributional aspects, likelihood and ‘importance’ of the impacts.

- **Risks to unique and threatened systems.** There is new and stronger evidence of observed impacts of climate change on unique and vulnerable systems (such as polar and high mountain communities and ecosystems), with increasing levels of adverse impacts as temperatures increase further. An increasing risk of species extinction and coral reef damage is projected with higher confidence than in the TAR as warming proceeds. There is *medium confidence* that approximately 20-30% of plant and animal species assessed so far are *likely* to be at increased risk of extinction if increases in global average temperature exceed 1.5-2.5°C over 1980-1999 levels. Confidence has increased that a 1-2°C increase in global mean temperature above 1990 levels (about 1.5-2.5°C above pre-industrial) poses significant risks to many unique and threatened systems including many biodiversity hotspots. Corals are vulnerable to thermal stress and have low adaptive capacity. Increases in sea surface temperature of about 1-3°C are projected to result in more frequent coral bleaching events and widespread mortality, unless there is thermal adaptation or acclimatization by corals. Increasing vulnerability of indigenous communities in the Arctic and small island communities to warming is projected.
- **Risks of extreme weather events.** Responses to some recent extreme events reveal higher levels of vulnerability than the TAR. There is now higher confidence in the projected increases in droughts, heatwaves, and floods as well as their adverse impacts.
- **Distribution of impacts and vulnerabilities.** There are sharp differences across regions and those in the weakest economic position are often the most vulnerable to climate change. There is increasing evidence of greater vulnerability of specific groups such as the poor and elderly in not only developing but also developed countries. Moreover, there is increased evidence that low-latitude and less-developed areas generally face greater risk, for example in dry areas and mega-deltas.
- **Aggregate impacts.** Compared to the TAR, initial net market-based benefits from climate change are projected to peak at a lower magnitude of warming, while damages would be higher for larger magnitudes of warming. The net costs of impacts of increased warming are projected to increase over time.
- **Risks of large-scale singularities.** There is *high confidence* that global warming over many centuries would lead to a sea level rise contribution from thermal expansion alone which is projected to be much larger than observed over the 20<sup>th</sup> century, with loss of coastal area and associated impacts. There is better understanding than in the TAR that the risk of additional contributions to sea level rise from both the Greenland and possibly Antarctic ice sheets may be larger than projected by ice sheet models and could occur on century time scales. This is because ice dynamical processes seen in recent observations but not fully included in ice sheet models assessed in AR4 could increase the rate of ice loss.

**There is *high confidence* that neither adaptation nor mitigation alone can avoid all climate change impacts; however, they can complement each other and together can significantly reduce the risks of climate change.** {5.3}

Adaptation is necessary in the short and longer term to address impacts resulting from the warming that would occur even for the lowest stabilisation scenarios assessed. There are barriers, limits and costs, but these are not fully understood. Unmitigated climate change would, in the long term, be *likely* to exceed the capacity of natural, managed and human systems to adapt. The time at which such limits could be reached will vary between sectors and regions. Early mitigation actions would avoid further locking in carbon intensive infrastructure and reduce climate change and associated adaptation needs. {5.2, 5.3}

**Many impacts can be reduced, delayed or avoided by mitigation. Mitigation efforts and investments over the next two to three decades will have a large impact on opportunities to achieve lower stabilisation levels. Delayed emission reductions significantly constrain the opportunities to achieve lower stabilisation levels and increase the risk of more severe climate change impacts.** {5.3, 5.4, 5.7}

In order to stabilise the concentration of GHGs in the atmosphere, emissions would need to peak and decline thereafter. The lower the stabilisation level, the more quickly this peak and decline would need to occur.<sup>20</sup> {5.4}

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<sup>20</sup> For the lowest mitigation scenario category assessed, emissions would need to peak by 2015 and for the highest by 2090 (see Table SPM.3). Scenarios that use alternative emission pathways show substantial differences in the rate of global climate change.

Table SPM.6 and Figure SPM.11 summarise the required emission levels for different groups of stabilisation concentrations and the resulting equilibrium global warming and long-term sea level rise due to thermal expansion only.<sup>21</sup> The timing and level of mitigation to reach a given temperature stabilisation level is earlier and more stringent if climate sensitivity is high than if it is low. {5.4, 5.7}

Sea level rise under warming is inevitable. Thermal expansion would continue for many centuries after GHG concentrations have stabilised, for any of the stabilisation levels assessed, causing an eventual sea level rise much larger than projected for the 21<sup>st</sup> century. The eventual contributions from Greenland ice sheet loss could be several metres, and larger than from thermal expansion, should warming in excess of 1.9–4.6°C above pre-industrial be sustained over many centuries. The long time scales of thermal expansion and ice sheet response to warming imply that stabilisation of GHG concentrations at or above present levels would not stabilise sea level for many centuries. {5.3, 5.4}

**Table SPM.6.** Characteristics of post-TAR stabilisation scenarios and resulting long-term equilibrium global average temperature and the sea level rise component from thermal expansion only. {Table 5.1}<sup>a</sup>

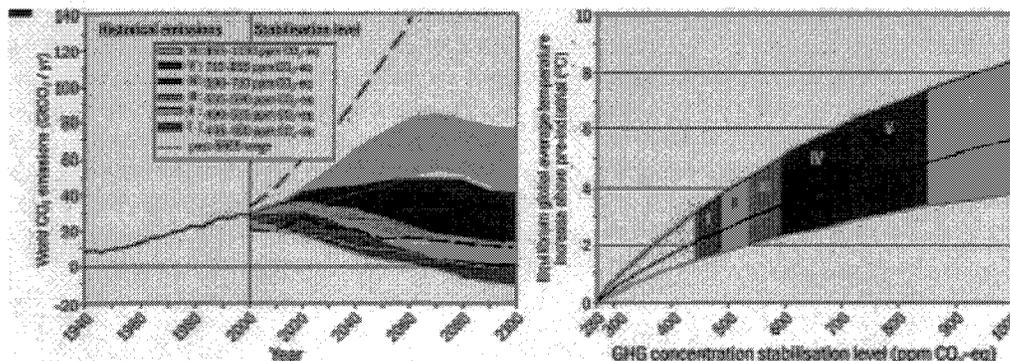
Category	CO <sub>2</sub> concentration at stabilization (2005 = 379 ppm) <sup>(a)</sup>	CO <sub>2</sub> -equivalent concentration at stabilization including GHGs and aerosols (2005 = 375 ppm) <sup>(b)</sup>	Peaking year for CO <sub>2</sub> emissions <sup>(a, c)</sup>	Change in global CO <sub>2</sub> emissions in 2050 (% of 2000 emissions) <sup>(a, c)</sup>	Global average temperature increase above pre-industrial at equilibrium, using 'best estimate' climate sensitivity <sup>(d, (e))</sup>	Global average sea level rise above pre-industrial at equilibrium from thermal expansion only <sup>(f)</sup>	Number of assessed scenarios
	ppm	ppm	Year	Percent	°C	metres	
I	350 – 400	445 – 490	2000 – 2015	-85 to -50	2.0 – 2.4	0.4 – 1.4	6
II	400 – 440	490 – 535	2000 – 2020	-60 to -30	2.4 – 2.8	0.5 – 1.7	18
III	440 – 485	535 – 590	2010 – 2030	-30 to +5	2.8 – 3.2	0.6 – 1.9	21
IV	485 – 570	590 – 710	2020 – 2060	+10 to +60	3.2 – 4.0	0.6 – 2.4	118
V	570 – 660	710 – 855	2050 – 2080	+25 to +85	4.0 – 4.9	0.8 – 2.9	9
VI	660 – 790	855 – 1130	2060 – 2090	+90 to +140	4.9 – 6.1	1.0 – 3.7	5

**Notes:**

- a) The emission reductions to meet a particular stabilization level reported in the mitigation studies assessed here might be underestimated due to missing carbon cycle feedbacks (see also Topic 2).
- b) Atmospheric CO<sub>2</sub> concentrations were 379 ppm in 2005. The best estimate of total CO<sub>2</sub>-eq concentration in 2005 for all long-lived GHGs is about 455 ppm, while the corresponding value including the net effect of all anthropogenic forcing agents is 375 ppm CO<sub>2</sub>-eq.
- c) Ranges correspond to the 15th to 85th percentile of the post-TAR scenario distribution. CO<sub>2</sub> emissions are shown so multi-gas scenarios can be compared with CO<sub>2</sub>-only scenarios (see Figure SPM.3).
- d) The best estimate of climate sensitivity is 3°C.
- e) Note that global average temperature at equilibrium is different from expected global average temperature at the time of stabilization of GHG concentrations due to the inertia of the climate system. For the majority of scenarios assessed, stabilisation of GHG concentrations occurs between 2100 and 2150 (see also Footnote 9).
- f) Equilibrium sea level rise is for the contribution from ocean thermal expansion only and does not reach equilibrium for at least many centuries. These values have been estimated using relatively simple climate models (one low resolution AOGCM and several EMICs based on the best estimate of 3°C climate sensitivity) and do not include contributions from melting ice sheets, glaciers and ice caps. Long-term thermal expansion is projected to result in 0.2 to 0.6 m per degree Celsius of global average warming above preindustrial. (AOGCM refers to Atmosphere Ocean General Circulation Models and EMICs to Earth System Models of Intermediate Complexity.)

<sup>21</sup> Estimates for the evolution of temperature over the course of this century are not available in the AR4 for the stabilisation scenarios. For most stabilisation levels global average temperature is approaching the equilibrium level over a few centuries. For the much lower stabilisation scenarios (category I and II, Figure SPM.11), the equilibrium temperature may be reached earlier.

## CO<sub>2</sub> emissions and equilibrium temperature increases for a range of stabilisation levels



**Figure SPM.11.** Global CO<sub>2</sub> emissions for 1940 to 2000 and emissions ranges for categories of stabilisation scenarios from 2000 to 2100 (left-hand panel); and the corresponding relationship between the stabilisation target and the *likely* equilibrium global average temperature increase above pre-industrial (right-hand panel). Approaching equilibrium can take several centuries, especially for scenarios with higher levels of stabilisation. Coloured shadings show stabilisation scenarios grouped according to different targets (stabilisation category I to VI). Right-hand panel shows ranges of global average temperature change above pre-industrial, using (i) “best estimate” climate sensitivity of 3°C (black line in middle of shaded area), (ii) upper bound of *likely* range of climate sensitivity of 4.5°C (red line at top of shaded area) (iii) lower bound of *likely* range of climate sensitivity of 2°C (blue line at bottom of shaded area). Black dashed lines in the left panel give the emissions range of recent baseline scenarios published since the SRES (2000). Emissions ranges of the stabilisation scenarios comprise CO<sub>2</sub>-only and multigas scenarios and correspond to the 10th-90th percentile of the full scenario distribution. Note: CO<sub>2</sub> emissions in most models do not include emissions from decay of above ground biomass that remains after logging and deforestation, and from peat fires and drained peat soils. (Figure 5.1)

There is *high agreement* and *much evidence* that all stabilisation levels assessed can be achieved by deployment of a portfolio of technologies that are either currently available or expected to be commercialised in coming decades, assuming appropriate and effective incentives are in place for their development, acquisition, deployment and diffusion and addressing related barriers. {5.5}

All assessed stabilisation scenarios indicate that 60-80% of the reductions would come from energy supply and use, and industrial processes, with energy efficiency playing a key role in many scenarios. Including non-CO<sub>2</sub> and CO<sub>2</sub> land-use and forestry mitigation options provides greater flexibility and cost-effectiveness. Low stabilisation levels require early investments and substantially more rapid diffusion and commercialisation of advanced low-emissions technologies.

Without substantial investment flows and effective technology transfer, it may be difficult to achieve emission reduction at a significant scale. Mobilizing financing of incremental costs of low-carbon technologies is important. {5.5}

The macro-economic costs of mitigation generally rise with the stringency of the stabilisation target (Table SPM.7). For specific countries and sectors, costs vary considerably from the global average.<sup>22</sup> {5.6}

In 2050, global average macro-economic costs for mitigation towards stabilisation between 710 and 445ppm CO<sub>2</sub>-eq are between a 1% gain and 5.5% decrease of global GDP (Table SPM.7). This corresponds to slowing average annual global GDP growth by less than 0.12 percentage points. {5.6}

<sup>22</sup> See footnote 17 for more detail on cost estimates and model assumptions.

**Table SPM.7.** Estimated global macro-economic costs in 2030 and 2050. Costs are relative to the baseline for least-cost trajectories towards different long-term stabilisation levels. (Table 5.2)

Stabilisation levels (ppm CO <sub>2</sub> -eq)	Median GDP reduction <sup>(a)</sup> (%)		Range of GDP reduction <sup>(b)</sup> (%)		Reduction of average annual GDP growth rates (percentage points) <sup>(c,d,e)</sup>	
	2030	2050	2030	2050	2030	2050
445 – 535 <sup>(d)</sup>	Not available		< 3	< 5.5	< 0.12	< 0.12
535 – 590	0.6	1.3	0.2 to 2.5	slightly negative to 4	< 0.1	< 0.1
590 – 710	0.2	0.5	-0.6 to 1.2	-1 to 2	< 0.06	< 0.05

Notes: Values given in this table correspond to the full literature across all baselines and mitigation scenarios that provide GDP numbers.

- a) Global GDP based on market exchange rates.
- b) The 10th and 90th percentile range of the analysed data are given where applicable. Negative values indicate GDP gain. The first row (445-535 ppm CO<sub>2</sub>-eq) gives the upper bound estimate of the literature only.
- c) The calculation of the reduction of the annual growth rate is based on the average reduction during the assessed period that would result in the indicated GDP decrease by 2030 and 2050 respectively.
- d) The number of studies is relatively small and they generally use low baselines. High emissions baselines generally lead to higher costs.
- e) The values correspond to the highest estimate for GDP reduction shown in column three.

**Responding to climate change involves an iterative risk management process that includes both adaptation and mitigation and takes into account climate change damages, co-benefits, sustainability, equity, and attitudes to risk. {5.1}**

Impacts of climate change are *very likely* to impose net annual costs which will increase over time as global temperatures increase. Peer-reviewed estimates of the social cost of carbon<sup>23</sup> in 2005 average US\$12 per tonne of CO<sub>2</sub>, but the range from 100 estimates is large (-\$3 to \$95/tCO<sub>2</sub>). This is due in large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates. Aggregate estimates of costs mask significant differences in impacts across sectors, regions and populations and *very likely* underestimate damage costs because they cannot include many non-quantifiable impacts. {5.7}

Limited and early analytical results from integrated analyses of the costs and benefits of mitigation indicate that they are broadly comparable in magnitude, but do not as yet permit an unambiguous determination of an emissions pathway or stabilisation level where benefits exceed costs. {5.7}

Climate sensitivity is a key uncertainty for mitigation scenarios for specific temperature levels.

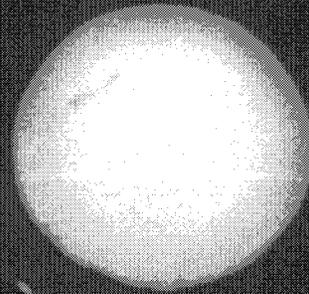
Choices about the scale and timing of GHG mitigation involve balancing the economic costs of more rapid emission reductions now against the corresponding medium-term and long-term climate risks of delay. {5.4}

<sup>23</sup> Net economic costs of damages from climate change aggregated across the globe and discounted to the specified year.

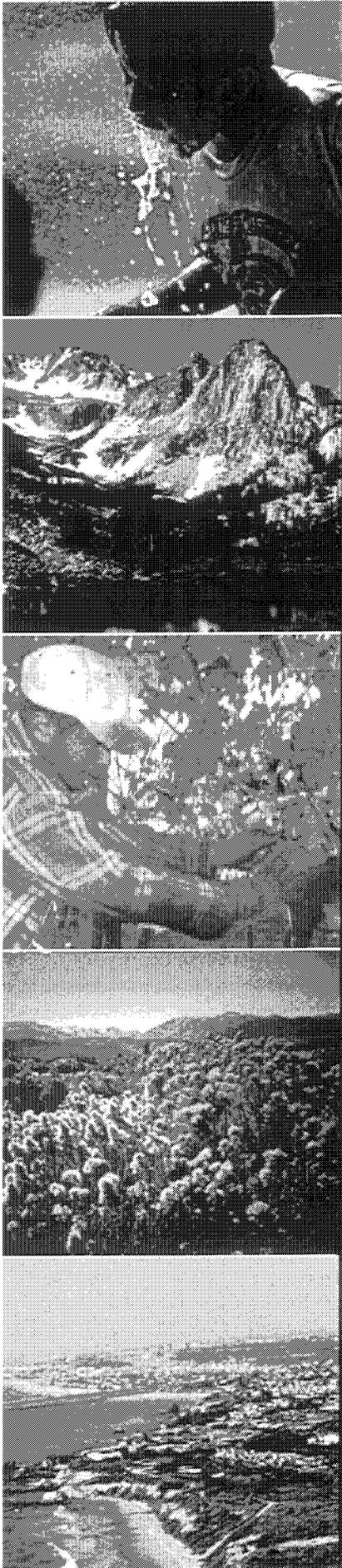


# Our Changing Climate

Assessing the Risks to California



A Summary Report from  
the California Climate Change Center



**Because most global warming emissions remain in the atmosphere for decades or centuries, the choices we make today greatly influence the climate our children and grandchildren inherit. The quality of life they experience will depend on if and how rapidly California and the rest of the world reduce these emissions.**

**I**n California and throughout western North America, signs of a changing climate are evident. During the last 50 years, winter and spring temperatures have been warmer, spring snow levels in lower- and mid-elevation mountains have dropped, snowpack has been melting one to four weeks earlier, and flowers are blooming one to two weeks earlier.

These regional changes are consistent with global trends. During the past 100 years, average temperatures have risen more than one degree Fahrenheit worldwide. Research indicates that much of this warming is due to human activities, primarily burning fossil fuels and clearing forests, that release carbon dioxide (CO<sub>2</sub>) and other gases into the atmosphere, trapping in heat that would otherwise escape into space. Once in the atmosphere, these heat-trapping emissions remain there for many years—CO<sub>2</sub>, for example, lasts about 100 years. As a result, atmospheric concentration of CO<sub>2</sub> has increased more than 30 percent above pre-industrial levels. If left unchecked, by the end of the century CO<sub>2</sub> concentrations could reach levels three times higher than pre-industrial times, leading to dangerous global warming that threatens our public health, economy, and environment.



The latest projections, based on state-of-the-art climate models, indicate that if global heat-trapping emissions proceed at a medium to high rate, temperatures in California are expected to rise 4.7 to 10.5°F by the end of the century. In contrast, a lower emissions rate would keep the projected warming to 3 to 5.6°F. These temperature increases would have widespread consequences including substantial loss of snowpack, increased risk of large wildfires, and reductions in the quality and quantity of certain agricultural products. The state's vital resources and natural landscapes are already under increasing stress

due to California's rapidly growing population, which is expected to grow from 35 million today to 55 million by 2050.

This document summarizes the recent findings of the California Climate Change Center's "Climate Scenarios" project, which analyzed a range of impacts that projected rising temperatures would likely have on California. The growing severity of the consequences as temperature rises underscores the importance of reducing emissions to minimize further warming. At the same time, it is essential to identify those consequences that may be unavoidable, for which we will need to develop coping and adaptation strategies.

**I**n 2003, the California Energy Commission's Public Interest Energy Research (PIER) program established the California Climate Change Center to conduct climate change research relevant to the state. This Center is a virtual organization with core research activities at Scripps Institution of Oceanography and the University of California, Berkeley, complemented by efforts at other research institutions. Priority research areas defined in PIER's five-year Climate Change Research Plan are: monitoring, analysis, and modeling of climate; analysis of options to reduce greenhouse gas emissions; assessment of physical impacts and of adaptation strategies; and analysis of the economic consequences of both climate change impacts as well as the efforts designed to reduce emissions.

Executive Order #S-3-05, signed by Governor Arnold Schwarzenegger on June 1, 2005, called for the California Environmental Protection Agency (CalEPA) to prepare biennial science reports on the potential impact of continued global warming on certain sectors of the California economy. CalEPA entrusted PIER and its California Climate Change Center to lead this effort. The "Climate Scenarios" analysis summarized here is the first of these biennial science reports, and is the product of a multi-institution collaboration among the California Air Resources Board, California Department of Water Resources, California Energy Commission, CalEPA, and the Union of Concerned Scientists.

# California's Future Climate

California's climate is expected to become considerably warmer during this century. How much warmer depends on the rate at which human activities, such as the burning of fossil fuels, continue. The projections presented here illustrate the climatic changes that are likely from three different heat-trapping emissions scenarios (see figure below).

## Projected Warming

Temperatures are expected to rise substantially in all three emissions scenarios. During the next few decades, the three scenarios project average temperatures to rise between 1 and 2.3°F; however, the projected temperature increases begin to diverge at mid-century so that, by the end of the century, the temperature increases projected in the higher emissions scenario are approximately twice as high as those projected in the lower emissions scenario. Some climate models indicate that warming would be greater in summer than in winter, which would have widespread effects on ecosystem health, agricultural production, water use and availability, and energy demand.

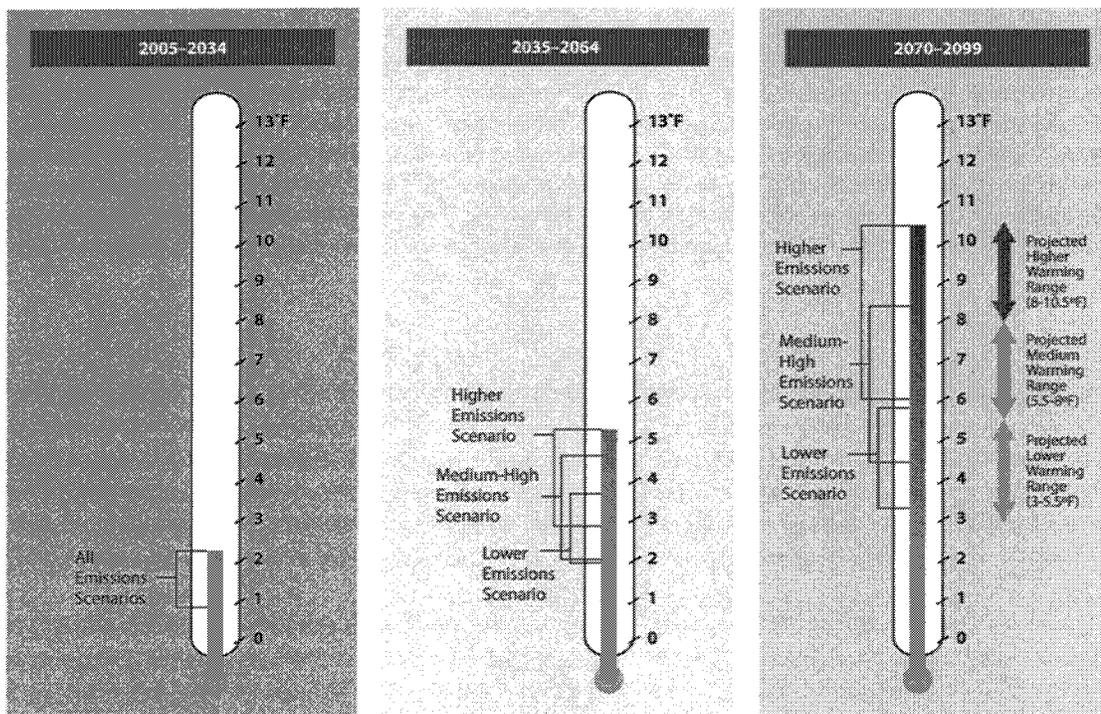
Toward the end of the century, depending on future heat-trapping emissions, statewide average temperatures are expected to rise between 3 and 10.5°F. The analysis presented

here examines the future climate under three projected warming ranges:<sup>1</sup>

- **Lower warming range:** projected temperature rises between 3 and 5.5°F
- **Medium warming range:** projected temperature rises between 5.5 and 8°F
- **Higher warming range:** projected temperature rises between 8 and 10.5°F

## Precipitation

On average, the projections show little change in total annual precipitation in California. Furthermore, among several models, precipitation projections do not show a consistent trend during the next century. The Mediterranean seasonal precipitation pattern is expected to continue, with most precipitation falling during winter from North Pacific storms. One of the three climate models projects slightly wetter winters, and another projects slightly drier winters with a 10 to 20 percent decrease in total annual precipitation. However, even modest changes would have a significant impact because California ecosystems are conditioned to historical precipitation levels and water resources are nearly fully utilized.



California is expected to experience dramatically warmer temperatures during the 21st century. This figure shows projected increases in statewide annual temperatures for three 30-year periods. Ranges for each emissions scenario represent results from state-of-the-art climate models.

<sup>1</sup> These warming ranges are for illustrative purposes only. These ranges were defined in the original Climate Scenarios analysis to capture the full range of projected temperature rise. The exact values for the warming ranges as presented in the original summary report are: lower warming range (3 to 5.4°F); medium warming range (5.5 to 7.9°F); and higher warming range (8 to 10.4°F).

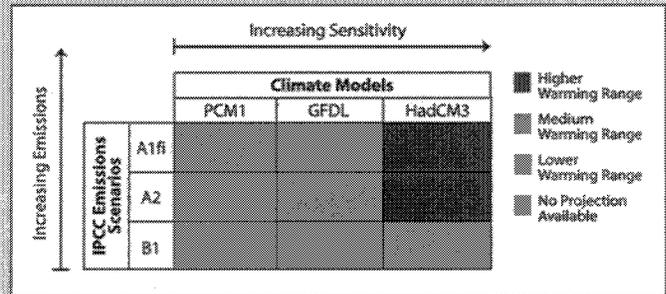
# Projecting Future Climate

How much temperatures rise depends in large part on how much and how quickly heat-trapping emissions accumulate in the atmosphere and how the climate responds to these emissions. The projections presented in this report are based on three different heat-trapping emissions scenarios and three climate models.

## Emissions Scenarios

The three global emissions scenarios used in this analysis were selected from a set of scenarios developed by the Intergovernmental Panel on Climate Change's (IPCC) *Special Report on Emissions Scenarios*, based on different assumptions about population growth and economic development (measured in gross domestic product).

- The **lower emissions scenario (B1)** characterizes a world with high economic growth and a global population that peaks by mid-century and then declines. There is a rapid shift toward less fossil fuel-intensive industries and introduction of clean and resource-efficient technologies. Heat-trapping emissions peak about mid-century and then decline; CO<sub>2</sub> concentration approximately doubles, relative to pre-industrial levels, by 2100.
- The **medium-high emissions scenario (A2)** projects continuous population growth and uneven economic and technological growth. The income gap between now-industrialized and developing parts of the world does not narrow. Heat-trapping emissions increase through the 21st century; atmospheric CO<sub>2</sub> concentration approximately triples, relative to pre-industrial levels, by 2100.
- The **higher emissions scenario (A1fi)** represents a world with high fossil fuel-intensive economic growth, and a global population that peaks mid-century then declines. New and more efficient technologies are introduced toward the end of the century. Heat-trapping emissions increase through the 21st century; CO<sub>2</sub> concentration more than triples, relative to pre-industrial levels, by 2100.



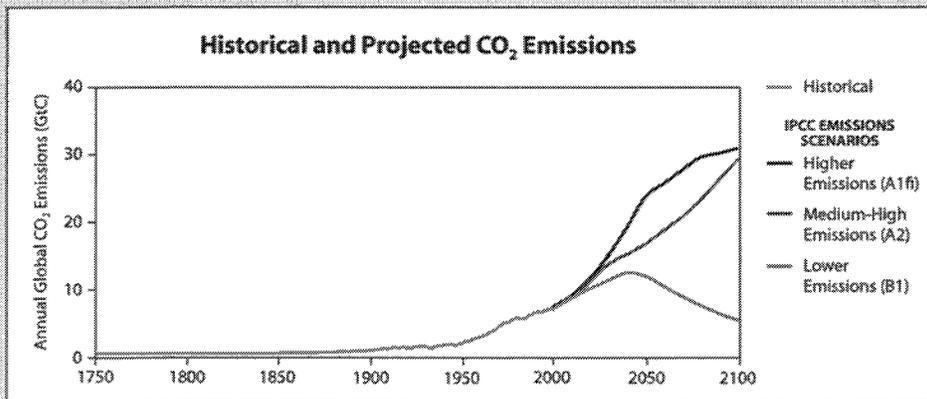
This matrix shows the temperature increases that result from the three climate models, assuming emission inputs indicated in the IPCC emissions scenarios. The resulting temperatures are grouped into three warming ranges defined in the "Climate Scenarios" analysis.

## Climate Sensitivity

The three models used in this analysis represent different climate sensitivities, or the extent to which temperatures will rise as a result of increasing atmospheric concentrations of heat-trapping gases. Climate sensitivity depends on Earth's response to certain physical processes, including a number of "feedbacks" that might amplify or lessen warming. For example, as heat-trapping emissions cause temperatures to rise, the atmosphere can hold more water vapor, which traps heat and raises temperatures further—a positive feedback. Clouds created by this water vapor could absorb and re-radiate outgoing infrared radiation from Earth's surface (another positive feedback) or reflect more incoming shortwave radiation from the sun before it reaches Earth's surface (a negative feedback).

Because many of these processes and their feedbacks are not yet fully understood, they are represented somewhat differently in different global climate models. The three global climate models used in this analysis are:

- **National Center for Atmospheric Research Parallel Climate Model (PCM1):** low climate sensitivity
- **Geophysical Fluids Dynamic Laboratory (GFDL) CM2.1:** medium climate sensitivity
- **United Kingdom Met Office Hadley Centre Climate Model, version 3 (HadCM3):** medium-high climate sensitivity



As this figure shows, CO<sub>2</sub> emissions from human activities (such as the burning of fossil fuels) were negligible until around the so-called industrial age starting in the 1850s.

# Public Health

**C**ontinued global warming will affect Californians' health by exacerbating air pollution, intensifying heat waves, and expanding the range of infectious diseases. The primary concern is not so much the change in *average* climate but the projected increase in *extreme* conditions, which pose the most serious health risks.

## Poor Air Quality Made Worse

Californians currently experience the worst air quality in the nation, with more than 90 percent of the population living in areas that violate the state's air quality standard for either ground-level ozone or airborne particulate matter. These pollutants can cause or aggravate a wide range of health problems including asthma and other acute respiratory and cardiovascular diseases, and can decrease lung function in children. Combined, ozone and particulate matter contribute to 8,800 deaths and \$71 billion in healthcare costs every year. If global background ozone levels increase as projected in some scenarios, it may become impossible to meet local air quality standards.

Higher temperatures are expected to increase the frequency, duration, and intensity of conditions conducive to air pollution formation. For example, if temperatures rise to the medium warming range, there will be 75 to 85 percent more days with weather conducive to ozone formation in Los Angeles and the San Joaquin Valley, relative to today's conditions. This is more than twice the increase expected if temperature rises are kept in the lower warming range.

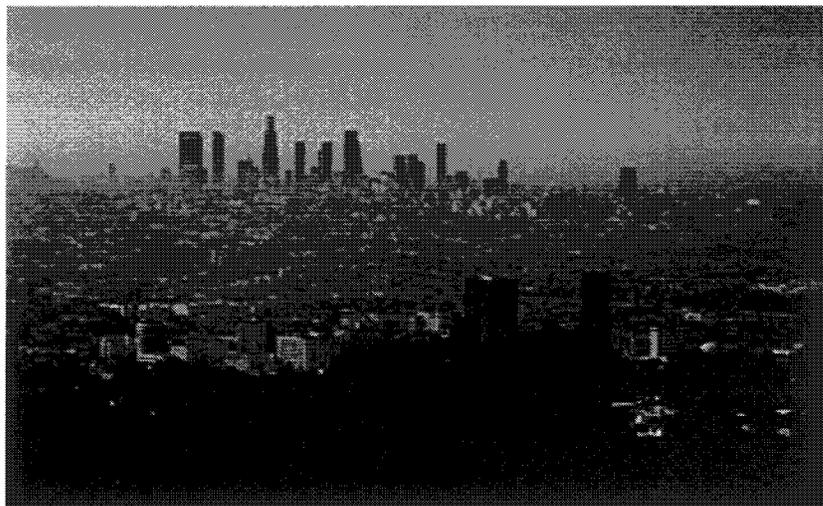
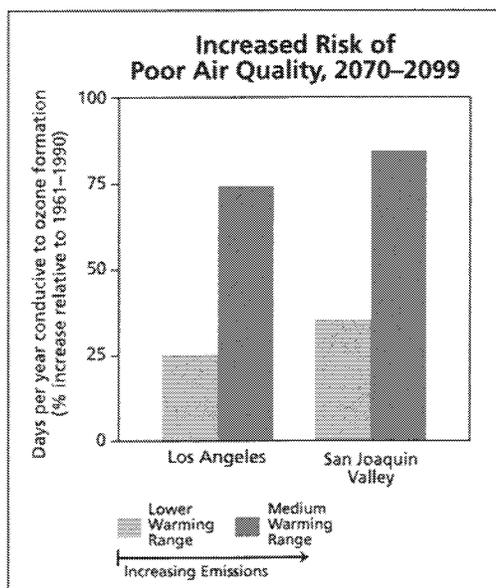
Air quality could be further compromised by increases in wildfires, which emit fine particulate matter that can travel long distances depending on wind conditions. The most recent analysis suggests that if heat-trapping gas emissions are not significantly reduced, large wildfires could become up to 55 percent more frequent toward the end of the century.

## More Severe Heat

By 2100, if temperatures rise to the higher warming range, there could be up to 100 more days per year with temperatures above 90°F in Los Angeles and above 95°F in Sacramento. This is a striking increase over historical patterns (see chart on p. 6), and almost twice the increase projected if temperatures remain within or below the lower warming range.

As temperatures rise, Californians will face greater risk of death from dehydration, heat stroke/exhaustion, heart attack, stroke, and respiratory distress caused by extreme heat. By mid century, extreme heat events in urban centers such as Sacramento, Los Angeles, and San Bernardino could cause two to three times more heat-related deaths than occur today. The members of the population most vulnerable to the effects of extreme heat include people who are already ill; children; the elderly;

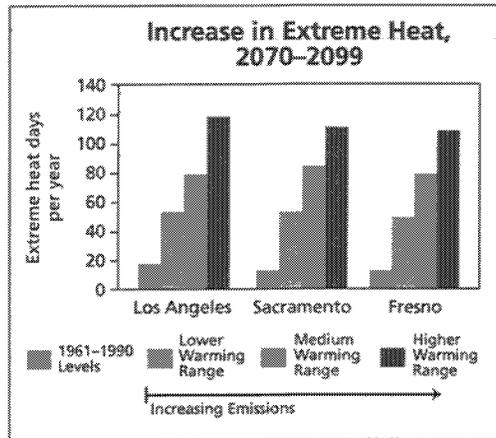
**As temperatures rise, Californians will face greater risk of death from dehydration, heat stroke, heart attack, and other heat-related illnesses.**



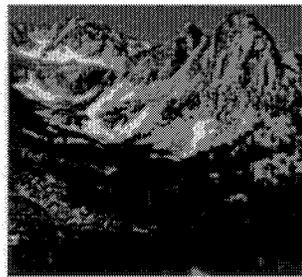
Cars and power plants emit pollutants that contribute to global warming and poor air quality. As temperatures increase, it will be increasingly difficult to meet air quality standards throughout the state.

and the poor, who may lack access to air conditioning and medical assistance.

More research is needed to better understand the potential effects of higher temperatures and the role that adaptation can play in minimizing these effects. For example, expanding air conditioner use can help people cope with extreme heat; however, it also increases energy consumption, which, using today's fossil fuel-heavy energy sources, would contribute to further global warming and air pollution.



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# Water Resources



If global warming emissions continue unabated, Sierra Nevada snowpack could decline 70 to 90 percent, with cascading effects on winter recreation, water supply, and natural ecosystems.

**M**ost of California's precipitation falls in the northern part of the state during the winter while the greatest demand for water comes from users in the southern part of the state during the spring and summer. A vast network of man-made reservoirs and aqueducts capture and transport water throughout the state from northern California rivers and the Colorado River. The current distribution system relies on Sierra Nevada mountain snowpack to supply water during the dry spring and summer months. Rising temperatures, potentially compounded by decreases in precipitation, could severely reduce spring snowpack, increasing the risk of summer water shortages.

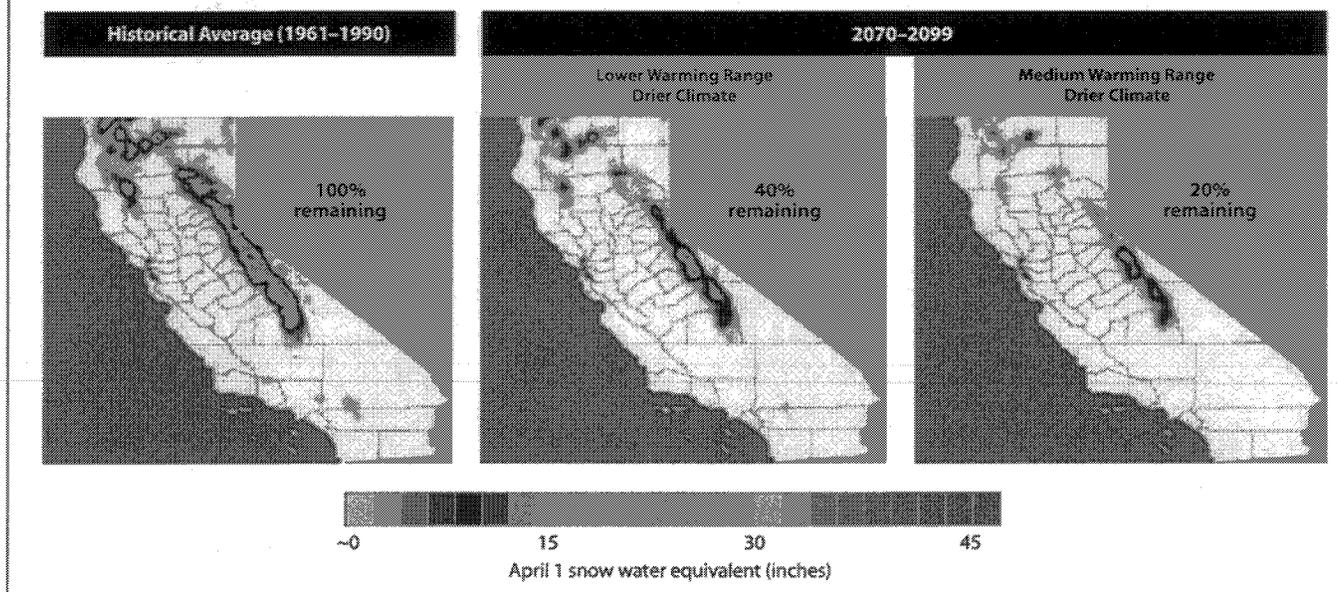
## Decreasing Sierra Nevada Snowpack

If heat-trapping emissions continue unabated, more precipitation will fall as rain instead of snow, and the snow that does fall will melt earlier, reducing the Sierra Nevada spring snowpack by as much as 70 to 90 percent. How much snowpack will be lost depends in part on future precipitation patterns, the projections for which remain uncertain. However, even under wetter climate projections, the loss of snowpack would pose challenges to water managers, hamper hydropower generation, and nearly eliminate skiing and other snow-related recreational activities. If global warming emissions are significantly curbed and temperature increases are kept in the lower warming range, snowpack losses are expected to be only half as large as those expected if temperatures were to rise to the higher warming range.

## Challenges in Securing Adequate Water Supplies

Continued global warming will increase pressure on California's water resources, which are already over-stretched by the demands of a growing

## Decreasing California Snowpack



economy and population. Decreasing snowmelt and spring stream flows coupled with increasing demand for water resulting from both a growing population and hotter climate could lead to increasing water shortages. By the end of the century, if temperatures rise to the medium warming range and precipitation decreases, late spring stream flow could decline by up to 30 percent. Agricultural areas could be hard hit, with California farmers losing as much as 25 percent of the water supply they need.

Water supplies are also at risk from rising sea levels. An influx of saltwater would degrade California's estuaries, wetlands, and groundwater aquifers. In particular, saltwater intrusion would threaten the quality and reliability of the major state fresh water supply that is pumped from the southern edge of the Sacramento/San Joaquin River Delta.

Coping with the most severe consequences of global warming would require major changes in water management and allocation systems. As more winter precipitation falls as rain

instead of snow, water managers will have to balance the need to fill constructed reservoirs for water supply and the need to maintain reservoir space for winter flood control. Some additional storage could be developed; however, the economic and environmental costs would be high.

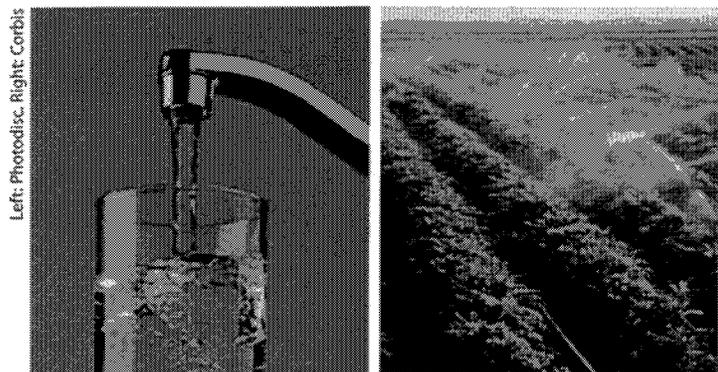
### Potential Reduction in Hydropower

Higher temperatures will likely increase electricity demand due to higher air conditioning use. Even if the population remained unchanged, toward the end of the century annual electricity demand could increase by as much as 20 percent if temperatures rise into the higher warming range. (Implementing aggressive efficiency measures could lower this estimate.)

At the same time, diminished snow melt flowing through dams will decrease the potential for hydropower production, which now comprises about 15 percent of California's in-state electricity production. If temperatures rise to the medium warming range and precipitation decreases by 10 to 20 percent, hydropower production may be reduced by up to 30 percent. However, future precipitation projections are quite uncertain so it is possible that precipitation may increase and expand hydropower generation.

### Loss of Winter Recreation

Continued global warming will have widespread implications for winter tourism. Declines in Sierra Nevada snowpack would lead to later starting and earlier closing dates of the ski season. Toward the end of the century, if temperatures rise to the lower warming range, the ski season at lower and middle elevations could shorten by as much as a month. If temperatures reach the higher warming range and precipitation declines, there might be many years with insufficient snow for skiing and snowboarding.



Rising temperatures, potentially exacerbated by decreasing precipitation, could increase the risk of water shortages in urban and agricultural sectors.

# Agriculture

California is home to a \$30 billion agriculture industry that employs more than one million workers. It is the largest and most diverse agriculture industry in the nation, producing more than 300 commodities including half the country's fruits and vegetables. Increased heat-trapping emissions are expected to cause widespread changes to this industry, reducing the quantity and quality of agricultural products statewide.

Although higher carbon dioxide levels can stimulate plant production and increase plant water-use efficiency, California farmers will face greater water demand for crops and a less reliable water supply as temperatures rise. Crop growth and development will change, as will the intensity and frequency of pest and disease outbreaks. Rising temperatures will likely aggravate ozone pollution, which makes plants more susceptible to disease and pests and interferes with plant growth.

To prepare for these changes, and to adapt to changes already under way, major efforts will be needed to move crops to new locations, respond to climate variability, and develop new cultivars and agricultural technologies. With adequate research and advance preparation, some of the consequences could be reduced.

## Increasing Temperature

Plant growth tends to be slow at low temperatures, increasing with rising temperatures up to a threshold. However, faster growth can result in less-than-optimal development for many crops, so rising temperatures are likely to worsen the quantity and quality of yield for a number of California's agricultural products. Crops that are likely to be hard hit include:

### Wine Grapes

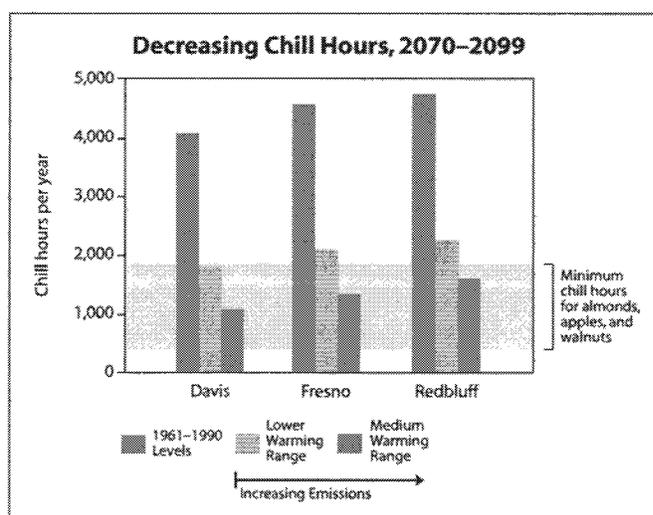
California is the nation's largest wine producer and the fourth-largest wine producer worldwide. High-quality wines produced throughout the Napa and Sonoma Valleys and along the northern and central coasts generate \$3.2 billion in revenue

each year. High temperatures during the growing season can cause premature ripening and reduce grape quality. Temperature increases are expected to have only modest effect on grape quality in most regions over the next few decades. However, toward the end of the century, wine grapes could ripen as much as one to two months earlier, which will affect grape

quality in all but the coolest coastal locations (Mendocino and Monterey Counties).

### Fruits and Nuts

Many fruit and nut trees are particularly sensitive to temperature changes because of heat-accumulation limits and chill-hour requirements. Heat accumulation, which refers to the total hours during which temperatures reach between 45 and 95°F, is critical for fruit development. Rising temperatures could increase fruit development rates and decrease fruit size.



For example, peaches and nectarines developed and were harvested early in 2004 because of warm spring temperatures. The fruits were smaller than normal, which placed them in a lower quality category.

A minimum number of chill hours (hours during which temperatures drop below 45°F) is required for proper bud setting; too few hours can cause late or irregular bloom, decreasing fruit quality and subsequent marketable yield. California is currently classified as a moderate to high chill-hour region, but chill hours are diminishing in many areas of the state. If temperatures rise to the medium warming range, the number of chill hours in the entire Central Valley is expected to approach a critical threshold for some fruit trees.

### Milk

California's \$3 billion dairy industry supplies nearly one-fifth of the nation's milk products. High temperatures can stress dairy cows, reducing milk production. Production begins to decline at temperatures as low as 77°F and can drop substantially as temperatures climb above 90°F. Toward the end of the century, if temperatures rise to the higher warming range, milk production is expected to decrease by up to 20 percent. This is more



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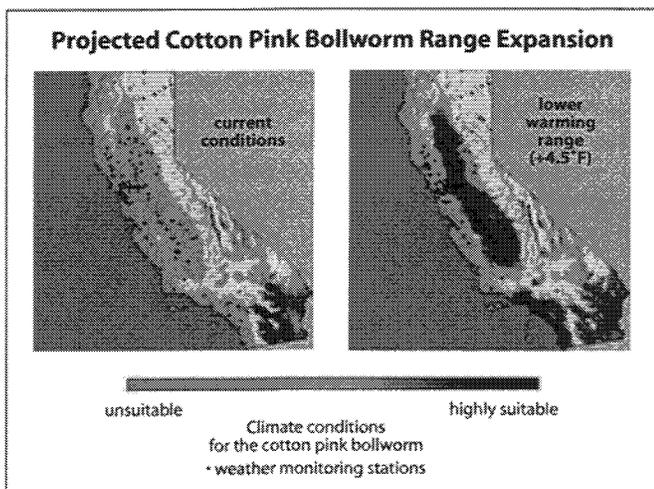


Increasing temperatures will likely decrease the quantity and quality of some agricultural commodities, such as certain varieties of fruit trees, wine grapes, and dairy products.

than twice the reduction expected if temperatures stay within or below the lower warming range.

### Expanding Ranges of Agricultural Weeds

Noxious and invasive weeds currently infest more than 20 million acres of California farmland, costing hundreds of millions of dollars annually in control measures and lost productivity. Continued climate change will likely shift the ranges of existing invasive plants and weeds and alter competition patterns with native plants. Range expansion is expected in many species while range contractions are less likely in rapidly evolving species with significant populations already established. Should



As temperatures rise, the climate is expected to become more favorable for the pink bollworm (above), a major cotton pest in southern California. The pink bollworm's geographic range is limited by winter frosts that kill over-wintering dormant larvae. As temperatures rise, winter frosts will decrease, greatly increasing the winter survival and subsequent spread of the pest throughout the state.

range contractions occur, it is likely that new or different weed species will fill the emerging gaps.

### Increasing Threats from Pests and Pathogens

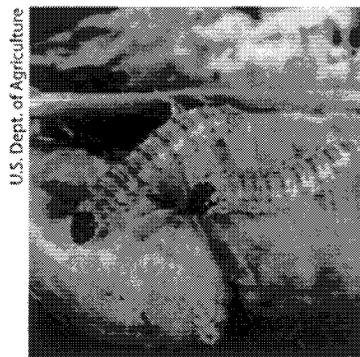
California farmers contend with a wide range of crop-damaging pests and pathogens. Continued climate change is likely to alter the abundance and types of many pests, lengthen pests' breeding season, and increase pathogen growth rates. For example, the pink bollworm, a common pest of cotton crops, is currently a problem only in southern desert valleys because it cannot survive winter frosts elsewhere in the state. However, if winter temperatures rise 3 to 4.5°F, the pink bollworm's range would likely expand northward, which could lead

to substantial economic and ecological consequences for the state.

Temperature is not the only climatic influence on pests. For example, some insects are unable to cope in extreme drought, while others cannot survive in extremely wet conditions. Furthermore, while warming speeds up the lifecycles of many insects, suggesting that pest problems could increase, some insects may grow more slowly as elevated CO<sub>2</sub> levels decrease the protein content of the leaves on which they feed.

### Multiple and Interacting Stresses

Although the effects on specific crops of individual factors (e.g., temperatures, pests, water supply) are increasingly well understood, trying to quantify interactions among these and other environmental factors is challenging. For example, the quality of certain grape varieties is expected to decline as temperatures rise. But the wine-grape industry also faces increasing risks from pests such as the glassy-winged sharpshooter, which transmits Pierce's disease. In 2002, this bacterial



disease caused damage worth \$13 million in Riverside County alone. The optimum temperature for growth of Pierce's disease is 82°F, so this disease is currently uncommon in the cooler northern and coastal regions of the state. However, with continued warming, these regions may face increased risk of the glassy-winged sharpshooter feeding on leaves and transmitting Pierce's disease.



# Forests and Landscapes

**C**alifornia is one of the most climatically and biologically diverse areas in the world, supporting thousands of plant and animal species. The state's burgeoning population and consequent impact on local landscapes is threatening much of this biological wealth. Global warming is expected to intensify this threat by increasing the risk of wildfire and altering the distribution and character of natural vegetation.

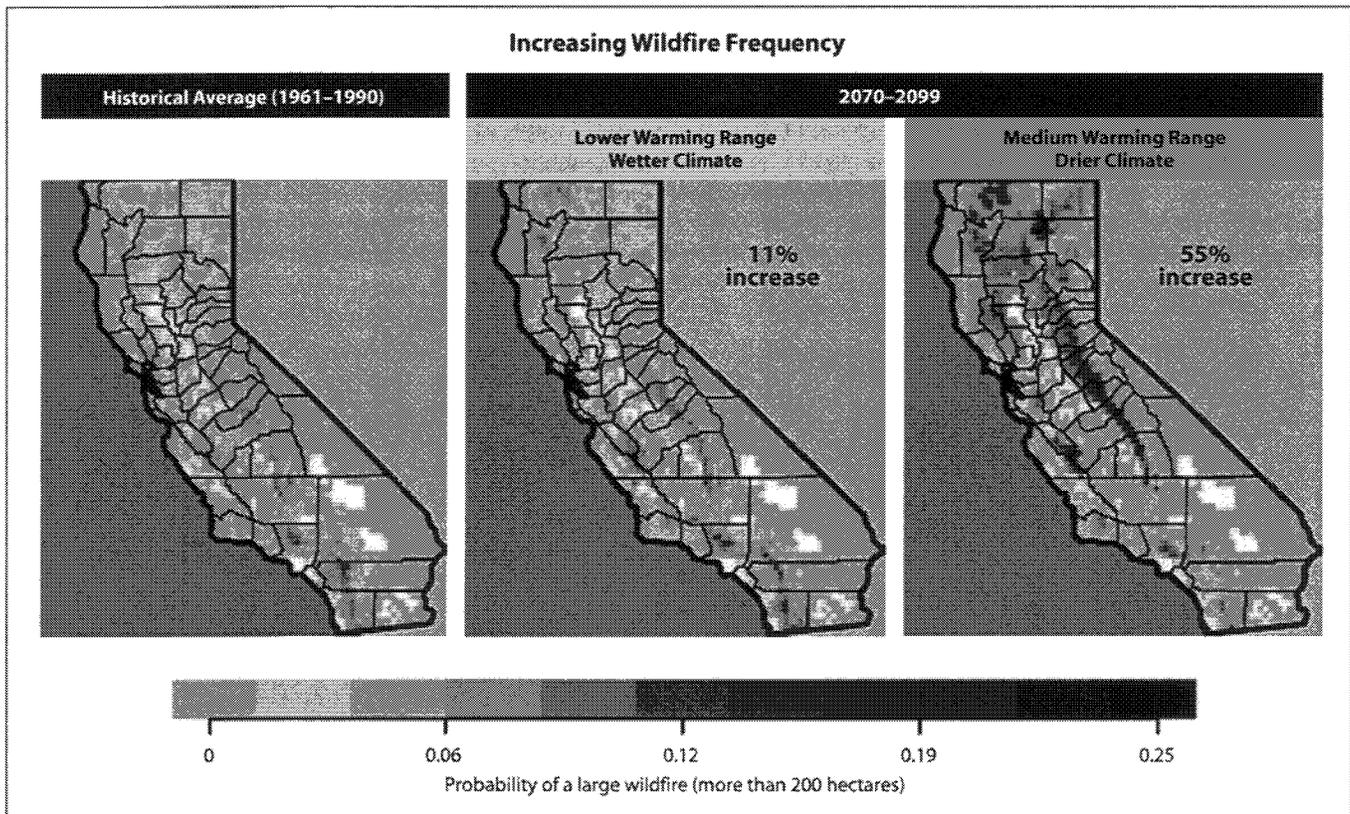
## Increasing Wildfires

Fire is an important ecosystem disturbance. It promotes vegetation and wildlife diversity, releases nutrients into the soil, and eliminates heavy accumulation of underbrush that can fuel catastrophic fires. However, if temperatures rise into the medium warming range, the risk of large wildfires in California could increase by as much as 55 percent, which is almost twice the increase expected if temperatures stay in the lower warming range.

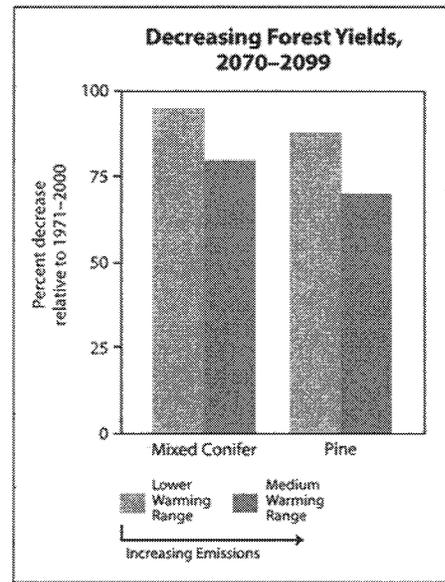
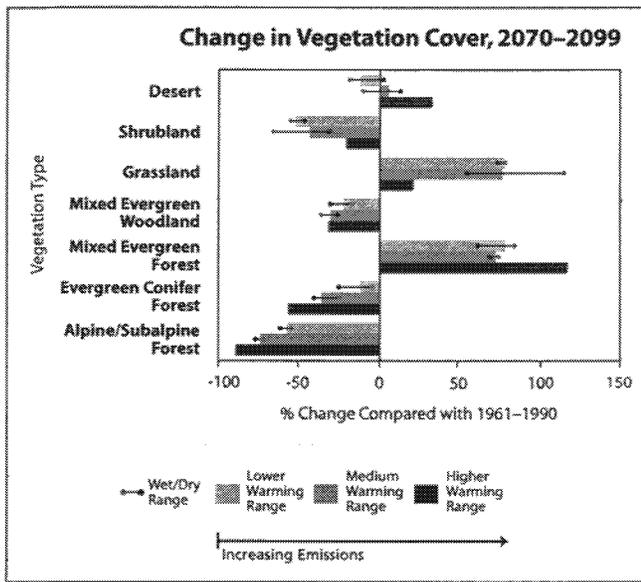
Because wildfire risk is determined by a combination of factors including precipitation, winds, temperature, and landscape and vegetation conditions, future risks will not be uniform throughout the state. In many regions, wildfire activity will depend critically on future precipitation patterns. For



Global warming threatens alpine and subalpine ecosystems, which have no place to move as temperatures rise.



Vegetation cover over the 21st century will depend on both temperature and precipitation. The lower and medium warming range bars reflect vegetation cover under a wetter climate (blue) and a drier climate (brown) projected in the different climate models. For the higher warming range, only a drier climate was considered.



example, if precipitation increases as temperatures rise, wildfires in the grasslands and chaparral ecosystems of southern California are expected to increase by approximately 30 percent toward the end of the century because more winter rain will stimulate the growth of more plant “fuel” available to burn in the fall. In contrast, a hotter, drier climate could promote up to 90 percent more northern California fires by the end of the century by drying out and increasing the flammability of forest vegetation.

### Shifting Vegetation

Land use and other changes resulting from economic development are altering natural habitats throughout the state. Continued global warming will intensify these pressures on the state’s natural ecosystems and biological diversity. For example, in northern California, warmer temperatures are expected to shift dominant forest species from Douglas and White Fir to madrone and oaks. In inland regions, increases in fire frequency are expected to promote expansion of grasslands into current shrub and woodland areas. Alpine and subalpine ecosystems are among the most threatened in the state; plants suited to these regions have limited opportunity to migrate “up slope” and are expected to decline by as much as 60 to 80 percent by the end of the century as a result of increasing temperatures.

### Declining Forest Productivity

Forestlands cover 45 percent of the state; 35 percent of this is commercial forests

such as pine plantations. Recent projections suggest that continued global warming could adversely affect the health and productivity of California’s forests. If average statewide temperatures rise to the medium warming range, the productivity of mixed conifer forests is expected to diminish by as much as 18 percent by the end of the century. Yield reductions from pine plantations are expected to be even more severe, with up to a 30 percent decrease by the end of the century.

**The risk of large wildfires in California could increase by as much as 55 percent.**



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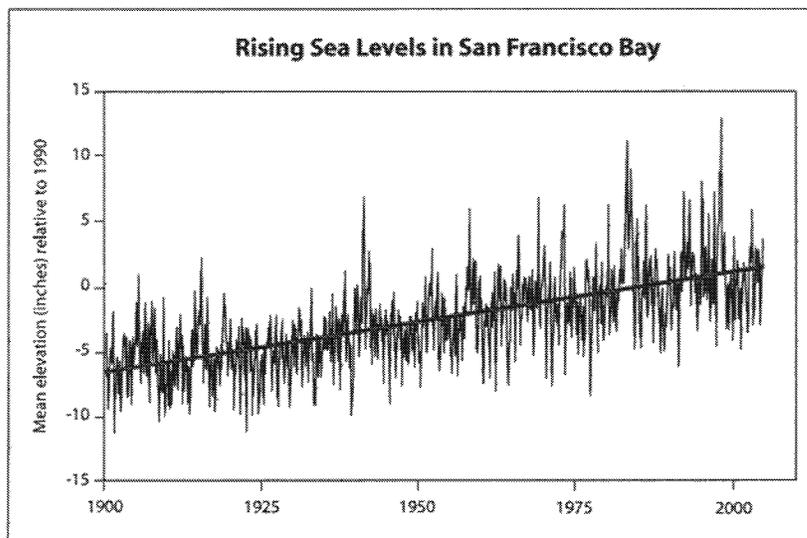
# Rising Sea Levels

**C**alifornia's 1,100 miles of coastline are a major attraction for tourism, recreation, and other economic activity. The coast is also home to unique ecosystems that are among the world's most imperiled. As global warming continues, California's coastal regions will be increasingly threatened by rising sea levels, more intense coastal storms, and warmer water temperatures.

During the past century, sea levels along California's coast have risen about seven inches. If heat-trapping emissions continue unabated and temperatures rise into the higher warming range, sea level is expected to rise an additional 22 to 35 inches by the end of the century. Elevations of this magnitude would inundate coastal areas with salt water, accelerate coastal erosion, threaten vital levees and inland water systems, and disrupt wetlands and natural habitats.

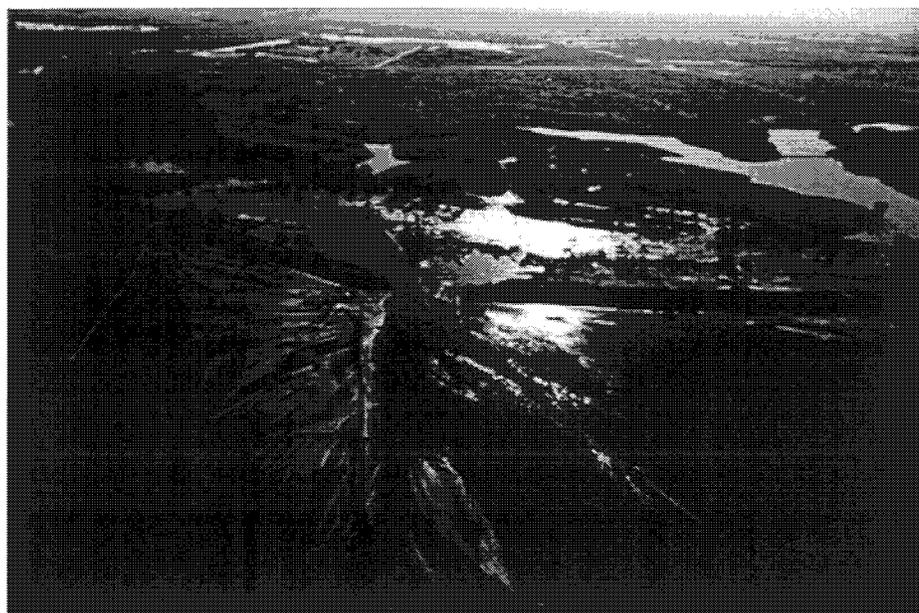
## Increasing Coastal Floods

The combination of increasingly severe winter storms, rising mean sea levels, and high tides is expected to cause more frequent and severe flooding, erosion, and damage to coastal structures. Many California coastal areas are at significant risk for flood damage. For example, the city of Santa Cruz is built on the 100-year floodplain and is only 20 feet above sea level.



Although levees have been built to contain the 100-year flood, a 12-inch increase in sea levels (projected for the medium warming range of temperatures) would mean storm-surge-induced flood events at the 100-year level would likely occur once every 10 years.

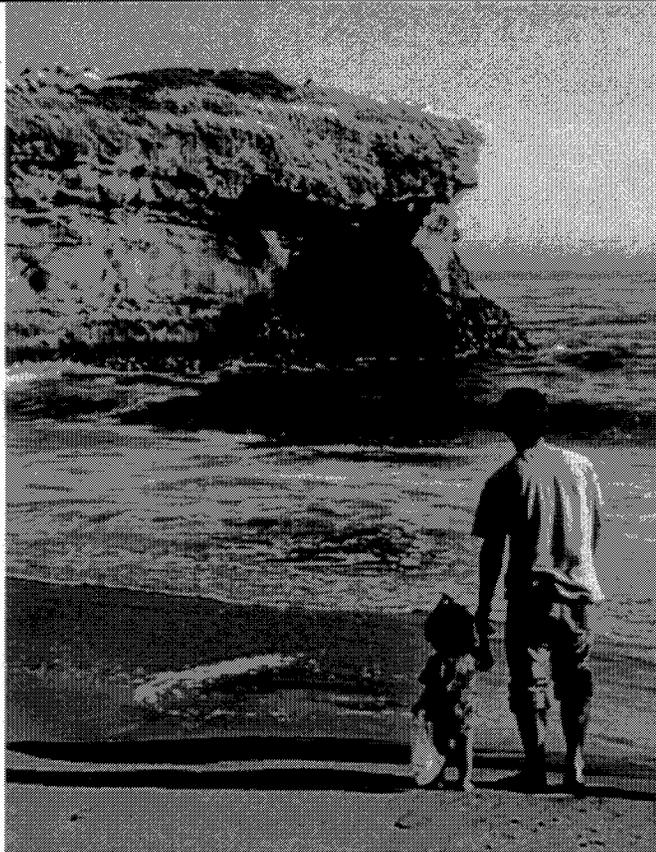
Flooding can create significant damage and enormous financial losses. Despite extensive engineering efforts, major floods have repeatedly breached levees that protect fresh-water supplies and islands in the San Francisco Bay Delta as well as fragile marine estuaries and wetlands throughout the



Robert A. Eppley/CA Governor's Office of Emergency Services

**Sea levels could rise up to three feet by the end of the century, accelerating coastal erosion, threatening vital levees, and disrupting wetlands.**

Rising sea levels and more intense storm surges could increase the risk for coastal flooding.



Many California beaches are threatened from rising sea levels and increased erosion, an expected consequence of continued global warming.

state. Continued sea level rise will further increase vulnerability to levee failures. Some of the most extreme flooding during the past few decades has occurred during El Niño winters, when warmer waters fuel more intense storms. During the winters of 1982–1983 and 1997–1998, for example, abnormally high seas and storm surges caused millions of dollars' worth of damage in the San Francisco Bay area. Highways were flooded as six-foot waves crashed over waterfront bulkheads, and valuable coastal real estate was destroyed.

Continued global warming will require major changes in flood management. In many regions such as the Central Valley,

where urbanization and limited river channel capacity already exacerbate rising flood risks, flood damage and flood control costs could amount to several billion dollars.

### Shrinking Beaches

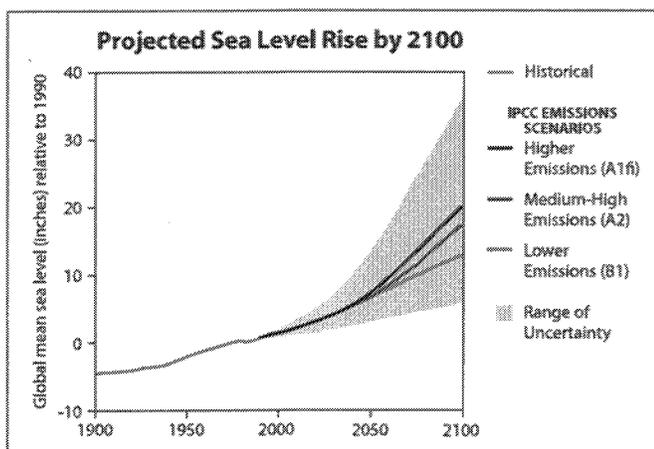
Many of California's beaches may shrink in the future because of rising seas and increased erosion from winter storms. Currently, many beaches are protected from erosion through manmade sand replenishment (or "nourishment") programs, which bring in sand from outside sources to replace the diminishing supply of natural sand. In fact, many of the wide sandy beaches in southern California around Santa Monica, Venice, and Newport Beach were created and are maintained entirely by sand nourishment programs. As sea levels rise, increasing volumes of replacement sand will be needed to maintain current beach width and quality. California beach nourishment programs currently cost millions of dollars each year. As global warming continues, the costs of beach nourishment programs will rise, and in some regions beach replenishment may no longer be viable.

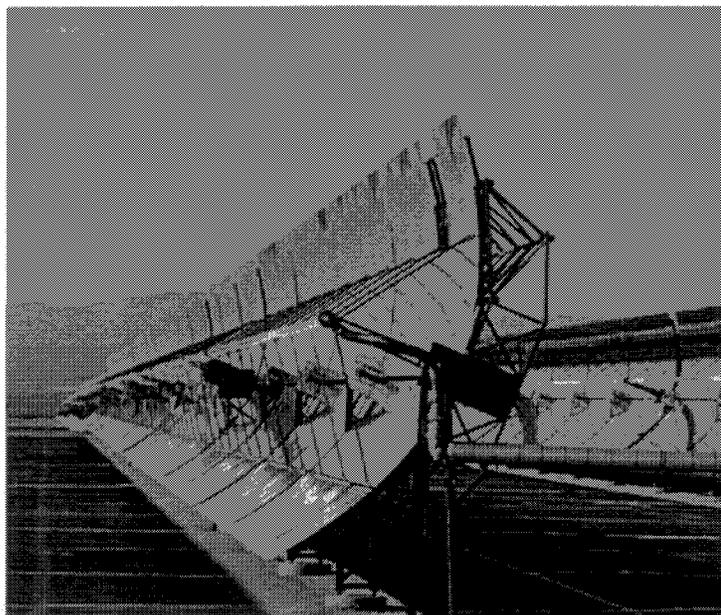
### Multiple Causes of Coastal Flooding

Several factors play a role in sea level and coastal flooding, including tides, waves temperature, and storm activity. Sea levels fluctuate daily, monthly, and seasonally; the highest tides occur in winter and in summer, during new and full moons. Sea levels often rise even higher during El Niño winters, when the Eastern Pacific Ocean is warmer than usual and westerly wind patterns are strengthened.

Coastal flooding usually occurs during winter storms, which bring strong winds and high waves. Storm winds tend to raise water levels along the coast and produce high waves at the same time, compounding the risk of damaging waves—a doubling of wave height is equivalent to a four-fold increase in wave energy. When these factors coincide with high tides, the chances for coastal damage are greatly heightened.

As sea levels rise, flood stages in the Sacramento/San Joaquin Delta of the San Francisco Bay estuary may also rise, putting increasing pressure on Delta levees. This threat may be particularly significant because recent estimates indicate the additional force exerted upon the levees is equivalent to the square of the water level rise. Estimates using historical observations and climate model projections suggest that extreme high water levels in the Bay and Delta will increase markedly if sea level rises above its historical rate. These extremes are most likely to occur during storm events, leading to more severe damage from waves and floods.





Cleaner energy and vehicle technologies can help California reduce global warming emissions, improve air quality, and protect public health.

# Managing Global Warming

**Continued global warming will have widespread and significant impacts on the Golden State. Solutions are available today to reduce emissions and minimize these impacts.**

The projections presented in this analysis suggest that many of the most severe consequences that are expected from the medium and higher warming ranges could be avoided if heat-trapping emissions can be reduced to levels that will hold temperature increases at or below the lower warming range (i.e., an increase of no more than 5.5°F). However, even if emissions are substantially reduced, research indicates that some climatic changes are unavoidable. Although not the solution to global warming, plans to cope with these changes are essential.

## Reducing Heat-Trapping Emissions

Reducing heat-trapping emissions is the most important way to slow the rate of global warming. On June 1, 2005,

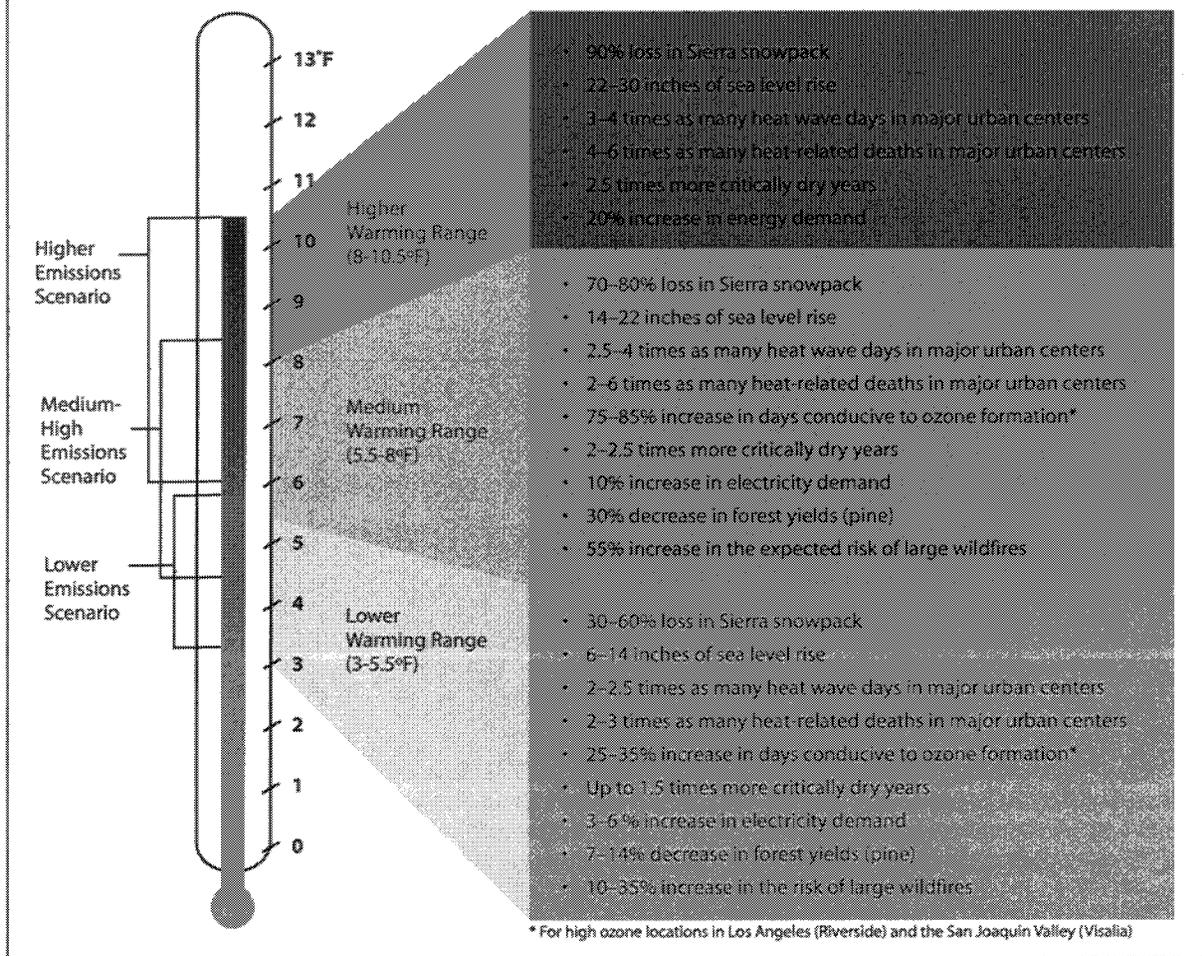
Governor Arnold Schwarzenegger signed an executive order (#5-3-05) that sets goals for significantly lowering the state's share of global warming pollution. The executive order calls for a reduction in heat-trapping emissions to 1990 levels by 2020 and for an 80 percent emissions reduction below 1990 levels by 2050. These emission reduction targets will help stimulate technological innovation needed to help transition to more efficient and renewable transportation and energy systems.

**California's actions can drive global progress to address global warming.**

## Coping with Unavoidable Climatic Changes

Because global warming is already upon us, and some amount of additional warming is inevitable, we must prepare for the changes that are already under way.

## Summary of Projected Global Warming Impact, 2070–2099 (as compared with 1961–1990)



Preparing for these unavoidable changes will require minimizing further stresses on sensitive ecosystems and implementing management practices that integrate climate risks into long-term planning strategies.

### California's Leadership

California has been a leader in both the science of climate change and in identifying solutions. The California Climate Change Center is one of the first—and perhaps the only—state-sponsored research institution in the nation dedicated to climate change research, and other state agencies such as the Air Resources Board support similar research. Continuing this strong research agenda is critical for developing effective strategies for addressing global warming in California.

The state has also been at the forefront of efforts to reduce heat-trapping emissions, passing precedent-setting

policies such as aggressive standards for tailpipe emissions, renewable energy, and energy efficiency. However, existing policies are not likely to be sufficient to meet the ambitious emission reduction goals set by the governor. To meet these ambitious goals California will need to build on its legacy of environmental leadership and develop new strategies and technologies to reduce emissions.

**By reducing heat-trapping emissions, severe consequences can be avoided.**

California alone cannot stabilize the climate. However, the state's actions can drive global progress. If the industrialized world were to follow the emission reduction targets established in California's executive order, and industrializing nations reduced emissions according to the lower emissions path (B1) presented in this analysis, we would be on track to keep temperatures from rising to the medium or higher (and possibly even the lower) warming ranges and thus avoid the most severe consequences of global warming.

The full text of the Climate Scenarios analysis overview report, and the core scientific papers that comprise this analysis, are online at [www.climatechange.ca.gov](http://www.climatechange.ca.gov). The scientists that participated in this effort are:

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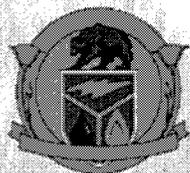
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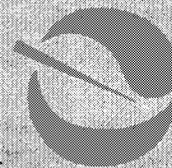
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# Office of the Governor

ARNOLD SCHWARZENEGGER  
THE PEOPLE'S GOVERNOR

## EXECUTIVE ORDER EXECUTIVE ORDER S-3-05

06/01/2005

WHEREAS, California is particularly vulnerable to the impacts of climate change; and

WHEREAS, increased temperatures threaten to greatly reduce the Sierra snowpack, one of the State's primary sources of water; and

WHEREAS, increased temperatures also threaten to further exacerbate California's air quality problems and adversely impact human health by increasing heat stress and related deaths, the incidence of infectious disease, and the risk of asthma, respiratory and other health problems; and

WHEREAS, rising sea levels threaten California's 1,100 miles of valuable coastal real estate and natural habitats; and

WHEREAS, the combined effects of an increase in temperatures and diminished water supply and quality threaten to alter micro-climates within the state, affect the abundance and distribution of pests and pathogens, and result in variations in crop quality and yield; and

WHEREAS, mitigation efforts will be necessary to reduce greenhouse gas emissions and adaptation efforts will be necessary to prepare Californians for the consequences of global warming; and

WHEREAS, California has taken a leadership role in reducing greenhouse gas emissions by: implementing the California Air Resources Board motor vehicle greenhouse gas emission reduction regulations; implementing the Renewable Portfolio Standard that the Governor accelerated; and implementing the most effective building and appliance efficiency standards in the world; and

WHEREAS, California-based companies and companies with significant activities in California have taken leadership roles by reducing greenhouse gas (GHG) emissions, including carbon dioxide, methane, nitrous oxide and hydrofluorocarbons, related to their operations and developing products that will reduce GHG emissions; and

WHEREAS, companies that have reduced GHG emissions by 25 percent to 70 percent have lowered operating costs and increased profits by billions of dollars; and

WHEREAS, technologies that reduce greenhouse gas emissions are increasingly in demand in the worldwide marketplace, and California companies investing in these technologies are well-positioned to profit from this demand, thereby boosting California's economy, creating more jobs and providing increased tax revenue; and

WHEREAS, many of the technologies that reduce greenhouse gas emissions also generate operating cost savings to consumers who spend a portion of the savings across a variety of sectors of the economy; this increased spending creates jobs and an overall benefit to the statewide economy.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power invested in me by the Constitution and statutes of the State of California, do hereby order effective

immediately:

1. That the following greenhouse gas emission reduction targets are hereby established for California: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; by 2050, reduce GHG emissions to 80 percent below 1990 levels; and
2. That the Secretary of the California Environmental Protection Agency ("Secretary") shall coordinate oversight of the efforts made to meet the targets with: the Secretary of the Business, Transportation and Housing Agency, Secretary of the Department of Food and Agriculture, Secretary of the Resources Agency, Chairperson of the Air Resources Board, Chairperson of the Energy Commission, and the President of the Public Utilities Commission; and
3. That the Secretary shall report to the Governor and the State Legislature by January 2006 and biannually thereafter on progress made toward meeting the greenhouse gas emission targets established herein; and
4. That the Secretary shall also report to the Governor and the State Legislature by January 2006 and biannually thereafter on the impacts to California of global warming, including impacts to water supply, public health, agriculture, the coastline, and forestry, and shall prepare and report on mitigation and adaptation plans to combat these impacts; and
5. That as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



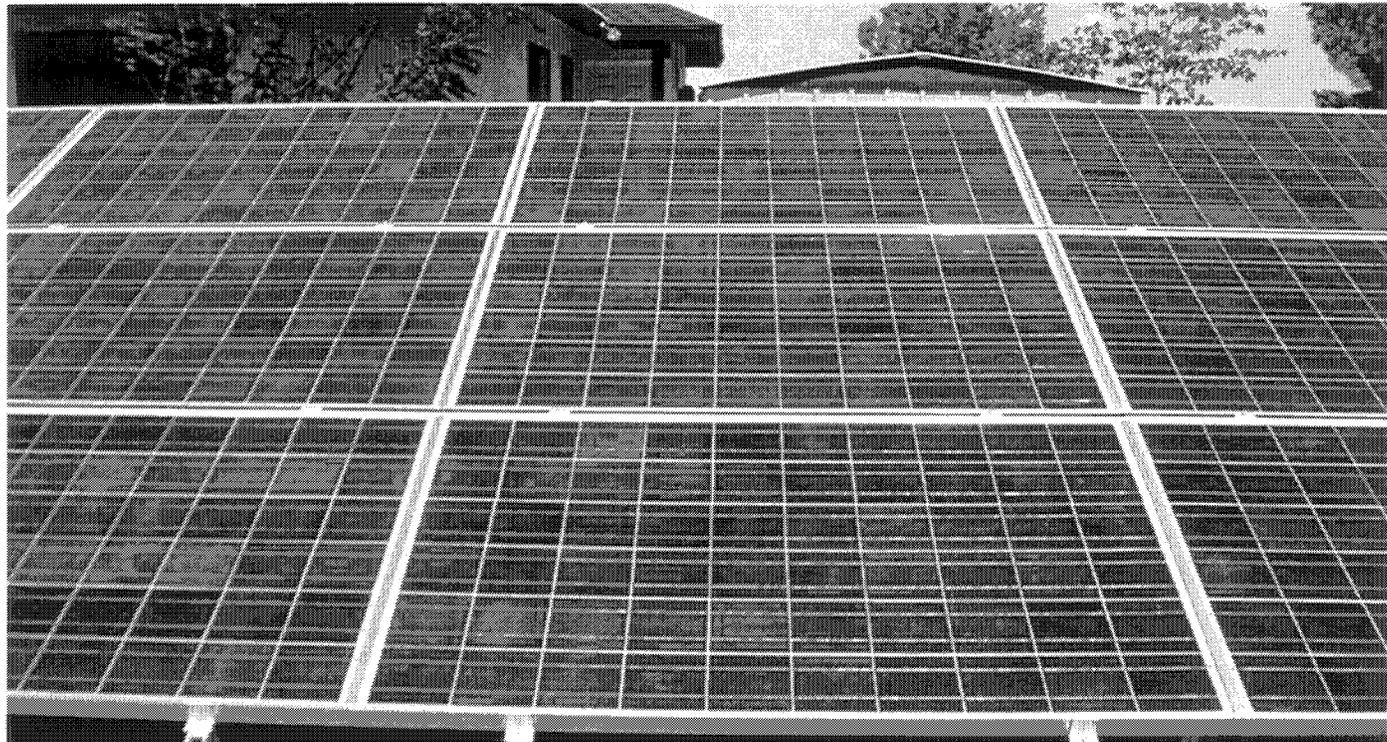
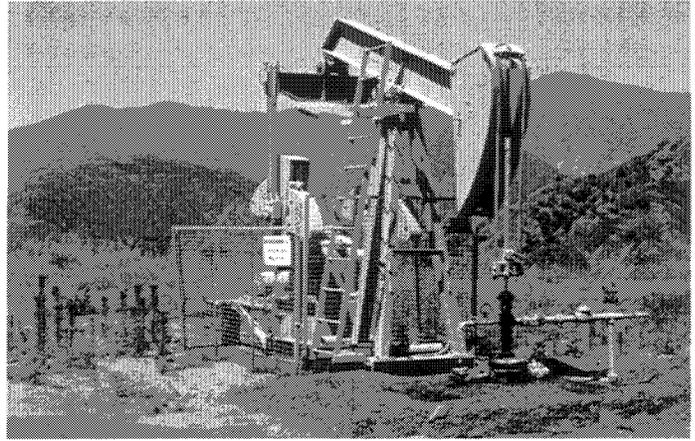
IN WITNESS WHEREOF I have here unto set my hand and caused the Great Seal of the State of California to be affixed this the first day of June 2005.

/s/ Arnold Schwarzenegger

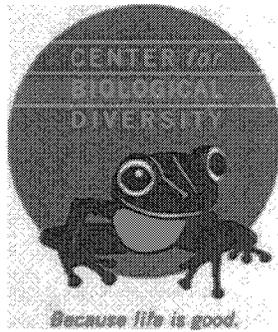
Governor of California

# The California Environmental Quality Act

On the Front Lines of California's Fight Against Global Warming



A Center for Biological Diversity Report



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September 2007

Front cover photos:  
Clockwise from top: US Fish and Wildlife Service,  
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The Center for Biological Diversity is a nonprofit  
conservation organization with more than 35,000 members  
dedicated to the protection of imperiled species and habitat.

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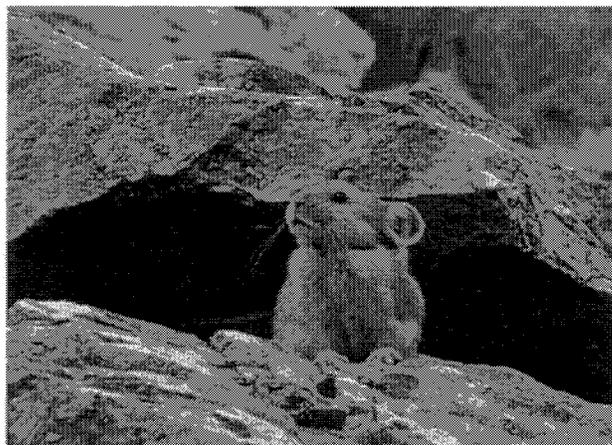


Photo courtesy Michael Mengak, [www.forestryimages.org](http://www.forestryimages.org)

# **The California Environmental Quality Act On the Front Lines of California's Fight Against Global Warming**

## **SUMMARY**

The State of California has long been a champion of environmental protection and a national leader in climate change policy. California has a number of laws and policies that address the critical challenge of slashing California's greenhouse gas emissions by mid-century. Prominent among these laws, but as yet little utilized, is California's flagship environmental protection statute, the California Environmental Quality Act (CEQA).<sup>1</sup> CEQA requires state and local agencies to assess and reduce to the extent feasible all significant environmental impacts from new project approvals. The CEQA environmental review process is fully established throughout the state, with a proven track record of mitigating impacts relating to air pollution, water quality and availability, land use, endangered species, and many other aspects of California's environment. With regard to climate change, CEQA offers an opportunity and a legal mandate for cities, counties, and government agencies to consider the greenhouse gas emissions from new projects they approve and to adopt the many measures available to reduce those emissions.

This paper describes the tremendous benefits to California from analyzing and reducing greenhouse gas emissions of new development through the CEQA process, and presents a blueprint for agencies and project applicants to address greenhouse gas emissions at each step in the CEQA review process. The assessment and reduction of greenhouse gas pollution through the CEQA process is one of our most important tools on the front lines of California's battle against global warming. For this reason, we encourage full implementation and enforcement of CEQA review of global warming impacts.

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<sup>1</sup> Public Resources Code § 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq. ("CEQA Guidelines").

## I. GLOBAL WARMING: IMPACTS AND RISKS TO CALIFORNIA AND THE WORLD

Changes in the climate in California and throughout the world are painfully apparent. Changes already observed in California include warmer winter and spring temperatures; a smaller mountain snowpack that melts one to four weeks earlier in the spring; increased frequency and severity of droughts, floods, and wildfires; changes in plant and animal populations and ranges; and about seven inches of sea level rise.

The California Climate Change Center's summary report presents future impacts based on a low, medium, and high emissions scenario (Luers et al. 2006). In all impact categories from temperatures to heat related deaths to wildfire risk to loss of the Sierra snowpack, impacts become far worse under the medium and high warming scenarios. The low warming scenario presumes a rapid shift away from fossil fuels and towards clean and resource-efficient technologies.

In addition to impacts to California, the Intergovernmental Panel on Climate Change reports that global warming impacts are similar across the United States and worldwide (Adger 2007). The IPCC projects an increase in global average surface temperature by as much as 11.5 °F over the next 100 years; reductions in snow cover and permafrost; reductions in sea ice extent, with the arctic becoming ice-free in the summer in the second half of the century; increases in frequency of extreme heat and heavy precipitation events; an increase in the intensity of hurricanes; increases in the intensity of

El Nino weather patterns; and changes in precipitation patterns, increasing or decreasing regionally by as much as 20% or more. These changes are predicted to displace millions of coastal residents, negatively impact public health, and lead to the catastrophic loss of biodiversity.

There is a large and growing body of economics literature on the environmental costs of climate change. For example, the Stern Review of the Economics of Climate Change (2006), a comprehensive report commissioned by the British government, concluded that if greenhouse gas emissions are unabated, each ton of carbon dioxide emitted today will cause damage worth at least \$85. Further, Stern (2006) warns that allowing current emissions trajectories to continue unabated would eventually cost the global economy between 5 to 20 percent of global gross domestic product (GDP) each year within a decade, or up to \$7 trillion, and that these figures should be considered conservative estimates. By contrast, measures to mitigate global warming by reducing emissions were estimated to cost about one percent of global GDP, or \$300 billion each year, and could save the world up to \$2.5 trillion per year (Stern 2006).

The severity of future global warming impacts is a collective societal choice: the longer it takes to reduce emissions, the worse the changes will be. Leading climate scientists warn that just ten more years of continued global "business as usual" greenhouse gas emissions will make it difficult or impossible to achieve the low warming scenario and avoid some of the worst impacts, including 20 feet of sea level

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rise in as little as a century, and the displacement of millions of coastal residents worldwide (Hansen et al. 2006, 2007). One scientific review determined that 35 percent of species may be committed to extinction by the year 2050 under a high emissions scenario (Thomas et al. 2004). Quite literally, continued unabated greenhouse gas emissions threaten life

on earth as we know it.

The importance of reducing greenhouse gas pollution cannot be overstated: reductions made today not only make economic sense, but will determine the type of climate and quality of life experienced by our children and grandchildren.

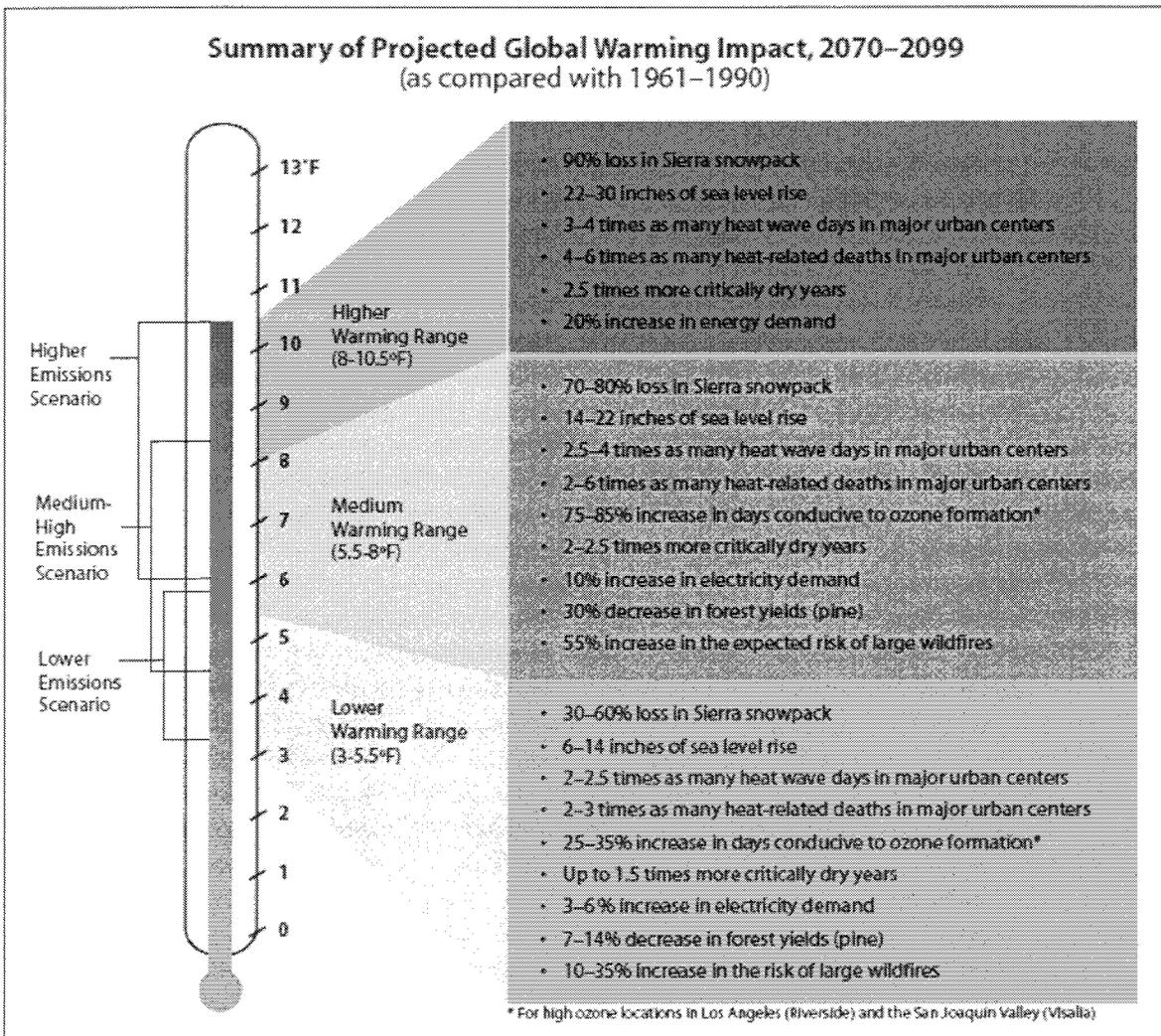


Figure from Luers et al. 2006.

## II. CALIFORNIA'S COMMITMENT TO FIGHTING GLOBAL WARMING

The significant risks climate change poses to California as well as the considerable benefits of reducing the State's greenhouse gas emissions have resulted in many laws and policies designed to reduce greenhouse gas emissions and increase energy efficiency and the use of renewable energy. These include California's Clean Vehicle Law (AB 1493, 2002), Governor Schwarzenegger's June 2005 Executive Order S-3-05, the California Global Warming Solutions Act of 2006 (AB 32, 2006), and many others.

California's Clean Vehicle law was implemented through a 2004 California Air Resources Board (CARB) rulemaking and would result in an 18% reduction in greenhouse gas emissions from California light-duty passenger vehicles by 2020 and a 27% reduction by 2030. These reductions would also be achieved, according to the CARB staff analysis, at a net benefit to the California economy.

The Governor's Executive Order established greenhouse gas emission targets as follows: by 2010, reduce emissions to 2000 levels; by 2020, reduce emissions to 1990 levels; and by 2050, reduce GHG emissions to 80 percent below 1990 levels. The Executive Order also established the interagency California Climate Action Team to coordinate the State's reduction efforts and report back on the progress of those efforts as well as the ongoing impacts of global warming on the State.

The California Global Warming Solutions Act of 2006 is the nation's first mandatory cap on a state's overall greenhouse gas emissions. The Act states:

*Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.*

The Global Warming Solutions Act requires the reduction of emissions to 1990 levels by the year 2020. The law will be implemented through a series of CARB rulemakings including establishing emission source monitoring and reporting requirements, discrete early action emission reduction measures, and finally greenhouse gas emission limits and measures to achieve the maximum feasible and cost-effective reductions in furtherance of the greenhouse gas emission cap.

Solving our climate crisis requires action on many fronts and pursuant to many different laws and policies. California's important new laws and policies are in addition and completely complementary to the existing obligation of state and local agencies to analyze the

greenhouse gas emissions from new project approvals pursuant to CEQA.<sup>2</sup>

Indeed, recognizing that CEQA provides an independent basis to combat global warming, the legislature recently passed SB 97 (2007), which requires the Office of Planning and Research to prepare by July 1, 2009, and the Resources Agency to certify by January 1, 2010, guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by [CEQA], including, but not limited to, effects associated with transportation and energy consumption."

### **III. ASSESSMENT OF GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE UNDER CEQA**

The CEQA environmental review process requires state and local agencies to analyze and disclose all significant environmental impacts of their discretionary project approvals. CEQA provides for varying levels of review based on the nature of the project's impacts. A Negative Declaration indicates that an initial study does not reveal any potentially significant environmental impacts. A Mitigated Negative Declaration indicates that potentially significant impacts exist but can be avoided or mitigated to below significance. Where there is a "fair

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<sup>2</sup> For example, the Global Warming Solutions Act states repeatedly that "[n]othing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment." *Health and Safety Code* § 38592(b); see also *id.* § 38598.

argument" that the project would have one or more significant environmental impacts, an Environmental Impact Report ("EIR") must be prepared (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* [1993] 6 Cal.App.4th 1112, 1123; see also Pub. Res. Code § 21082.2).

An EIR is a documented review of the significant environmental effects of a project, possible ways to minimize those effects, and a comparison of alternative versions of the project. The purpose of the EIR is to inform agency decisions with regard to projects, to improve projects by reducing and mitigating environmental effects, and to inform the public and facilitate public input into the decisionmaking process. Once an agency has determined that a project's environmental effects will be significant, the agency cannot approve the project as proposed if there are feasible alternatives or feasible mitigation measures that will avoid or substantially lessen those effects (Pub. Res. Code § 21002). This paper focuses on the EIR process to disclose and analyze the project's greenhouse gas emissions.

#### **A. Environmental Impacts Analysis**

A project impact must be assessed if it has "an effect on the environment within the meaning of CEQA" (See *Protect the Historic Amador Waterways v. Amador Water Agency* [2004] 116 Cal.App.4th 1099, 1111). Global warming affects the "environment" as defined by CEQA<sup>3</sup>

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<sup>3</sup> CEQA defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." Pub. Res. Code § 21060.5.

because global warming affects the physical conditions in all regions of California. Because a project that generates greenhouse gas emissions contributes to global warming, this impact must be fully disclosed and analyzed under CEQA.

In order to properly analyze a project's climate change impacts, an EIR should: 1) provide a regulatory and scientific background on global warming; 2) assess the project's contribution to climate change through an emissions inventory; 3) assess the effect of climate change on the project and its impacts; and 4) make a significance determination.

### ***1. Providing a Scientific and Regulatory Background on Global Warming***

As discussed above, climate change poses enormous risks to California. In order to assess a project's contribution to global warming, the EIR should provide an accurate and relevant summary of global warming and its impacts. The scientific literature on the impact of greenhouse gas emissions on California (and the world) is well developed and can provide the context for this discussion.<sup>4</sup> The summary should make a good faith effort at full disclosure and avoid minimizing or discounting the severity of global warming's impacts (see CEQA Guidelines 14 C.C.R. § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* [1994] 27 Cal.App.4th 713).

<sup>4</sup> Reports issued by California agencies are available at <http://www.climatechange.ca.gov>, and IPCC reports available at <http://www.ipcc.ch/>.

The EIR should also include a brief discussion of other laws that address climate change, including California's mandate to reduce emissions to 1990 levels by 2020 and goal of further reducing emissions to 80% below 1990 levels by 2050. Achievement of state-mandated emissions reductions will be severely impeded if agencies across the state continue to approve new projects without incorporating measures to reduce the added emissions created by these projects.

### ***2. Assessing the Project's Greenhouse Gas Emissions***

To assess the project's greenhouse gas pollution, the EIR should complete an inventory of all of the project's emission sources. This inventory should include a "sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences," and should include direct and indirect sources included in all phases of the project (CEQA Guidelines §§ 15151; 15126; 15358(a)(2)). The greenhouse gas inventory can be conducted in conjunction with the assessment of the project's energy consumption, required by Pub. Res. Code § 21100(b)(3) (see also CEQA Guidelines § 15126.4).

While the exact contents of an inventory will vary depending on the project considered, sources to consider include the following:

- Electricity and natural gas usage in buildings;
- Vehicle trips generated by the project;

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On the Front Lines of California's Fight Against Global Warming**

- Water supply and transportation to the project;
- Operation of construction vehicles and machinery;
- Manufacture and transport of building materials;
- Waste disposal, including transport of solid waste and methane emissions from organics decomposition;
- Process emissions, such as from the production of cement or the refining of gasoline;
- "End use" emissions, such as the burning of the fossil fuels extracted by a production project;
- Agricultural processes, including methane from concentrated animal manure;
- Fugitive emissions, such as methane leaks from pipeline systems and leaks of HFCs from air conditioning systems.

A project's greenhouse gas emissions can be measured through a variety of straightforward inventory methodologies including protocols from the California Air Resources Board, the California Climate Action Registry, the California Energy Commission, U.S. Environmental Protection Agency, Intergovernmental Panel on Climate Change, and non-governmental organizations. Inventory methodologies are listed in the Appendix of this paper.

***3. Assessing the Effect of Global Warming on the Project and the Project's Impacts***

The EIR should discuss how climate change will affect the project and its

impacts. For example, a development project in a coastal area may be subject to flooding based on projected sea level rise. In addition, global warming may exacerbate or change a proposed project's impacts. Dewatering of rivers by pumping will be much more significant if surface flows are reduced by global warming; higher air temperatures will increase the formation of ground level ozone; and species at risk from temperature increases and changes in precipitation will be more sensitive to project impacts to their habitats. In sum, global warming may exacerbate a project's impacts or reduce the effectiveness of mitigation measures to reduce those impacts, and the EIR should include a discussion of these dynamics.

***4. Making a Significance Determination***

After disclosing and analyzing a project's greenhouse gas emissions, the agency must determine whether the impacts from those emissions are significant (Pub. Res. Code § 21082.2). A lead agency must determine not only whether a project's impacts will be significant in and of themselves, but also whether the impact will be significant on a cumulative basis. A project's impacts require a mandatory finding of significance if they are "cumulatively considerable" (Pub. Res. Code § 21083(b)). "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (CEQA Guidelines § 15064(h)(1)).

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Climate change is a classic example of a cumulative effects problem: emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. These sources may appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact (see *Los Angeles Unified School Dist. v. City of Los Angeles* [1997] 58 Cal.App.4th 1019, 1025). The solution to climate change lies not in any one single action, but in systematically reducing emissions from all possible sources.

While a particular project's greenhouse gas emissions represent a fraction of California's total emissions, courts have flatly rejected the notion that the incremental impact of a project is not cumulatively considerable because it is so small that it would make only a *de minimis* contribution to the problem as a whole (see *Communities for a Better Environment v. California Resources Agency* [2002] 103 Cal.App.4th 98, 117).<sup>5</sup> An EIR may not use the magnitude of a current problem to trivialize the project's impacts (see *Kings County Farm Bureau v. City of Hanford* [1990] 221 Cal.App.3d 692, 719). Rather, "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative

impacts as significant" (see *Communities for a Better Environment* 103 Cal.App.4th at 120). In light of the magnitude and scope of the climate change impacts facing California and the mandate of both the California Global Warming Solutions Act of 2006 and Executive Order S-3-05 that existing levels of greenhouse gases be significantly reduced, any new emissions generated by a project should be considered cumulatively significant.

Consistent with CEQA's treatment of cumulative impacts, lead agencies have explicitly determined that *any* increase in greenhouse gases above existing levels is a significant impact under CEQA (see *Marin Countywide Plan Update DEIR*, 2007; *San Diego Ass'n of Governments Regional Transportation Plan DEIR*, 2007). Other agencies have declined to make a significance determination on global warming impacts based on the assertion that doing so would be "speculative." In the case of climate change, there is nothing speculative about the fact that: 1) new sources of greenhouse gases add to existing levels; and 2) the state has determined existing levels are unacceptable and must be reduced within a fixed timeframe.

Moreover, even where there is no universally accepted methodology as to what constitutes a significant impact, a lead agency must still meaningfully attempt to quantify a particular impact and determine whether the impact is significant (see *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* [2001] 91 Cal.App.4th 1344, 1370-71. Accordingly, the lack of established greenhouse gas thresholds does not

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<sup>5</sup> See also *Massachusetts v. EPA*, 127 S.Ct., 1438, 1457 (2007) (U.S. Environmental Protection Agency arguments for not regulating carbon dioxide from vehicles under the Clean Air Act "rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum [ . . . ] Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop.").

shield a lead agency from making a significance determination on global warming impacts. Because the legislature has determined that California's current greenhouse gas baseline is so high that it requires significant reductions, and any additional emissions will exacerbate existing conditions, it is difficult to see how a new source, even a small one, can be cumulatively insignificant.

Because additional greenhouse gas emissions from new projects will nearly always qualify for a mandatory finding of significance under CEQA as a cumulative impact, an agency's determination of whether the emissions should be considered significant in and of themselves may assume less importance as a practical matter. While the authors believe that agencies should consider emissions from large projects significant in their own right as well as cumulatively, agencies will exercise their discretion in this regard and further clarification will likely come in the form of case law or guidance.

It does not follow from this analysis, however, that every project that generates greenhouse gas emissions will require an EIR. As with any other potentially significant impact, the project may include measures to reduce the impact of greenhouse gas emissions to below significance, allowing for a Mitigated Negative Declaration (Pub. Res. Code § 21064.5). As discussed below, there are many mitigation measures available for housing and other types of projects that can do so.

## **B. Evaluation of Alternatives**

A rigorous analysis of alternatives is essential to avoid or substantially lessen environmental impacts in the first instance (Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2)). "Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process" (*Laurel Height Improvement Ass'n v. Regents of University of California* [1988] 47 Cal.3d 376, 404). With regard to development projects, an EIR should examine alternatives that call for higher density development, mixed use, and site locations in urban areas that would reduce vehicle miles traveled. In the case of fossil fuel related energy projects, an EIR should examine the feasibility of energy generation utilizing renewable energy sources. Impacts should be avoided wherever possible through the adoption of environmentally superior alternatives.

## **C. Adoption of Feasible Mitigation Measures**

Mitigation of a project's significant impacts is one of the "most important" functions of CEQA (*Sierra Club v. Gilroy City Council* [1990] 222 Cal.App.3d 30, 41). Once an agency has determined that a project's greenhouse gas emissions will be significant, the agency cannot approve the project as proposed if there are feasible alternatives or feasible mitigation measures that will avoid or substantially lessen the project's significant environmental effects (Pub. Res. Code § 21002).

The applicability of mitigation for global warming impacts was recognized by the

legislature in SB 97, which sets a deadline of January 1, 2010, for the Resources Agency to certify and adopt guidelines developed by the Office of Planning and Research "for the mitigation of greenhouse gas emissions as required" by CEQA. While SB 97 clarifies that the legislature considers global warming to be an impact requiring mitigation under CEQA, nothing in SB 97 postpones or defers the current obligation of agencies to mitigate greenhouse gas emissions from proposed projects prior to the adoption of guidelines by the Resources Agency.

Agencies should utilize a hierarchy of options to avoid and reduce greenhouse gas emissions before moving on to other types of mitigation. For example, with regard to energy use, the agency should first look at reducing the energy required by the project, then at measures to generate the remaining energy from renewable sources, then at measures to offset any remaining energy related emissions. (See Pub. Res. Code § 21100(b)(3); CEQA Guidelines, App. F; see also *Anderson First Coalition v. City of Anderson* [2005] 130 Cal.App.4th 1173). Measures to reduce climate change impacts may not be deferred until some future time or be so vague that it is impossible to evaluate their effectiveness (see CEQA Guidelines § 15126.4(a)(1)(B)).

While the specific array of feasible mitigation measures varies with the diversity of project proposals in California, there is a common suite of avoidance and mitigation measures for many types of projects. Below we discuss two of the most common project types, proposals for new residential or

commercial buildings and municipal general plans.

### ***1. Avoiding and Mitigating a Building Project's Greenhouse Gas Emissions***

California has access to nearly year-round sunshine in vast areas of the state and already has more stringent energy efficiency requirements than the rest of the nation as a whole. This has placed our state in an enviable position: by increasing green building practices, it is feasible today to build many structures with vastly reduced energy needs for heating, cooling, lighting, and other needs. Mitigation measures agencies should consider include the following:

- Constructing highly energy-efficient buildings to decrease heating, cooling, and other energy demands, including using passive heating, natural cooling, and reduced pavement;
- Utilizing high-efficiency heating and cooling systems, lighting devices, and appliances;
- Minimizing and recycling construction-related waste;
- Using salvaged and recycled-content materials, and other materials that have low production energy costs, for building materials, hard surfaces, and non-plant landscaping;
- Maximizing water conservation measures in buildings and landscaping;
- Installing photovoltaic solar energy arrays on buildings to meet energy needs;

**The California Environmental Quality Act  
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- Installing solar hot water systems to meet hot water needs; and
- Cooperating with local transportation agencies to secure public transportation, and contributing to public transportation infrastructure.
- Capture and control of methane from municipal landfills and composting facilities; and
- Incentives to focus housing development along existing travel corridors, urban areas, and as in-fill.

**2. Mitigating a Municipal Plan's Greenhouse Gas Emissions**

The adoption and updating of municipal general plans and transportation plans offer exceptional opportunities to examine the impact of agency planning and policy on greenhouse gas pollution and to adopt measures to reduce that pollution. Mitigation measures incorporated into these multi-year plans would not only reduce the greenhouse gas emissions and global warming impacts of the plans, but facilitate the development of future projects with lower impacts and greater opportunities for mitigation. For example, municipal plans can include provisions for:

- Expanded public transportation service and infrastructure, such as bus and light rail lines;
- Energy efficiency/green building requirements, adopted via ordinances, codes, and regulations;
- Installation of electric vehicle charging stations;
- Expanded infrastructure for pedestrian and bicycle circulation;
- Public awareness and education programs;
- Conversion of state, local, and private fleets to alternative fuel vehicles, and requirements and incentives for fleets to run on alternative fuels;

**3. Offsetting Greenhouse Gas Emissions**

Once all measures to avoid and minimize greenhouse gas emissions have been adopted, the project will need to offset the remaining greenhouse gas emissions. Offsets are a type of offsite mitigation in which the greenhouse gas emissions of the project are balanced by an action to reduce greenhouse gas emissions elsewhere. Credit is given in the amount of emissions avoided or sequestered by the offsite project. It is critical that offsets be real, verifiable, and permanent, and not have adverse impacts on communities or the environment. For example, offsets can include a retrofit of previously existing buildings in the project area to make them more energy efficient, or the installation of photovoltaic arrays or solar water heating systems on offsite buildings.

However, offsite mitigation and offsets should be pursued only after all feasible onsite actions have been undertaken to maximally avoid and reduce the project's greenhouse gas emissions. Furthermore, any offsite mitigation should give the highest priority to offsets within California in order to contribute to state-wide greenhouse gas emissions reductions and to help ensure that the offsets comply with California environmental laws and emissions standards.

#### **D. Statements of Overriding Considerations**

If a proposed project will still have a significant impact on the environment after all feasible alternatives and avoidance and mitigation measures have been adopted, an agency may still approve the project if it adopts a "Statement of Overriding Considerations" (CEQA Guidelines § 15092). Thus, CEQA does not prevent agencies from approving new sources of greenhouse gas emissions, it simply provides a time-tested mechanism for agencies to explore and adopt options to reduce greenhouse gas emissions. It also serves an important informational purpose – the public and decision-makers can track a jurisdiction's approach to greenhouse gas reductions and the success of that approach through the CEQA process. CEQA will continue to illuminate, as the Legislature intended, the way that local elected officials balance factors, including the environment and greenhouse gas emissions, in their project approvals.

#### **IV. CONCLUSION**

The solutions to climate change are multi-faceted, including the need for a federal commitment to reducing greenhouse gas emissions, a world-wide transition away from fossil fuels and towards renewable and low-carbon energy sources, and a general adoption of all possible means of systematically reducing emissions from all sources. These challenges will be made even more difficult if we continue to engage in land use and planning decisions that do not take global warming into account.

The solutions to climate change, then, are also highly local. In California we are extremely fortunate to already have an established and straightforward mechanism for evaluating and ameliorating the greenhouse gas emissions from local project approvals. Taking full advantage of the CEQA review process to do so will continue to be an important and integral part of solving the climate crisis.

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## APPENDIX: METHODOLOGIES FOR CALCULATING A PROJECT'S GREENHOUSE GAS EMISSIONS

The following resources are available for calculating a project's greenhouse gas emissions. No single protocol will necessarily fulfill CEQA's requirement to assess all of a project's direct and indirect emissions. It may be necessary to combine more than calculation protocol to include all of the project's impacts.

- The **California Climate Action Registry**, <http://www.climateregistry.org/>, is developing inventory protocols for many greenhouse gas emission sources, including: electricity use; motor vehicles; stationary combustion sources such as power plants, refineries, manufacturing processes, and furnaces; purchased steam, heat, and power from co-generation plants; fugitive emissions; cement manufacturing; forestry operations; and livestock operations.
- The **California Energy Commission 2006 "Inventory of California Greenhouse Gas Emissions and Sinks: 1990-2004,"** Appendix B, describes methodologies for the calculation of CO<sub>2</sub> and methane emissions from a variety of sources. The report is available at: [http://www.climatechange.ca.gov/policies/greenhouse\\_gas\\_inventory/index.html](http://www.climatechange.ca.gov/policies/greenhouse_gas_inventory/index.html);
- The **California Air Resources Board** has developed the **Emission FACTors (EMFAC)** model computer program to calculate CO<sub>2</sub> and methane emissions from motor vehicles. The model and data are available at: [http://www.arb.ca.gov/msei/onroad/latest\\_version.htm](http://www.arb.ca.gov/msei/onroad/latest_version.htm).
- The **U.S. Environmental Protection Agency 2007 "Inventory of U.S. greenhouse gas emissions and sinks: 1990-2005"** provides an inventory of greenhouse gas emissions by state, and methodologies for estimating CO<sub>2</sub>, methane and N<sub>2</sub>O emissions from a variety of sources. The report is available at: <http://www.epa.gov/climatechange/emissions/usinventoryreport.html>.
- The **U.S. Environmental Protection Agency** provides a clearinghouse of online programs for calculating greenhouse gas emissions from homes and businesses, motor vehicles, and solid waste, and for converting emissions to CO<sub>2</sub> equivalents. The clearinghouse is available at: <http://yosemite.epa.gov/oar/globalwarming.nsf/content/ResourceCenterToolsCalculators.html>.
- The **U.S. Environmental Protection Agency Climate Leaders Program** offers a **Greenhouse Gas Inventory Protocol** based on the Greenhouse Gas Protocol (GHG Protocol) developed by the World Resources Institute and the World Business Council for Sustainable Development Emissions Inventory Improvement Program. The program and documents are available at: <http://www.epa.gov/climateleaders/resources/index.html>.
- The **Intergovernmental Panel on Climate Change 2006 Guidelines for National Greenhouse Gas Inventories** provides methodologies for calculating greenhouse gas emissions from energy production, transport, and use; industrial processes and product use; agriculture, forestry, and other land use; solid waste and wastewater treatment. The guidelines are available at <http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.htm>.
- **World Resources Institute** and the **World Business Council for Sustainable Development (WRI/WBCSD)** provide standards and guidance for a greenhouse gas emissions inventory, covering the six greenhouse gases covered by the Kyoto Protocol--CO<sub>2</sub>, methane, N<sub>2</sub>O, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>). The protocols are available at <http://www.ghgprotocol.org>.



## Attachment 6

Protection Agreement in October 2006, which commits the City to strive to meet or beat the GHG emission reduction targets of the Kyoto Protocol.

### **City of Chula Vista**

In 1992 the City of Chula Vista was involved in United Nations Framework Convention on Climate Change and the Kyoto Protocol Conference. As a result of this initial involvement, the City was the first local government with fewer than 1 million residents to become a founding member of ICLEI, the International Council for Local Environmental Initiatives and its Cities for Climate Protection campaign. It also is a member in the California Climate Action Registry.

In November 2000, the Chula Vista City Council approved the Chula Vista CO2 Reduction Plan. The Plan sets a reduction target of 20 percent by 2010, using 1990 as a baseline, and focuses on mitigation areas of transportation control, land use, clean transportation fuels, buildings, municipal government, energy supply, and regional/state/federal policies. In 2005 the City completed its first formal evaluation of the City progress in reaching its emissions goals, publishing a GHG Emissions Inventory. The 2005 inventory indicates that Chula Vista's annual citywide GHG levels have increased by 35 percent since 1990 due primarily to residential growth. While this represents a significant challenge in reaching the City's 2010 community emissions goal, the City did make significant progress in reducing annual per capita emissions by 17 percent between the 2 inventory years and avoiding nearly 200,000 tons of GHG emissions annually. In addition, GHG emissions from municipal sources decreased by 18 percent mainly due to energy-efficient traffic signal retrofits.

The City of Chula Vista is currently updating its CO2 Reduction Plan. In July 2007 the City initiated a Climate Change Working Group (CCWG) with the mission to provide an open, transparent, and inclusive public process that provides the City Council with a list of GHG reduction program options for meeting its climate change commitment.

### **4.7.3 Significance Criteria**

Implementation of the proposed 2030 RTP would have a potentially significant energy impact if:

**SC-EN-1** It results in an increase in total consumption of nonrenewable energy.

As described previously, the State Legislature and global scientific community have found that global climate change poses significant adverse effects to the environment of California and the entire world. To mitigate these adverse effects, the State Legislature has required statewide GHG reductions of 25 percent below 1990 levels by 2020.

In light of the substantial GHG emission reductions established by the State Legislature to mitigate the significant adverse environmental effects of global climate change, the following global climate change significance threshold is used for this analysis. This threshold has been identified for the purposes of the proposed 2030 RTP EIR only. The project's incremental contribution to global climate change would be considered cumulatively significant if:

**SC-GCC-1** It would generate a cumulatively considerable increase in GHG emissions.

## 4.7.4 Impact Analysis

### SC-EN-1

The proposed 2030 RTP would program improvements to the region's transportation network through the year 2030. It should be noted that the proposed 2030 RTP reflects transportation improvements that are already approved via other local, state, and federal processes. Accordingly, there are roadway and transit improvements that can, and will, be constructed without adoption of the proposed 2030 RTP. These improvements reflect the No Build condition for the year 2030. However, the proposed 2030 RTP would program projects that would not otherwise be implemented, including but not limited to the following:

- \$206 million Smart Growth Incentive Program
- transit improvements like operation of the Mid-Coast light rail trolley extension and Sprinter rail line, construction and operation of two bus guideways, funding for the I-15 High Speed Rail, and double-tracking of the Coaster and Sprinter
- rehabilitation and enhancement of existing bus and rail services and facilities
- highway improvements such as the addition of HOV and Managed Lanes to segments of I-5 and I-805 and SR 78, 94, and 125
- highway widenings along I-5, 8, 15, and 805 and SR 52, 56, and 67
- \$13 billion (2006 dollars) in goods movement facilities improvements to port, truck/highway, and rail infrastructure
- *San Diego Regional Bicycle Plan* (SANDAG 2005), a complementary and supporting document to the RTP

Attachment 7

# Digging Up Trouble

The Health Risks of  
Construction Pollution  
in California



Union of  
Concerned  
Scientists

Citizens and Scientists for Environmental Solutions

# Digging Up Trouble

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**The Health Risks of  
Construction Pollution in California**

D O N   A N A I R

Union of Concerned Scientists  
November 2006

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**Don Anair** is a vehicles engineer in the Union of Concerned Scientists Clean Vehicles Program.

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## EXECUTIVE SUMMARY

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Pollution from diesel construction equipment is taking a toll on the health and economic well-being of California residents. This equipment contributes to particulate and ozone pollution that can cause severe cardiovascular and respiratory illnesses, asthma attacks, acute bronchitis, and even premature death.

This study analyzes air pollution caused by construction equipment and—for the first time—quantifies its effect on California’s public health and economy, both across the state and in the five most-affected regions. In addition, we evaluate the risk of exposure to construction activity in specific cities in each of these five regions. Lagging emission standards and very old equipment have made construction equipment one of the largest sources of toxic diesel particulate matter pollution in the state, necessitating an accelerated cleanup program to protect the health of all Californians.

Using established U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) methods to quantify the impact of air pollution, the Union of Concerned Scientists (UCS) estimates that construction equipment emissions statewide are responsible for:

- more than 1,100 premature deaths per year
- more than 1,000 hospital admissions for cardiovascular and respiratory illness
- 2,500 cases of acute bronchitis
- tens of thousands of asthma attacks and other lower respiratory symptoms

This pollution is hurting the state’s economy as well. Construction equipment is critical to the building industry (a sector of the economy worth \$60 billion per year)<sup>1</sup> and instrumental in maintaining and building our roads and highways (on which California spent eight billion dollars last year). But the pollution from this equipment results in more than nine billion dollars in annual public health costs, including hundreds of thousands of lost work days and school absences.

Construction equipment is used extensively throughout the entire state. More than 270,000 acres of land in California were under construction permit during 2005—an area the size of Los Angeles.<sup>2</sup> In addition, more than 10,000 miles of state roadway were under contract for construction, repairs, or maintenance.<sup>3</sup>

The impact of construction pollution on public health is greatest where equipment and people mix, and 90 percent of the health and economic damage occurs in California’s five most populous air basins. The South Coast air basin (which encompasses most of Los Angeles, Orange, Riverside, and San Bernardino counties) ranks first with more than 700 premature deaths and more than 650 hospitalizations for respiratory and cardiovascular illness annually. The San Francisco Bay Area and San Diego follow, with more than 150 and 89 premature deaths, respectively, every year. The San Joaquin Valley and Sacramento Valley (the two largest air basins in

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1 As reported to the California Department of Finance by the California Construction Industry Research Board. Available at [http://www.dof.ca.gov/HTML/FS\\_DATA/LatestEconData/FS\\_Construction.htm](http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Construction.htm).

2 Total acres based on State Water Resources Control Board data (SWRCB 2005). The city of Los Angeles covers 300,160 acres.

3 Mileage based on ongoing contract data available from the California Department of Transportation (CALTRANS 2005).

TABLE 1 Health Damage from Construction Pollution (by Air Basin)

Health Endpoint	Total Incidences					
	Statewide	South Coast	San Francisco Bay Area	San Diego	San Joaquin Valley	Sacramento Valley
Premature Deaths	1,132	731	154	89	49	39
Respiratory Hospitalizations	669	383	56	50	55	30
Cardiovascular Hospitalizations	417	274	61	33	14	12
Asthma and Other Lower Respiratory Symptoms	30,118	20,941	3,406	2,127	1,284	790
Acute Bronchitis	2,494	1,729	284	177	107	66
Lost Work Days	182,940	123,439	25,713	14,014	6,241	4,617
Minor Restricted Activity Days	1,544,952	959,839	168,459	113,280	99,585	50,408
School Absences	331,040	175,309	18,472	24,639	33,282	17,492

NOTE: Values represent the mean annual incidence estimate for 2005.

California's Central Valley) round out the top five with 49 and 39 annual premature deaths, respectively.

Construction activity varies from city to city and, therefore, so does potential exposure to harmful diesel exhaust. Areas with high population density and construction activity are an obvious concern because construction equipment emissions are more likely to be occurring in close proximity to people. Nevertheless, the most densely populated cities are not the only areas with high potential for construction risk; evaluation of active construction projects finds areas outside major population centers also face risks since large-scale construction projects accompany regional population growth.

While incentive programs have begun to clean up some of this equipment, only statewide regulations can achieve the reductions in construction equipment pollution needed to truly protect public health. Cost-effective technology solutions that would help meet this regulatory goal already exist, and more will become available over the next few years. CARB should adopt a regulatory regime that will clean up existing construction equipment by retiring the oldest, most-polluting equipment and using retrofit technology where appropriate.

*Chapter 1***DIESEL POLLUTION FROM CONSTRUCTION EQUIPMENT**

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Highway truck and bus engine manufacturers have had to meet increasingly stringent emission regulations since the late 1980s. Construction and other off-road equipment, however, did not face new particulate matter (PM) emission standards until 1996, with some engines unregulated as late as 2003.<sup>4</sup> In 2004, the U.S. Environmental Protection Agency (EPA) finally forced construction equipment to meet similar standards to highway trucks and buses, requiring 90 percent reductions in nitrogen oxides (NOx) and PM for most engine sizes. These standards will phase in over a seven-year period starting in 2008, reaching full implementation in 2014 (EPA 2004).

Although these standards will significantly reduce pollutants from new engines, the full benefits will not be realized until sometime after 2030, when the long-lasting equipment currently in use today is finally retired. There are technology options available to clean up these existing machines, but neither the EPA nor the state of California currently requires them. As a result, if no additional requirements are put in place, the construction sector will continue emitting high levels of toxic and smog-forming pollution for the next two to three decades.

**THE WORST OFFENDERS**

The Union of Concerned Scientists (UCS) took a closer look at pollution from California's construction equipment to find out which types of

equipment emit the most toxic diesel PM (or "soot") and smog-forming NOx. Most people think of trucks and buses when they think of diesel pollution, but as it turns out, the equipment repairing the road near your home or operating at a construction site near your office may be many times more polluting. Diesel construction equipment ranges from backhoes and bulldozers to paving equipment and cranes; we have identified the worst offenders.

Out of 18 categories of construction equipment identified in the 2005 California Air Resources Board (CARB) emission inventory, the five highest-polluting categories are responsible for 65 percent of PM and 60 percent of NOx emissions. In descending order, they are excavators, tractors/loaders/backhoes, crawler tractors (commonly called bulldozers), rubber-tired loaders, and skid-steer loaders (CARB 2006c).

We compared PM and NOx emissions from these types of equipment with the number of miles a new heavy-duty tractor-trailer truck (or "big rig") would have to travel to emit the same amount of pollution. The emissions of a model year 2007 big rig were estimated based on a truck traveling 55 miles per hour and operating on recently available ultra-low-sulfur diesel fuel. Hourly construction equipment emissions were calculated from equipment population estimates and CARB's 2005 emission inventory.

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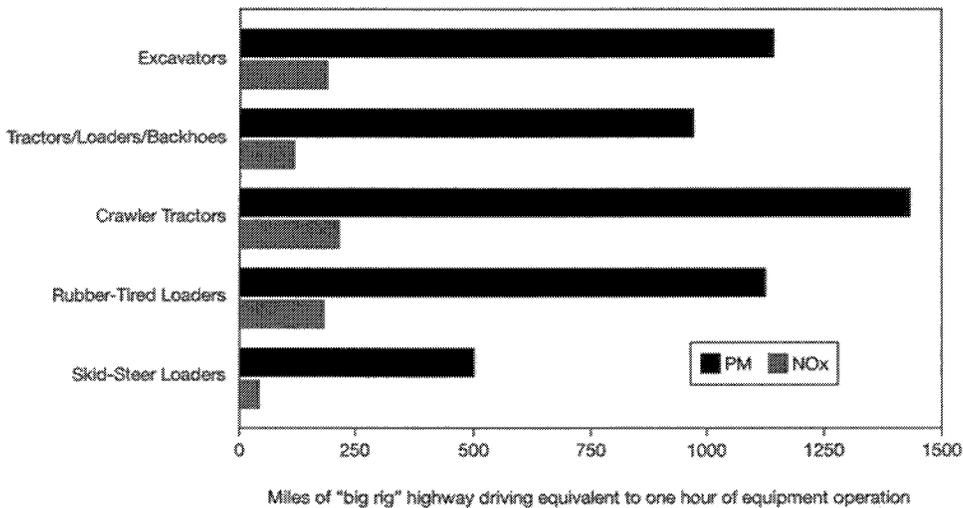
<sup>4</sup> Tier 1 EPA nonroad engine standards did not include PM limits for engines of 50 to 175 horsepower.

**TABLE 2 Emissions by Type of Construction Equipment**

	Percent of Total PM from Construction Equipment	Percent of Total NOx from Construction Equipment	Useful Life (in years)
Excavators	17%	18%	17
Tractors/Loaders/Backhoes	16%	12%	18
Crawler Tractors (Tracked Bulldozers)	13%	13%	29
Rubber-Tired Loaders	12%	12%	21
Skid-Steer Loaders	7%	4%	13
Off-Highway Trucks	5%	9%	17
Rough-Terrain Forklifts	5%	3%	16
Graders	5%	5%	23
Off-Highway Tractors	4%	5%	31
Rollers	3%	3%	20
Trenchers	3%	2%	28
Scrapers	3%	4%	26
Cranes	3%	4%	19
Rubber-Tired Dozers	2%	2%	32
Pavers	2%	1%	26
Bore/Drill Rigs	1%	1%	10
Other Construction Equipment	0.4%	1%	16
Paving Equipment	0.3%	0.2%	24
Surfacing Equipment	0.04%	0.1%	22

NOTE: Useful life is defined as the age at which half of the equipment of a given model year has been retired.  
 SOURCE: Based on 2005 CARB construction emission inventory (updated as of September 2006).

**FIGURE 1 Construction Equipment Emissions Compared with a New "Big Rig"**



### Excavators

There are an estimated 19,000 excavators in California, ranging in size from about 50 to 750 horsepower. The annual PM pollution from excavators accounts for 17 percent of all PM from construction equipment. On average, an excavator operating for one hour emits as much PM as a new big rig traveling 1,100 miles, while NO<sub>x</sub> emissions are equivalent to driving a big rig about 200 miles. The useful life of this equipment is 17 years.<sup>5</sup>



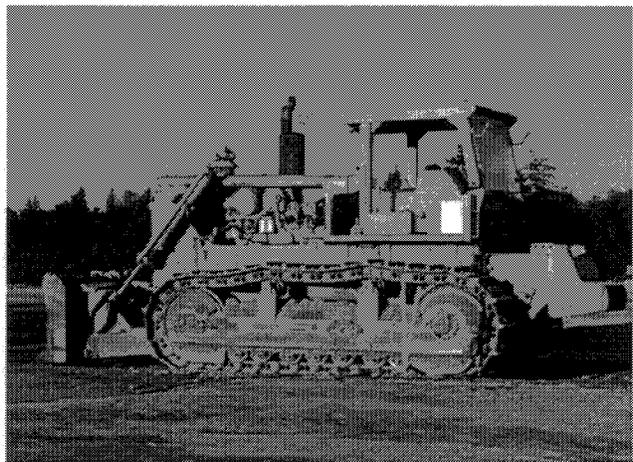
### Tractors/loaders/backhoes

These versatile pieces of equipment are commonly used on construction sites and road repair projects. More than 30,000 backhoes are operated in California every year, emitting 16 percent of all PM from construction equipment. The PM produced by the average backhoe in one hour is equivalent to driving a big rig nearly 1,000 miles, while the NO<sub>x</sub> emissions are equivalent to driving more than 100 miles. The useful life of this equipment is 18 years.



### Crawler tractors (bulldozers)

These tracked vehicles are used primarily for earthmoving operations. More than 16,000 bulldozers operate in California and emit 13 percent of all PM from construction equipment. The average bulldozer operating for one hour emits the same amount of PM as a new big rig driving 1,400 miles. The NO<sub>x</sub> emissions from an hour of operation are equivalent to driving a big rig 200 miles. The useful life of a crawler tractor is an impressive 29 years.



<sup>5</sup> Useful life is defined as the age at which half of the equipment of a certain model year has been retired. The useful life, equipment populations, emissions, and other equipment specifics described in this section are based on CARB's updated off-road emission inventory model as of September 2006 (CARB 2006c).

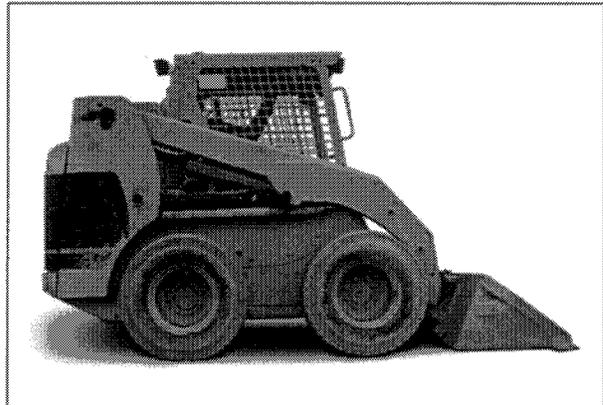
### Rubber-tired loaders

These heavy-duty vehicles, commonly used to load trucks, represent the fourth largest source of diesel emissions from construction equipment; the estimated 19,000 rubber-tired loaders in California account for 12 percent of all construction pollution. The average loader operating for one hour emits PM equivalent to driving a new big rig 1,100 miles and NOx emissions equivalent to driving 200 miles. The useful life of rubber-tired loaders is 21 years.



### Skid-steer loaders

More than 29,000 of these relatively small pieces of equipment operate in California on all types of construction projects, and account for seven percent of all PM from construction equipment. Even though the average skid-steer loader delivers less than 50 horsepower (a fraction of that provided by a big rig),<sup>6</sup> its PM emissions from one hour of operation are equivalent to driving a new big rig 500 miles. The useful life of a skid-steer loader is 13 years.



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<sup>6</sup> A new big rig's engine can range anywhere from 300 to 600 horsepower.

## Chapter 2

# HEALTH AND ECONOMIC DAMAGE FROM CONSTRUCTION EQUIPMENT

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Emissions from construction equipment and other diesel vehicles are harmful to our health and well-being. The damage comes in the form of premature death, increased hospital admissions for respiratory and cardiovascular diseases, asthma attacks, and lost productivity through school absences and missed work days. Following established statistical methods, UCS has quantified the cost of diesel emissions from construction equipment in California.

The impact of several pollutants that comprise diesel exhaust must be taken into account:

- **Particulate matter (PM).** Also known as soot, these small particles (25 times smaller than the width of a human hair) are released directly from the tailpipe or formed indirectly from emissions of NO<sub>x</sub> and sulfur oxides (SO<sub>x</sub>). PM can penetrate deeply into the lungs, causing or aggravating a variety of respiratory and cardiovascular illnesses and even leading in some cases to premature death (Pope 2002, Krewski 2000, Samet 2000).
- **Smog-forming pollutants.** NO<sub>x</sub> and hydrocarbons react in the presence of sunlight to form ozone (smog), which can damage the respiratory tract, reduce lung function, exacerbate asthma, aggravate chronic lung diseases, and also cause premature death (White 1994,

Koren 1995, Thurston 2001, Bell 2005). As much as 10 to 20 percent of all summertime hospital visits and admissions for respiratory illness are associated with ozone, and more than 90 percent of Californians live in areas that do not comply with federal ozone standards (Thurston 1992, 1994).

- **Air toxics.** The state of California has classified diesel exhaust and more than 40 compounds in diesel exhaust as toxic air contaminants.<sup>7</sup> Exposure to these chemicals can cause cancer, damage to fetuses, and other serious health and reproductive problems. CARB has estimated that diesel exhaust is responsible for 70 percent of the state's risk of cancer from airborne toxics (CARB 1998).

### ESTIMATING HEALTH EFFECTS OF CONSTRUCTION POLLUTION

This analysis uses methods established by CARB and the EPA to quantify health and economic damage from diesel pollution. In March 2006, CARB released a study detailing the regional health and economic damage caused by California's goods movement system (CARB 2006a). A number of adverse health effects, or endpoints, strongly linked to diesel pollution were quantified along with an estimate of the economic costs associated with these endpoints.

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<sup>7</sup> According to the California Health and Safety Code, a toxic air contaminant is "an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health."



## How Diesel Exhaust Damages Lungs

As PM from diesel exhaust travels through the air and is inhaled, the largest particles settle in the nose, throat, and lungs. The finest particles are able to evade the body's natural defenses (such as sneezing and coughing) and travel deep into the lungs. Once there, these particles can cause inflammation and scarring of air passageways and lung tissue, resulting in reduced oxygen flow to the rest of the body. Symptoms can range from coughing and shortness of breath to severe and fatal asthma attacks.

When inhaled, ozone—a key ingredient of smog—can also damage lungs by chemically burning delicate tissue and causing scarring. Recent evidence suggests that exposure to ozone can cause asthma in otherwise healthy children (McConnell 2002). On days with high ozone levels, health officials recommend reducing outdoor activities to lower exposure to this dangerous pollutant.

Using emission data specific to diesel construction equipment in California, we used the same methodology to quantify the damage from construction equipment pollution. Because our ability to quantify the public health impact of diesel pollution is limited, the health endpoints quantified in this analysis do not represent all of the potential damage associated with diesel pollution and are therefore conservative estimates.

Economic damage associated with construction equipment pollution is estimated by assigning each health endpoint an economic value. Economic valuations for each health endpoint are based on the cost of treating an illness, lost productivity or wages, or the value society is willing to pay to lower the risk of certain outcomes.

For further discussion of the methodology used to estimate the health and economic impact of construction pollution, please refer to the appendix.

Our analysis found that the economic and health damage caused by construction equipment pollution in California is staggering. More than 1,000 premature deaths per year can be attributed to these emissions, along with more than 1,000 hospitalizations for cardiovascular and respiratory illness, and more than 30,000 asthma attacks and other respiratory symptoms. Hundreds of thousands of lost work days and school absences equate to more than \$60 million in annual economic losses. In addition, Californians collectively experience millions of days each year when air pollution restricts their activities. Overall, construction equipment pollution costs the state more than nine billion dollars every year.

**TABLE 3 Health and Economic Damage from Construction Pollution (Statewide)**

Health Endpoint	Pollutants	Total Incidences	Costs (in thousands of 2005 dollars)
<b>Premature Deaths</b> (\$7.9 million/incidence)	PM and ozone	<b>1,132</b> (328–1930)	<b>6,944,256</b> (2,588,161–15,249,672)
<b>Respiratory Hospitalizations</b> (\$34,000/incidence)	PM and ozone	<b>669</b> (398–933)	<b>22,750</b> (13,530–31,735)
<b>Cardiovascular Hospitalizations</b> (\$41,000/incidence)	PM only	<b>417</b> (263–646)	<b>17,082</b> (10,795–26,491)
<b>Asthma and Other Lower Respiratory Symptoms</b> (\$19/incidence)	PM only	<b>30,118</b> (11,686–48,110)	<b>572</b> (222–914)
<b>Acute Bronchitis</b> (\$422/incidence)	PM only	<b>2,494</b> (–609–6,406)	<b>1,053</b> (–257–2,282)
<b>Lost Work Days</b> (\$180/incidence)	PM only	<b>162,940</b> (155,031–210,610)	<b>32,929</b> (27,906–37,946)
<b>Minor Restricted Activity Days</b> (\$60/incidence)	PM and ozone	<b>1,544,952</b> (988,809–2,150,641)	<b>92,697</b> (59,329–129,038)
<b>School Absences</b> (\$88/incidence)	Ozone only	<b>331,040</b> (134,632–531,374)	<b>29,131</b> (11,845–46,761)
<b>Total Cost</b>			<b>9,140,480</b> (2,711,532–15,524,840)

**DEFINITIONS:**

Premature deaths: Premature deaths due to exposure to PM and ozone, including cardiopulmonary and lung cancer mortality.

Respiratory hospitalizations: Hospital admissions for respiratory illnesses (such as emphysema or chronic bronchitis) as a result of exposure to both PM and ozone.

Cardiovascular hospitalizations: Hospital admissions for cardiovascular illnesses (such as heart attacks or hypertension) as a result of exposure to PM.

Lower respiratory symptoms: Asthma attacks and other symptoms such as wheezing, coughing, and shortness of breath.

Acute bronchitis: Symptoms can include coughing, chest discomfort, and slight fever and can last several days.

Lost work days: Days of work missed due to symptoms resulting from exposure to PM or to take care of an individual with such symptoms.

Minor restricted activity days: Days in which high ozone and PM levels require less strenuous activities but do not result in a lost work day or school absence.

School absences: Days of school missed due to symptoms resulting from exposure to ozone.

NOTE: Mean estimates are shown in bold; ranges shown in parentheses represent the 95 percent confidence interval (i.e., there is a 95 percent chance that the actual value falls between the two values shown).

*Chapter 3***CONSTRUCTION POLLUTION IMPACT BY REGION**

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The majority of the damage caused by construction equipment pollution occurs in areas where large numbers of people are exposed. Five of California's 15 air basins, home to more than 85 percent of the state's population, suffer more than 90 percent of the total health and economic damage from construction pollution. In each of these five air basins, which are the focus of this chapter, concerns exist in both urban and suburban areas.

Air basins are largely defined by physical features, such as mountain ranges, and meteorological conditions, such as air flow patterns, that restrict the movement of air pollution to another air basin. Air quality in a given air basin is influenced by the emission sources within it, and to a lesser degree by pollution entering from another air basin. Transport of air pollution from neighboring air basins is an ongoing area of research and, for the purposes of this analysis, construction equipment emissions are assumed to remain in the air basin in which they were generated.

**WHERE PEOPLE AND CONSTRUCTION MIX**

UCS also evaluated the likelihood of exposure to construction activity in specific cities within the five most-affected air basins. While construction equipment contributes to overall PM and ozone concentrations in each air basin, people who live or work near construction equipment may be at a higher risk of exposure to these dangerous pollutants.<sup>8</sup> Using 2000 census data and

2005 construction permit data from the California State Water Resources Control Board (SWRCB), we have identified those cities that have a higher risk of exposure to construction activity. The results show that areas where construction activity and people mix are spread throughout each region, in both urban and suburban cities and towns.

The SWRCB requires permits for construction projects that disturb more than one acre of land through clearing, grading, or excavation. We used permits from the SWRCB database for our analysis because such land disturbance generally involves the use of diesel earthmoving construction equipment. By excluding local building permits, we attempted to eliminate small projects such as single-family home construction and remodeling work that may not require the use of diesel equipment. The permits selected for this analysis were either active or issued between January 1, 2005, and December 31, 2005 (SWRCB 2005).

We then created maps using geographic information system (GIS) software to display "Construction Risk Zones" related to construction activity in each of the five studied air basins. Construction Risk Zones represent the risk of exposure to construction pollution in a given city, based on its mixture of construction activity and population density. To determine the relative risk potential for each city, we multiplied the total acreage under construction permit during 2005

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<sup>8</sup> Northeast States for Coordinated Air Use Management showed increased concentrations of diesel PM near construction sites (NESCAUM 2003). Other studies have shown an elevated risk of cancer near diesel pollution sources; these studies include a health risk assessment at a California rail yard (CARB 2005).

by population density from the 2000 census. A city's risk potential is presented in relation to other cities within the air basin, ranging from a relatively high risk to a relatively low risk.

The resulting Construction Risk Zones are based on the best information available, but it is important to note that this is not a measure of actual exposure to emissions and is only one measure of the likelihood that people and construction equipment will be in proximity to one another. Actual exposure levels depend on the amount of emissions produced by specific equipment, the types of equipment on a construction site and the length of time they operate, wind patterns and atmospheric conditions, and proximity

to the emission source. These details are not available from the SWRCB permit database.

Also, because we have measured construction activity in terms of acreage, a multi-story project and a single-story project are treated equally. In addition, the construction permit data used to evaluate Construction Risk Zones does not include California Department of Transportation (Caltrans) highway projects—a major source of construction activity in the state.<sup>9</sup> In spite of these limitations, our Construction Risk Zone evaluation captures a majority of the largest construction sites in the state.

Please see the appendix for further discussion of the SWRCB permit data.

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<sup>9</sup> For perspective, Caltrans contracts were worth eight billion dollars in 2005 (CALTRANS 2005) while building and construction contracts were valued at \$65 billion according to the California Department of Finance (CDF 2005).

## SOUTH COAST

Comprising most of Los Angeles, San Bernardino, Riverside, and Orange counties, this air basin experiences the greatest degree of health and economic damage in the state from construction equipment emissions. For 2005, this includes estimates of:

- more than 700 premature deaths
- 650 hospitalizations for respiratory and cardiovascular disease
- more than 1,700 cases of acute bronchitis
- nearly 21,000 incidences of asthma attack and other lower respiratory symptoms
- 300,000 days of lost work and school absences
- close to one million days of restricted activity

This loss of life and productivity cost South Coast residents an estimated \$5.9 billion.

Within the air basin, 127 cities and towns had active construction permits during 2005 accounting for more than 70,000 acres of land under construction. Areas designated as high-risk are spread throughout the region, with cities in all four counties falling in the top 10 percent of Construction Risk Zones. San Bernardino and Riverside counties each have four such cities while Los Angeles has three and Orange two. The presence of less population-dense cities such as Murrieta and Temecula in this group reflects the fact that large developments of 50 acres or more are common in these cities.

**TABLE 4 South Coast Construction Pollution Damage**

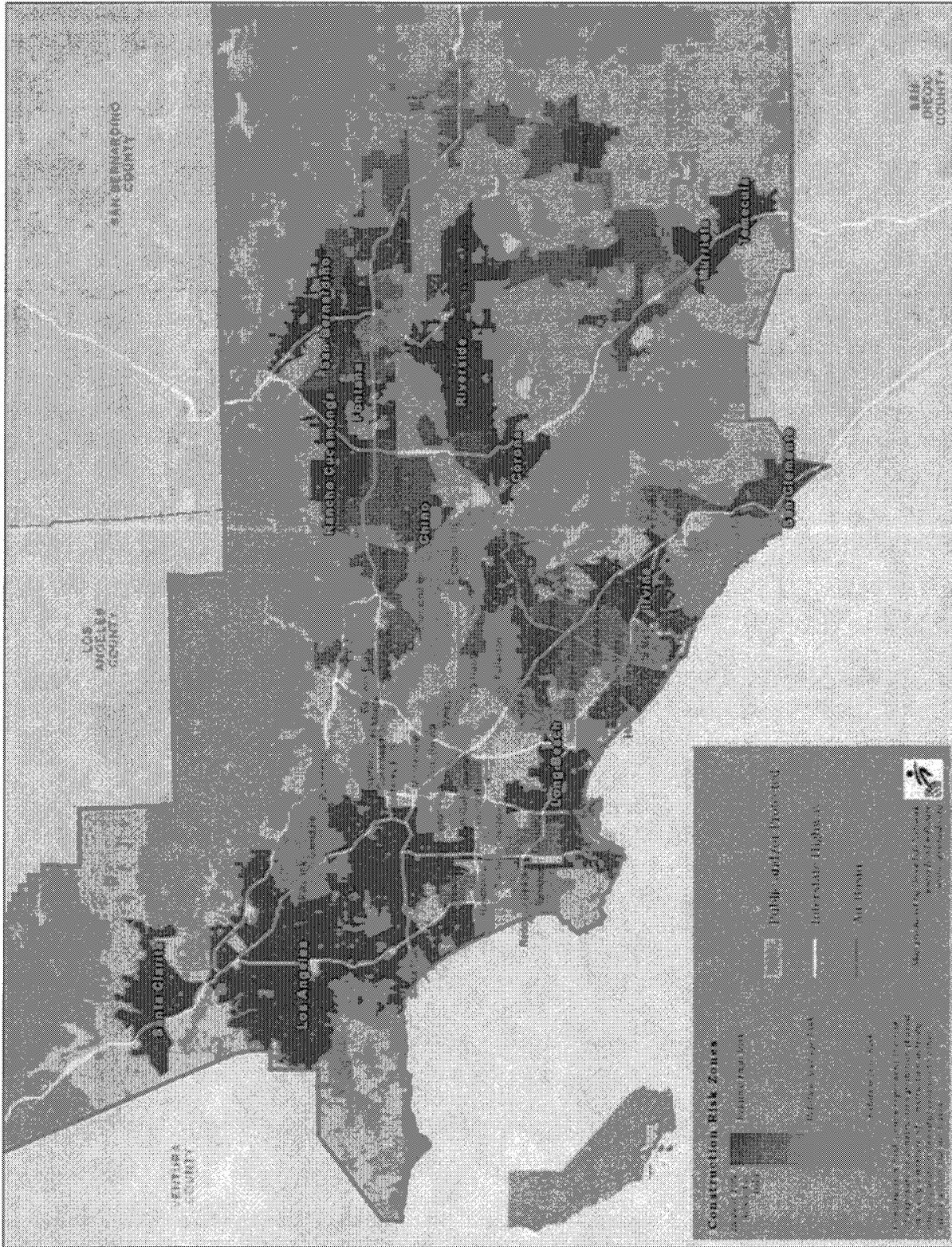
Health Endpoint	Mean Annual Incidences	Annual Costs (in thousands of 2005 dollars)
Premature Deaths	731	5,776,261
Respiratory Hospitalizations	363	13,019
Cardiovascular Hospitalizations	274	11,248
Asthma and Other Lower Respiratory Symptoms	20,941	398
Acute Bronchitis	1,729	730
Lost Work Days	123,433	22,219
Minor Restricted Activity Days	959,839	57,590
School Absences	175,339	15,430
<b>Total Annual Cost</b>		<b>5,896,894</b>

**TABLE 5 Top 10 Percent of South Coast Construction Risk Zones**

City	County
Long Beach	Los Angeles
Los Angeles	Los Angeles
Santa Clarita	Los Angeles
Irvine	Orange
San Clemente	Orange
Corona	Riverside
Murrieta	Riverside
Riverside	Riverside
Temecula	Riverside
Chino	San Bernardino
Fontana	San Bernardino
Rancho Cucamonga	San Bernardino
San Bernardino	San Bernardino

NOTE: Cities are listed in alphabetical order by county.

FIGURE 2 Construction Pollution Risk in the South Coast Air Basin



### SAN FRANCISCO BAY AREA

This air basin comprises nine counties and is second only to the South Coast air basin in health and economic damage from construction equipment emissions. For 2005, this includes estimates of:

- more than 150 premature deaths
- 100 hospitalizations for respiratory and cardiovascular disease
- more than 280 cases of acute bronchitis
- 3,000 incidences of asthma attack and other lower respiratory symptoms
- 44,000 days of lost work and school absences
- well over 100,000 days of restricted activity

This loss of life and productivity cost Bay Area residents an estimated \$1.2 billion.

Within the air basin, 80 cities and towns had active construction permits during 2005 accounting for more than 17,500 acres of land under construction. As in the South Coast, areas designated as high-risk are spread throughout the region. San Francisco and San Jose, both densely populated cities, fall in the top 10 percent of Construction Risk Zones along with less population-dense cities in Contra Costa, Alameda, and Solano counties (where large amounts of acreage are under construction).

It should be noted that the replacement of the Bay Bridge's eastern span, a multi-year, multi-billion-dollar project involving large amounts of construction equipment, is not captured in this evaluation.

**TABLE 6 San Francisco Bay Area Construction Pollution Damage**

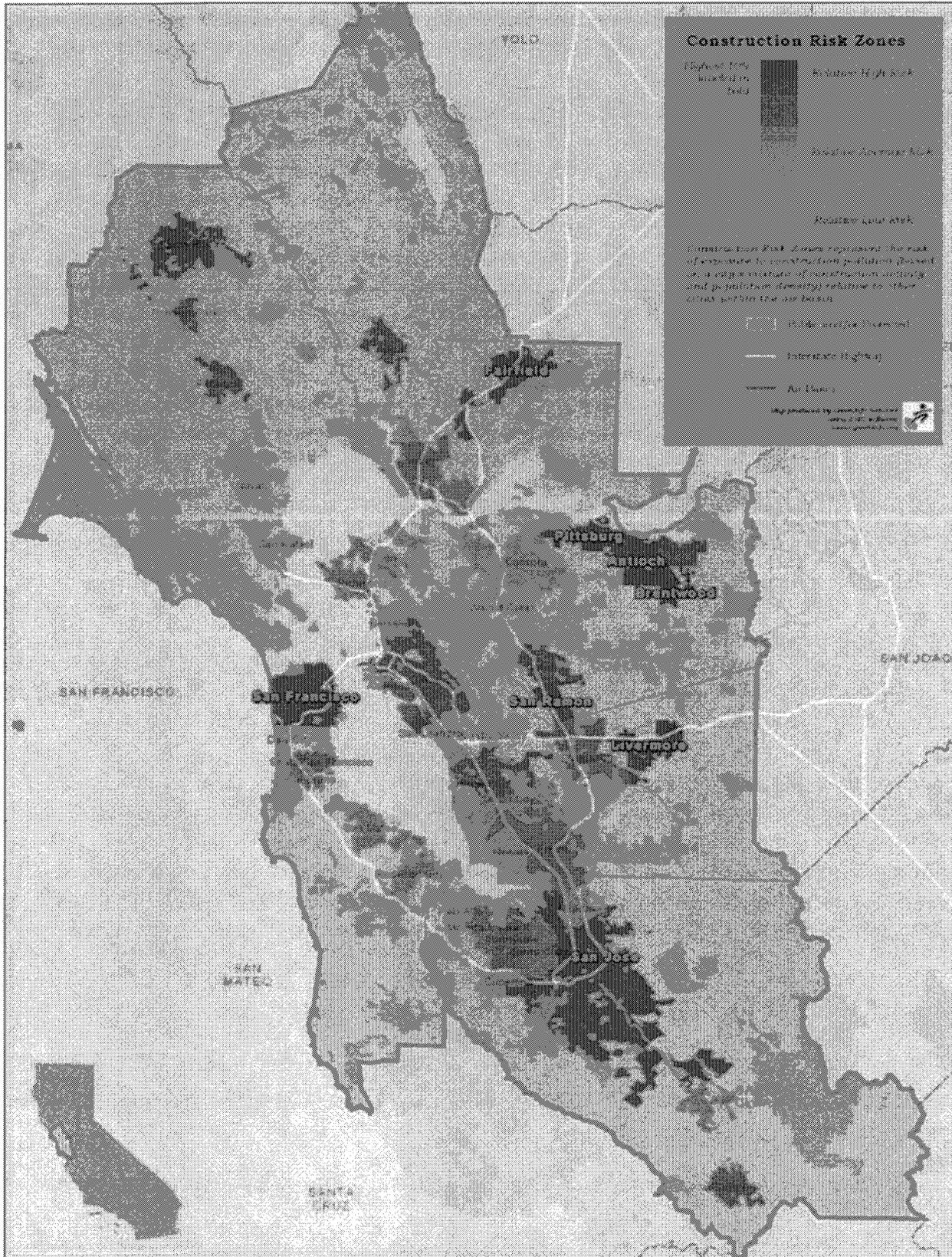
Health Endpoint	Mean Annual Incidences	Annual Costs (in thousands of 2005 dollars)
Premature Deaths	154	1,215,948
Respiratory Hospitalizations	56	1,914
Cardiovascular Hospitalizations	61	2,482
Asthma and Other Lower Respiratory Symptoms	3,406	65
Acute Bronchitis	284	120
Lost Work Days	25,713	4,626
Minor Restricted Activity Days	168,459	10,108
School Absences	16,472	1,626
<b>Total Annual Cost</b>		<b>1,236,890</b>

**TABLE 7 Top 10 Percent of San Francisco Bay Area Construction Risk Zones**

City	County
Livermore	Alameda
Antioch	Contra Costa
Brentwood	Contra Costa
Pittsburg	Contra Costa
San Ramon	Contra Costa
San Francisco	San Francisco
San Jose	Santa Clara
Fairfield	Solano

NOTE: Cities are listed in alphabetical order by county.

**FIGURE 3 Construction Pollution Risk in the San Francisco Bay Area Air Basin**



**SAN DIEGO**

This air basin ranks third behind the South Coast and San Francisco Bay Area for damage from construction equipment pollution. For 2005, this includes estimates of:

- nearly 90 premature deaths
- more than 80 hospitalizations for respiratory and cardiovascular disease
- more than 170 cases of acute bronchitis
- more than 2,000 incidences of asthma attack and other lower respiratory symptoms
- 38,500 days of lost work and school absences
- more than 100,000 days of restricted activity

This loss of life and productivity cost San Diego residents an estimated \$718 million.

Within the air basin, 25 cities and towns had active construction permits during 2005 accounting for more than 22,500 acres of land under construction. San Diego is by far the most populated and largest city in the air basin falling in the top 10 percent of Construction Risk Zones; others include Chula Vista and Oceanside, which both have a population density similar to San Diego and more than 1,000 acres under construction permit in 2005.

**TABLE 8 San Diego Construction Pollution Damage**

Health Endpoint	Mean Annual Incidences	Annual Costs (in thousands of 2005 dollars)
Premature Deaths	89	703,222
Respiratory Hospitalizations	50	1,703
Cardiovascular Hospitalizations	33	1,357
Asthma and Other Lower Respiratory Symptoms	2,127	40
Acute Bronchitis	177	75
Lost Work Days	14,014	2,523
Minor Restricted Activity Days	113,280	6,797
School Absences	24,689	2,173
<b>Total Annual Cost</b>		<b>717,890</b>

**TABLE 9 Top 10 Percent of San Diego Construction Risk Zones**

City	County
Chula Vista	San Diego
Oceanside	San Diego
San Diego	San Diego

NOTE: Cities are listed in alphabetical order by county.

FIGURE 4 Construction Pollution Risk in the San Diego Air Basin



### SAN JOAQUIN VALLEY

This air basin, comprising the southern counties of California's Central Valley, ranks fourth for health and economic damage from construction equipment pollution. For 2005, this includes estimates of:

- nearly 50 premature deaths
- 70 hospitalizations for respiratory and cardiovascular disease
- more than 100 cases of acute bronchitis
- more than 1,200 incidences of asthma attack and other lower respiratory symptoms
- 39,000 days of lost work and school absences
- nearly 100,000 days of restricted activity

This loss of life and productivity cost San Joaquin Valley residents an estimated \$401 million.

Within the air basin, 66 cities and towns had active construction permits during 2005 accounting for more than 32,500 acres of land under construction. The seven cities comprising the air basin's top 10 percent of Construction Risk Zones are spread throughout the valley (in six different counties) and correspond to the most populated areas.

**TABLE 10 San Joaquin Valley Construction Pollution Damage**

Health Endpoint	Mean Annual Incidences	Annual Costs (in thousands of 2005 dollars)
Premature Deaths	49	388,547
Respiratory Hospitalizations	55	1,858
Cardiovascular Hospitalizations	14	592
Asthma and Other Lower Respiratory Symptoms	1,284	24
Acute Bronchitis	107	45
Lost Work Days	6,241	1,123
Minor Restricted Activity Days	99,585	5,975
School Absences	33,282	2,929
<b>Total Annual Cost</b>		<b>401,094</b>

**TABLE 11 Top 10 Percent of San Joaquin Valley Construction Risk Zones**

City	County
Clovis	Fresno
Fresno	Fresno
Bakersfield	Kern
Merced	Merced
Stockton	San Joaquin
Modesto	Stanislaus
Visalia	Tulare

NOTE: Cities are listed in alphabetical order by county.



### SACRAMENTO VALLEY

This air basin, comprising the northern counties of California's Central Valley, ranks fifth for health and economic damage from construction equipment pollution. For 2005, this includes estimates of:

- nearly 40 premature deaths
- more than 40 hospitalizations for respiratory and cardiovascular disease
- more than 65 cases of acute bronchitis
- 790 incidences of asthma attack and other lower respiratory symptoms
- 22,000 days of lost work and school absences
- more than 50,000 days of restricted activity

This loss of life and productivity cost Sacramento Valley residents an estimated \$314 million.

Within the air basin, 52 cities and towns had active construction permits during 2005 accounting for more than 29,000 acres of land under construction. The cities falling in the top 10 percent of Construction Risk Zones include the city of Sacramento and its suburbs Elk Grove, Roseville, and Woodland, along with Yuba City in Sutter County.

TABLE 13 Top 10 Percent of Sacramento Valley Construction Risk Zones

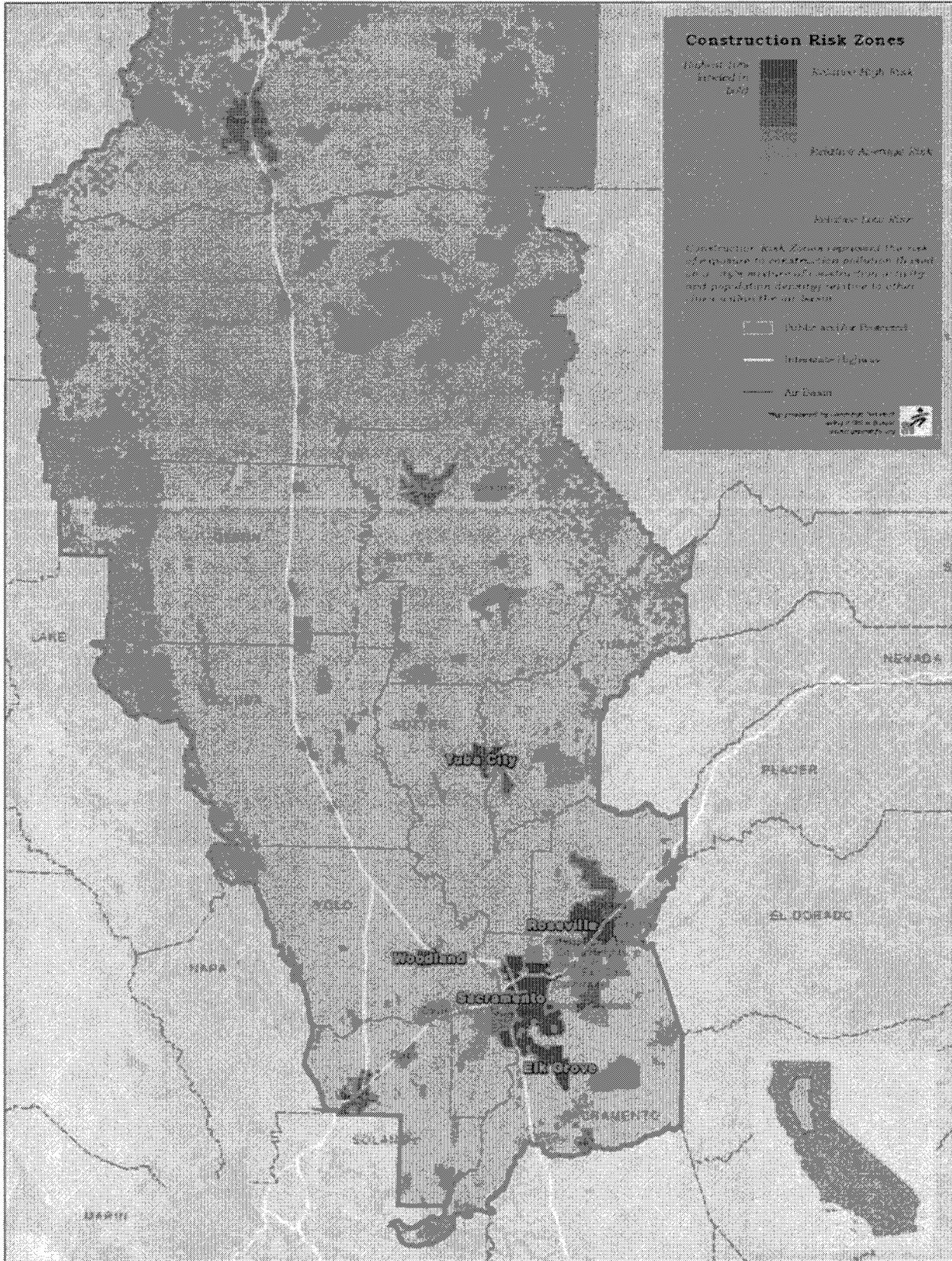
City	County
Roseville	Placer
Elk Grove	Sacramento
Sacramento	Sacramento
Yuba City	Sutter
Woodland	Yolo

NOTE: Cities are listed in alphabetical order by county.

TABLE 12 Sacramento Valley Construction Pollution Damage

Health Endpoint	Mean Annual Incidences	Annual Costs (in thousands of 2005 dollars)
Premature Deaths	39	306,638
Respiratory Hospitalizations	30	1,003
Cardiovascular Hospitalizations	12	493
Asthma and Other Lower Respiratory Symptoms	790	15
Acute Bronchitis	66	28
Lost Work Days	4,617	831
Minor Restricted Activity Days	50,408	3,025
School Absences	17,432	1,639
<b>Total Annual Cost</b>		<b>313,571</b>

FIGURE 6 Construction Pollution Risk in the Sacramento Valley Air Basin



## **CONCLUSIONS**

Construction equipment is operating in cities and towns throughout California, releasing harmful NO<sub>x</sub> and PM emissions into the air and raising the risk of exposure to these pollutants for residents who live and work near construction sites. The likelihood of people living or working close to construction sites is highest in densely populated urban areas, but the suburbs are not

free of risk from construction equipment pollution. Many projects in these areas, including new commercial and residential developments, require extensive use of construction equipment for land clearing and grading operations. Road construction and maintenance projects occurring throughout the state add additional risk.

Construction equipment pollution is therefore a health concern for all Californians.

## Chapter 4

# BUILDING A CLEANER FUTURE

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**B**ecause of its long working life, high replacement cost, and lagging emission standards, diesel construction equipment will continue to pollute for decades. That means Californians will suffer from increased hospital admissions for respiratory and cardiovascular disease, asthma attacks, acute bronchitis, and even premature death—unless the state takes action to dramatically reduce construction equipment pollution.

### WHAT CAN CALIFORNIA DO?

Under the federal Clean Air Act, California has the unique authority to regulate construction equipment. The state should use this authority to establish stringent new regulations that would complement its recent efforts to clean up pollution from other on-road and off-road sources of diesel pollution.<sup>10</sup> An effective regulatory regime for diesel construction equipment would:

- reduce diesel PM 75 percent below 2000 levels by 2010 and 85 percent below 2000 levels by 2020—which would reduce estimated annual premature deaths from construction equipment pollution by 790 (70 percent) compared with 2005
- phase out or retire the oldest, most polluting equipment
- install the best available retrofit technology on newer equipment

- require the strongest emission controls near sensitive locations such as schools, nursing homes, hospitals, and day care centers

Incentive programs have also proven effective in cleaning up construction equipment (UCS 2004). These programs should continue to fund equipment cleanup with the goal of achieving emission reductions above and beyond what regulations require.

There are a number of cost-effective ways to reduce emissions from construction and other off-road diesel equipment, allowing for flexibility in meeting reduction targets:<sup>11</sup>

- **Refuel.** Switching to alternative diesel fuels can achieve modest reductions in pollutants. These fuels can also facilitate the use of advanced retrofit technologies, resulting in even less pollution.
- **Repower.** The body or chassis of some equipment can last many decades, beyond the life of the original engine. Installing a new low-emission engine in an older chassis can allow the machine to run cleanly for many more years. California's Carl Moyer incentive program is currently funding some repower projects for construction equipment.<sup>12</sup>
- **Replace.** Replacing old equipment with a new lower-emission model ahead of schedule can result in substantial pollution reductions.

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<sup>10</sup> CARB has passed numerous regulations under its Diesel Risk Reduction Plan that set strict emission reduction targets for specific types of diesel vehicles and equipment (CARB 2005a, 2005b, 2005c, 2004b, 2003a, 2003b, 2003c, 2000).

<sup>11</sup> Previous UCS analysis found that diesel cleanup through California's Carl Moyer incentive program achieves benefits valued at 10 times the cost of cleanup (UCS 2004).

<sup>12</sup> Repower projects funded by the Carl Moyer incentive program must meet stringent cost-effectiveness thresholds (CARB 2000a, 2004a).

- **Retrofit.** Existing engines that can be expected to run for many more years can be retrofitted with emission control technologies that reduce PM more than 90 percent.<sup>13</sup>
- **Reduce idling.** Idling equipment not only pollutes, but also wastes fuel. Limiting idle time, on the other hand, saves money by reducing fuel use and wear-and-tear on the engine.

Efforts around the country and around the world are proving that the technology exists to lower construction equipment emissions. In Switzerland, for example, an aggressive regulation to curtail diesel PM emissions from construction sites has resulted in thousands of retrofits (Mayer 2004, 2005). In 2003, New York City passed an ordinance requiring that diesel equipment on all city-funded construction sites use ultra-low-sulfur fuel and be retrofitted with the best available control technology (Bradley 2006). Boston's "Big Dig" incorporated more than 200 retrofit devices on construction equipment, and Connecticut's Harbor Crossing Corridor is following suit.

In California, some air districts are funding repowers and retrofits through the Carl Moyer incentive program and, for large projects, requiring the use of cleaner construction equipment.<sup>14</sup> These and other groundbreaking efforts (MECA 2006) have proven the success of cleanup technology for construction equipment, but statewide action is necessary to achieve the greatest reductions and maximum health benefits.

### WHAT CAN YOU DO?

By taking the following actions, individuals can help protect themselves from harmful diesel emissions and make sure that the appropriate

decision makers know that Californians want diesel-powered construction equipment cleaned up:

- File a visible smoke complaint with your air district (contact information can be found at <http://www.arb.ca.gov/capcoal/roster.htm>) or CARB (call 800-952-5588 or email [vruiz@arb.ca.gov](mailto:vruiz@arb.ca.gov)) when you see plumes of diesel soot coming from construction equipment. Request that an inspector be sent to the site and investigate the emission source.
- Report illegal idling (commercial trucks that haul dirt or service construction sites cannot idle for more than five minutes) to CARB (visit <http://www.arb.ca.gov/enf/complaints/complaints.htm> or call 800-END-SMOG) or your local air district (contact information can be found at <http://www.arb.ca.gov/capcoal/roster.htm>). Citations for illegal idling can also be issued by local law enforcement.
- Tell your state legislative representatives (contact information can be found at <http://www.leginfo.ca.gov/yourleg.html>) and CARB ([arbboard@arb.ca.gov](mailto:arbboard@arb.ca.gov)) that cleaner construction equipment is important to you.
- Close your windows while diesel-powered equipment is operating near your home or office.
- Raise your concern about emissions from proposed construction in your neighborhood during the public review period, and demand that the project's environmental impact review assesses these emissions and includes a strategy for controlling them.
- Urge your city council to protect residents from construction pollution by enacting a clean-construction ordinance—especially around sensitive sites such as schools and day care centers.

<sup>13</sup> CARB has verified retrofit technologies for use on off-road equipment. See <http://www.arb.ca.gov/diesel/verdev/verifiedtechnologies/cvt.htm>.

<sup>14</sup> The Sacramento Metropolitan Air Quality Management District (<http://www.airquality.org/cegal/index.shtml>) and San Luis Obispo County Air Pollution Control District (contact: Andrew Mutziger) require construction equipment pollution mitigation for some projects under the California Environmental Quality Act.

*Appendix*

## ESTIMATING THE HEALTH DAMAGE AND ECONOMIC COSTS OF CONSTRUCTION POLLUTION

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Our polluted air has provided researchers a real-world laboratory for studying the impact of air pollution on people's health. Numerous epidemiological studies tracking thousands of individuals have linked PM exposure to premature death as well as cardiovascular and respiratory illnesses. Similar studies have been carried out for exposure to ozone pollution. These studies provide the basis for estimating the health benefits of reducing air pollution and are used in this study to estimate the impact of construction pollution.

The health effects quantified in this report are based on peer-reviewed epidemiological studies used by both the EPA and CARB to evaluate the benefits of reducing air pollution. These studies establish a statistically significant relationship between exposure to PM and ozone and increased incidences of specific health endpoints, which can then be quantified through a concentration-response function. The uncertainty in these estimates is quantified by presenting results as both a mean estimate of the number of incidences and a range of estimates representing the 95 percent confidence interval.<sup>15</sup>

Our analysis links health and economic damage to construction equipment pollution by using California-specific air quality monitoring data, county baseline health incidence rates, population estimates, and a diesel construction equipment emission inventory. PM concentrations for specific air basins were measured by CARB when identifying diesel PM as a toxic air contaminant (CARB 1998). And CARB recently evaluated

concentration-response functions for specific health endpoints using diesel PM concentration estimates along with population data, baseline health incidence rates, and an inventory of diesel emission sources related to the movement of goods (CARB 2006a). As part of these efforts, air basin-specific factors were estimated (in tons of diesel pollution per incidence) for each health endpoint. UCS used these factors along with CARB's air basin-specific inventory of diesel PM, NO<sub>x</sub>, and reactive organic gases (ROG) to estimate the health effects of PM and ozone from construction equipment (CARB 2006d).

Each health endpoint covered in this report is assigned a dollar value to estimate the economic impact of diesel pollution. The EPA uses economic valuations of health endpoints to perform cost-benefit analyses of air pollution reduction measures, and our analysis reflects changes made to the EPA's hospitalization endpoints and lost work days to better reflect California-specific wage and health care data (CARB 2006a).

Premature death is the most serious health endpoint related to diesel pollution and has the greatest economic impact. Estimates of premature death resulting from exposure to fine PM are based on long-term exposure for people 30 or older, and include all causes of death (Pope 2002). Individuals with existing respiratory and cardiovascular disease and the elderly are most vulnerable, and life expectancies are shortened by months or even years (Pope 2000). Economic valuation of premature death is based on a review of studies carried

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<sup>15</sup> For a list of the epidemiological studies used, see CARB 2006a and EPA 2004.

out by the EPA and on society's "willingness-to-pay" to lower the risk of premature death (EPA 1999).

### CONSTRUCTION PERMIT DATA

The California State Water Resources Control Board (SWRCB) construction permit database was chosen as the primary source for representing construction activity in California. Residential and commercial building permit data were excluded from the study due to overlapping information with the SWRCB database and the inclusion of projects that may not involve the use of diesel construction equipment.

SWRCB construction permits, which we used to calculate Construction Risk Zones, are required under the federal Clean Water Act for projects that disturb more than one acre of land. According to the SWRCB Fact Sheet for Water Quality Order 99-08-DWQ:

*Construction activity subject to this General Permit includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre of total land area. Construction activity that results in soil disturbances of less than one acre is subject to this General Permit if the construction activity is part of a larger common plan of development that encompasses one or more acres of soil disturbance or if there is significant water quality impairment resulting from the activity.*

Construction projects that disturb more than one acre of land generally involve the use of diesel earthmoving construction equipment. These permits, while not directly representing construction equipment activity, provide the best available indication of where large earthmoving equipment is being used.

*Limitations of permit data.* There are, however, some limitations to estimating construction activity from SWRCB permits.

Projects under permit may go through many different phases of construction before completion, not all of which require the use of diesel-powered construction equipment or sustained levels of construction equipment activity. Therefore, there is no guarantee that construction equipment was operated on site during a specific period of time, but permittees must pay an annual fee to the SWRCB to keep permits active. This monetary requirement should minimize the number of permittees holding active permits but not performing construction activity.

Additionally, there are some construction projects that will not appear in the SWRCB database. Projects in which storm runoff is captured in a combined sewer/storm water system do not require permits because the water treatment plant that receives the runoff is the permitted entity. Some projects in San Francisco and Sacramento, where a combined sewer system exists, may be excluded from the database as a result, but the majority of California cities do not have combined sewer/storm water systems.

Furthermore, some projects listed in the SWRCB database have incomplete location information. These details can include street address with or without number, street intersections with or without compass directions, pier number, and tract number. Mapping project location by city rather than zip code or street address allowed us to capture 90 percent of the acres under permit.

Because the size of a project is represented by the number of acres disturbed during construction, the amount of construction equipment activity may not have a linear relationship to the size

of the project. In general, large-acreage projects will likely have greater construction equipment activity than small-acreage projects. However, urban construction sites that are relatively small in area may have heavy construction equipment activity due to multi-story construction. For instance, a two-acre high-rise construction site in

downtown Los Angeles may have a much higher sustained level of construction equipment activity than a two-acre single-family home construction site in the suburbs. The available data did not allow us to distinguish between single-story and multi-story construction.

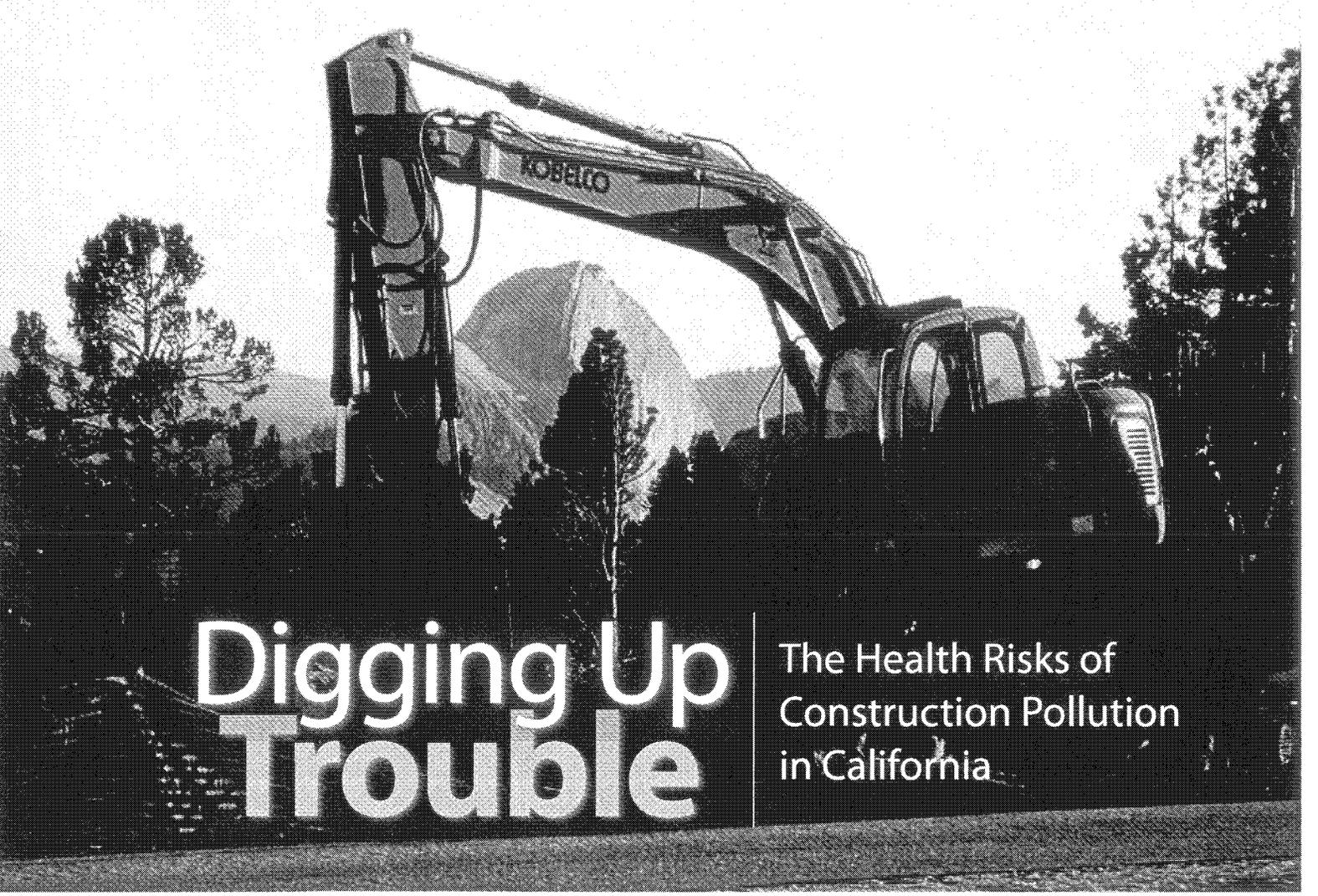
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# Digging Up Trouble

The Health Risks of  
Construction Pollution  
in California

Diesel engines may conjure up images of big rigs or transit buses, but construction equipment is a leading source of diesel pollution in California. Air pollution caused by construction equipment can result in severe cardiovascular and respiratory illnesses, asthma attacks, acute bronchitis, and even premature death.

This study quantifies the effect of construction pollution on California's public health and economy, both across the state and in the five most-affected regions. The risk of exposure to construction activity is evaluated for cities in each of these regions.

Construction equipment will continue to be a significant source of pollution over the next two to three decades unless California acts now. By adopting the cost-effective technology solutions that already exist (and those that will become available over the next few years), the state can reduce this public health threat and help all Californians breathe easier.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN JOAQUIN

11 CITIZENS FOR OPEN )  
 12 GOVERNMENT; )

13 Petitioner, )

14 v. )

15 CITY OF LODI; CITY COUNCIL )  
 16 OF THE CITY OF LODI; )  
 17 AND DOES 1-10, )

18 Respondents. )

19 BROWMAN DEVELOPMENT CO. a; )  
 20 California Corporation; LODI )  
 21 SOUTHWEST ASSOCIATE, L.P., a )  
 22 California Limited Partnership; )  
 23 DOES 11-100 )

24 Real Parties in Interest. )

Case No.: CV026002

**PETITIONER'S OPENING MERITS  
 BRIEF**

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1 **I INTRODUCTION**

2 Can the desire for a Wal-Mart Supercenter and its perceived economic benefits trump the  
3 protections for environment enshrined in the California Environmental Quality Act ("CEQA")?  
4 The Petitioner Citizens for Open Government ("Citizens") thinks not and hereby submits this  
5 Opening Brief on the merits of its Petition for Writ of Mandate. In this brief, Petitioner  
6 demonstrate that the Lodi Shopping Center Environmental Impact Report ("EIR") and related  
7 findings adopted by the Respondent City of Lodi through its City Council (collectively the  
8 "City") fail to meet the legal and factual standards set forth under CEQA, its Guidelines and  
9 applicable case law. Petitioner therefore respectfully request that the Court grant their Petition,  
10 negate the certification of the EIR and approval of the Lodi Shopping Center and direct the City  
11 reissue a revise draft EIR should it desire to proceed with the project.

12 **II BACKGROUND**

13 **A. The Proposed Project**

14 On June 27, 2002, Real Party in Interest Browman Development Company ("Browman")  
15 applied to the City for various development approvals to convert 40 acres of prime farmland into  
16 the Lodi Shopping Center. Administrative Record of Proceedings ("AR") at 941. Browman  
17 anticipates that a Wal-Mart Supercenter will anchor the Lodi Shopping Center in addition to  
18 several fast food restaurants, retail stores and professional services. AR 28. The 40 acres in  
19 question are located on the southwest corner of the intersection of West Kettleman Lane and  
20 Lower Sacramento Road in the southwest portion of the City. AR 27.

21 The intersection of West Kettleman Lane and Lower Sacramento Road is not without  
22 existing shopping opportunities, major discount retailers and or even Wal-Marts. The northwest  
23 corner hosts the Vintner's Square Shopping Center that offers Lowes Home Center and other  
24 smaller retailers (217,000 square feet of retail space). AR 27; 255. The northeast corner of the  
25 intersection houses a Target/Safeway combination and on the southwest corner sits an existing  
26 Wal-Mart and Food 4 Less Supermarket. Major superstores also exist within striking distance  
27 of the intersection: K-marts to the east and south; Costcos to the south and west; Targets and  
28 Kohls to the south and west; and a new Wal-Mart Supercenter planned for just 10 miles away in

1 northwest Stockton. AR 265, 813. Finally, eight supermarkets surround the area to provide Lodi  
2 residents with plenty of food shopping opportunities. AR 263.

3 Why then another Wal-Mart across the street from an existing one? The answer apparently  
4 lies in the developer's desire to supersize and relocate the existing store. Browman applied to  
5 the City to develop the 40-acre Lodi Shopping Center site in the following manner: 13 new  
6 buildings offering approximately 339,966 square feet of commercial retail uses. Of this amount,  
7 the new Wal-Mart Supercenter will occupy about two-thirds of the total or 226,868 square feet.

8 AR 28. The existing Wal-Mart across the street occupies about 120,000 square feet. AR 275.

9 The approximate 100,000 square foot enlargement for the new Supercenter is accounted for with  
10 three new elements: a 70,000 square foot grocery section, a 19,889 garden center (including a  
11 10,656 square foot outdoor fenced area), and a 6,437 square foot auto lube and oil change shop.

12 AR 28. In the remaining 12 building sites of the Lodi Shopping Center, the developer intends to  
13 secure a "moderate sized retailer," three fast food franchises, two sit down restaurants, and a mix  
14 of "pharmacy/drugstore, financial services/bank, personal services, business/professional  
15 services, and other retail uses." AR 28.

16 And what of the proposed project site? It is currently prime farmland now cultivated with  
17 vineyards in part and used previously for row crops (hay, oats, corn, grain, and miscellaneous  
18 truck crops) and alfalfa in part. AR 44, 53. The site offers foraging habitat for multiple bird and  
19 bat "special-status" species including the white tailed kite, northern harrier, merlin, golden eagle,  
20 prairie falcon, loggerhead shrike, Pacific western big-eared bat, and the California mastiff bat.

21 AR 76-85. Three additional species of concern may utilize the site on a more extensive basis: the  
22 Swainson's hawk, the burrowing owl, and the California horned lark. *Id.*

23 **B. Summary of the City's CEQA Procedures**

24 Recognizing that the conversion of prime farmland/open space to high intensity urban uses  
25 will cause a range of significant adverse impacts to the environment, the City issued a Notice of  
26 Preparation of a Draft Environmental Impact Report on April 14, 2003. AR 993. On August 6,  
27 2004, the City issued its Notice of Availability of the Draft Environmental Impact Report for the  
28 Lodi Shopping Center project ("DEIR"). AR 1030.

1 The DEIR received voluminous public written comment (AR 818-940, 1045-1177) and oral  
2 testimony (AR 1310-1417). Despite receiving numerous comments regarding the inadequacies  
3 of the DEIR, the City made a only few corrections to the document (AR 814-816) and issued it as  
4 the Final Environmental Impact Report (FEIR). AR 757. On December 8, 2004, the City of  
5 Lodi Planning Commission certified the FEIR as complete, made the findings, and approved the  
6 project. AR 1303-1309; 1252-1281; 1282-1295. Several parties then appealed the actions of the  
7 Planning Commission to the City Council. AR 1439-1445.

8 On January 19, February 3 and February 16, the Lodi City Council held public meetings  
9 and to review, de novo, the certification of the FEIR, the adequacy of the CEQA findings and  
10 whether to approve the project. See AR 1654, 2608, 3013. The City abruptly ended the first  
11 hearing (January 19) when the Mayor recused himself because of inappropriate ex parte contacts.  
12 AR 2624-2943. At the subsequent February meetings the City Council adopted Resolutions  
13 2005-26 and 2005-38 certifying the FEIR, making findings of overriding considerations, and  
14 approving the project. AR 2944-2972; AR 2973-2986. The City ultimately filed its Notice of  
15 Determination on February 18, 2005. AR 3204. The Petitioners timely initiated this action  
16 thereafter.

17 **C. The Substantive Contents of the DEIR**

18 **1. The Project Description and Objectives**

19 As discussed below, the CEQA Guidelines note that the objectives of a project set the stage  
20 for a number of critical CEQA determinations including reasonable alternatives, feasibility  
21 alternatives and mitigations, findings of overriding considerations, etc. See CEQA Guidelines 14  
22 C.C.R. §15124(b) (hereinafter "CEQA Guidelines"). The DEIR adopts the project objectives  
23 as articulated by the project applicant (AR 42-43):

- 24 • To build a commercial center on a large, undeveloped lot near other commercial  
25 development;
- 26 • To build a commercial center consisting of at least 30 net developable acres;
- 27 • To "complete" the development of the "Four Corners" are by providing a large  
28 retail center on the last remaining undeveloped site;

- 1 • To build a retail development which meets the current unmet demand of City  
2 residents;
- 3 • To build a commercial center that attracts regional customers and new retailers;
- 4 • To build a commercial center that results in net fiscal benefits to the City by  
5 providing new sales tax revenue, increasing property tax revenues, and create new jobs;
- 6 • To provide large-scale retail activities that will compliment existing smaller scale  
7 retail activities located throughout the City.

8 As is readily evident, the developer/applicant's objectives carefully describe only one  
9 possible outcome, namely the exact commercial supercenter at the exact location proposed by the  
10 developer.

## 11 2. The Project's Environmental Impacts and Responses

12 The City's DEIR concluded that the proposed project would not have any significant  
13 impacts under the following categories: Land Use, Aesthetics, Hazardous Materials, and Utilities  
14 and Services. AR 12-25. The DEIR found significant impacts would occur from the proposed  
15 project under the following categories but concluded that mitigation would render the impacts  
16 less-than-significant: Geology and Soils, Hydrology and Water Quality, Biological Resources,  
17 Cultural Resources, Traffic and Circulation, and Noise. *Id.* In particular, the DEIR found that  
18 the loss of 40 acres of foraging and potential nesting habitat was significant but that this impact  
19 could be fully mitigated by the protection of existing productive agricultural lands (*i.e.*,  
20 comparable habitat) elsewhere. AR 78-86; 342

21 The DEIR concluded that for the two remaining categories, Agricultural Resources and Air  
22 Quality, the project would result in significant and unavoidable (non-mitigable) impacts to the  
23 environment. For Agricultural Resources, the DEIR found that the proposed project would  
24 destroy 40 acres of prime farmland. AR 26-28. The DEIR then concluded – mistakenly – that no  
25 mitigation is available for this loss because (1) prime farmland cannot be recreated elsewhere, and  
26 (2) protection of existing prime farmland elsewhere (*e.g.*, agricultural conservation easements)  
27 does not create new farmland and therefore cannot avoid or reduce to less-than-significance this  
28

1 impact. AR 56-59. The DEIR therefore proposed no mitigation measures for impacts to  
2 Agricultural Resources. *Id.*

3 For Air Quality, the DEIR concluded that the traffic caused by the project would result in  
4 ozone precursors (reactive organic gasses and nitrogen oxides) and particulate matter (PM<sub>10</sub>) well  
5 above regional air quality significance thresholds. AR 149. The DEIR then proposed a set of  
6 project design measures to reduce area source emissions and required a Transportation Demand  
7 Management plan to reduce single occupant vehicle trips by employees. AR 149-150. The  
8 DEIR concluded that although these mitigations would reduce the traffic related impacts to  
9 regional air quality, they would not cause the resultant impacts to be less-than-significant. AR  
10 150.

11 The DEIR also examined the “growth-inducing” effects of the Lodi Shopping Center  
12 project. The DEIR concluded that the project would not cause any significant growth inducing  
13 impacts primarily because the infrastructure associated with the project was not sized to  
14 accommodate any growth but for the project. AR 187-188.

15 Finally, the DEIR assessed the cumulative impacts from the proposed Lodi Shopping  
16 Center with a list of projects approved by the City. AR 166-177. The DEIR concludes that for  
17 Agricultural Resources and Air Quality the project aggregate with other project to cause  
18 significant and unavoidable impacts. AR 168, 170.

### 19 3. Alternatives Analyzed in the DEIR

20 CEQA requires that the City consider a range of feasible alternatives to the proposed project  
21 and would avoid or substantially lessen the impacts of the project. CEQA Guidelines §15126.6.  
22 In addition, CEQA requires that the City analyze a “no-project” alternative. *Id.*, at §15126(e). In  
23 the DEIR, the City undertook the following alternatives analysis.

24 First, the City rejected for analysis an “Alternative Land Use” alternative (*e.g.*, offices,  
25 residential) because other types of commercial or residential development would be inconsistent  
26 with local zoning. AR 173. Second, the City rejected for analysis a “Reduced Density  
27 Alternative” (*i.e.*, same developed acres but “substantially reduced floor area and parking”)  
28 because such development would not be economically feasible and would not reduce to

1 insignificance the adverse impacts to Agricultural Resources and Regional Air Quality. AR 173-  
2 174.

3 Next, the City concluded that a “Reduced Project Size” alternative would “not represent a  
4 meaningful alternative under CEQA” because the developer demanded at least 30 net developable  
5 acres (see project objectives above). Compared to the proposed project of 33 net developable  
6 acres, the City’s reduced size alternative represented only a 10 percent reduction. “Therefore, a  
7 reduced project size alternative was not selected for further consideration.” AR 174. Despite  
8 concluding that the reduced sized alternative was not a meaningful, the City decided to include it  
9 for illustrative purposes. *Id.* In its analysis of the reduced size project, the City found that it  
10 would have lesser impacts but rejected it because it “would not achieve the CEQA objective of  
11 avoiding significant impacts associated with the project” and would “not fulfill the project  
12 objective of a 30-acre minimum project size needed for project feasibility.” AR 180.<sup>1</sup>

13 The City then considered an “Alternative Project Location” alternative. Using the “30 net  
14 developable acres” and the “undeveloped land” objectives, the City found no alternative  
15 locations available within its jurisdictional boundaries. AR 174.<sup>2</sup> As a result, it concluded CEQA  
16 required no alternative locations to be analyzed. *Id.* However, the City did include, for  
17 comparison purposes only, an alternative location in San Joaquin County. AR 175. The site  
18 consisted of 36 gross acres of undeveloped land on the northeast corner of Highway 12 and  
19 Thorton Road. *Id.* In its analysis of the same project at a different location, the City concluded  
20 that proposed project at the alternative location would have not avoid or lessen any impact and  
21 would in fact have “somewhat greater impacts” than at the proposed location. AR 153-158.

22 Finally, the City also analyzed the required “no project” alternative. AR 148-150. The  
23 DEIR concluded that the No Project alternative was environmentally superior to the proposed  
24

---

25 <sup>1</sup> The City concluded that the Reduced Project alternative would have “the same  
26 significant and unavoidable impacts to agricultural resources and air quality as the proposed  
27 project” even though the alternative would reduce the acres converted and associated traffic by  
28 approximately 30 percent. AR 185.5 (page not numbered).

<sup>2</sup> The City rejected as infeasible an alternative location of 23 acres within the City. AR  
174. The City, however, ultimately analyzed a reduced project size alternative that composed just

1 project. AR 150. The City rejected the alternative because it “it would not fulfill the project  
2 objective of developing the site with a regional shopping center nor enhancing the City’s fiscal  
3 resources.” *Id.*

4 As discussed below, the City’s perfunctory analysis was insufficient because it did not  
5 include examination of any alternatives that met most project objectives and were environmentally  
6 superior in some significant aspect as required by law.

7 **D. The City’s Adoption of the FEIR, Statement of Overriding Considerations**  
8 **and Project Approvals**

9 On February 3, 2005, the City adopted Resolution 2005-26 certifying the Lodi Shopping  
10 Center FEIR as complete, made findings about impacts, alternatives, and determined that the  
11 economic benefits of the Lodi Shopping Center project outweighed the significant but allegedly  
12 unavoidable impacts of the project. AR 2944-2972. Resolution 2005-26 carried forward without  
13 correction or amendment the conclusions and statement of the DEIR and FEIR.

14 On February 16, 2005, the City adopted Resolution 2005-38 approving the application by  
15 the Browman Development for the Lodi Shopping Center. AR 2973-2986. Resolution 2005-38  
16 contains the basic project approvals and multiple develop conditions. Condition R (AR 2984-  
17 2985) is particularly relevant. In an attempt to avoid the “empty box store” phenomenon that  
18 usually happens when regular Wal-Marts close in order to make room for a Wal-Mart  
19 Supercenter, the City required that prior to issuance of the building permit for the Lodi Shopping  
20 Center Browman must either (a) sign leases for tenants of at least 50% of the old Wal-Mart  
21 building, or (b) enter into a purchase agreement for sale of the old building to a bone-fide retailer,  
22 or (c) demolish the building (and post a bond for its demolition). AR 2984-2985. As a result of  
23 this condition, the City cannot rely on the retail space of the old Wal-Mart remaining operative.  
24 The building may very well be destroyed if that proves to be in the fiscal best interest of  
25 Browman.

26  
27  
28 24 acres. The City never explains why it would accept for analysis a 24-acre on-site alternative but  
not a 23-acre off-site one.

1 **III. ARGUMENT**

2 **A. Standard of Review**

3 The court's role in reviewing an EIR is not to second-guess the lead agency's conclusions.  
4 The court, however, must determine whether those conclusions are supported by substantial  
5 evidence and "whether the EIR is sufficient as an informational document." *Laurel Heights*  
6 *Improvement Ass'n v. Regents of the Univ. of Cal.* ("Laurel Heights I") (1988) 47 Cal.3d 376,  
7 407. "Conclusory comments in support of environmental conclusions are generally  
8 inappropriate." *Id.* at 404. Rather, the EIR "must include detail sufficient to enable those who  
9 did not participate in its preparation to understand and to consider meaningfully the issues raised  
10 by the proposed project." *Id.* at p. 405.

11 The certification of a legally inadequate EIR constitutes a prejudicial abuse of discretion.  
12 Pub. Resources Code, § 21005(a); *Citizens to Preserve the Ojai v. County of Ventura* (1986) 176  
13 Cal.App.3d 421, 428. Under the CEQA the court must determine whether the agency has  
14 committed a prejudicial abuse of discretion. Pub. Resources Code, § 21168.5. An abuse of  
15 discretion is established if:

- 16 1) the agency's determination or decision is not supported by substantial evidence; or  
17 2) the agency has failed to proceed in a manner required by law.

18 (*Id.*) The substantial evidence test applies only to the court's review of the agency's factual  
19 determinations, not to claims that the agency has failed to comply with CEQA's substantive and  
20 procedural mandates. See 2 Kostka & Zischke, *Practice Under the Environmental Quality Act*  
21 (Cont. Ed. Bar 2000), §§ 23.33-23.35, pp. 950-951. The substantial evidence test does not apply  
22 to the court's determination on whether the District failed to comply with CEQA's substantive  
23 and procedural requirements.

24 Even where the substantial evidence standard does apply, the court still must determine, as a  
25 legal matter, "whether the EIR is sufficient as an informational document." *Kings County Farm*  
26 *Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711. "Substantial evidence" is not  
27 synonymous with "any" evidence. *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4<sup>th</sup> 634,  
28 651. Nor does substantial evidence include argument, speculation or unsubstantiated opinion.

1 Pub. Resources Code, § 21080(e). Rather “substantial evidence” means “enough relevant  
2 information and reasonable inferences from this information that a fair argument can be made to  
3 support a conclusion, even though other conclusions might also be reached.” Guidelines, §  
4 15384(a).

5 “Noncompliance with substantive requirements of CEQA or noncompliance with  
6 information disclosure provisions ‘which precludes relevant information from being presented to  
7 the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections  
8 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public  
9 agency had complied with those provisions.’ ( 21005, subd. (a).) In other words, when an agency  
10 fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to  
11 comply with the law subverts the purposes of CEQA if it omits material necessary to informed  
12 decisionmaking and informed public participation. Case law is clear that, in such cases, the error  
13 is prejudicial.” *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th  
14 931, 946.

15 **B. The California Environmental Quality Act**

16 “CEQA is a comprehensive scheme designed to provide long-term protection to the  
17 environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public  
18 agencies responsible for regulating activities affecting the environment give prime consideration  
19 to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be  
20 interpreted ‘to afford the fullest possible protection to the environment within the reasonable  
21 scope of the statutory language.’ [Citation.]” *Mountain Lion Foundation v. Fish & Game Com.*  
22 (1997) 16 Cal.4th 105, 112. “The environmental impact report, with all its specificity and  
23 complexity, is the mechanism prescribed by CEQA to force informed decision making and to  
24 expose the decision-making process to public scrutiny. *Planning and Conservation League v.*  
25 *Department of Water Resources* (2000) 83 Cal.App.4<sup>th</sup> 892, 910; citing *No Oil, Inc. v. City of*  
26 *Los Angeles* (1974) 13 Cal.3d 68, 86.

27 The EIR is “the heart of CEQA” and “an environmental alarm bell whose purpose is to  
28 alert the public and its responsible officials to environmental changes before they have reached

1 the ecological point of no return.” *Laurel Heights I*, 47 Cal.3d at 392. The EIR is the “primary  
2 means” of ensuring that public agencies “take all action necessary to protect, rehabilitate, and  
3 enhance the environmental quality of the state.” *Id.*, quoting Pub. Resources Code, § 21001(a).  
4 The EIR is also a “document of accountability,” intended “to demonstrate to an apprehensive  
5 citizenry that the agency has, in fact, analyzed and considered the ecological implications of its  
6 actions.” (*Laurel Heights I*, 47 Cal.3d at 392 (quoting *No Oil, Inc.*, 13 Cal.3d at 86.)

7 The central purpose of an EIR is to identify the significant environmental effects of the  
8 proposed project, and to identify ways of avoiding or minimizing those effects through the  
9 imposition of feasible mitigation measures of the selection of feasible alternatives. Pub.  
10 Resources Code, §§ 21002, 21002.1(a), 21061. “An EIR provides the public and responsible  
11 government agencies with detailed information on the potential environmental consequences of an  
12 agency’s proposed decision.” *Mountain Lion Foundation v. Fish & Game Com.*, 16 Cal.4th at  
13 113.

14 CEQA requires the lead agency to adopt feasible alternatives or feasible mitigation measures  
15 that can substantially lessen the project’s significant environmental impacts. Pub. Resources  
16 Code, § 21002; CEQA Guidelines, § 15002(a)(3); *Sierra Club v. Gilroy City Council* (1990) 222  
17 Cal.App.3d 30, 41. For that reason, “[t]he core of an EIR is the mitigation and alternatives  
18 sections.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

19 **C. The EIR Fails to Analyze a Reasonable Range of Project Alternatives**

20 CEQA Guidelines Section 15126.6 sets forth the necessary elements of adequate  
21 alternatives analysis:

22 An EIR shall describe a range of reasonable alternatives to the  
23 project, or to the location of the project, which would feasibly attain  
24 most of the basic objectives of the project but would avoid or  
substantially lessen any of the significant effects of the project, and  
evaluate the comparative merits of the alternatives.

25 \* \* \*

26 Because an EIR must identify ways to mitigate or avoid the  
27 significant effects that a project may have on the environment (Pub.  
Resources Code, section 21002.1), the discussion of alternatives  
28 shall focus on alternatives to the project or its location which are  
capable of avoiding or substantially lessening any significant effects

1 of the project, even if these alternatives would impede to some degree  
2 the attainment of the project objectives, or would be more costly.

3 \* \* \*

4 The range of potential alternatives to the proposed project shall include those that  
5 could feasibly accomplish most of the basic objectives of the project and could avoid  
6 or substantially lessen one or more of the significant effects.

7 The alternatives need not accomplish all of the proponent's goals in order to qualify under  
8 this standard. "The lead agency must consider alternatives even if they would impede to some  
9 degree the attainment of the project objectives, or would be more costly." *Citizens for*  
10 *Responsible Government v. City of Albany* (1997) 56 Cal.App.4<sup>th</sup> 1199, 1222, see also *Kings*  
11 *County Farm Bureau v. City of Hanford*, 221 Cal.App.4<sup>th</sup> at p. 733; *Planning and Conservation*  
12 *League v. Department of Water Resources*, 83 Cal.App.4<sup>th</sup> at p. 917. "An environmentally  
13 superior alternative cannot be deemed infeasible absent evidence the additional costs or lost  
14 profits are so severe the project would become impractical." *Kings County Farm Bureau v. City*  
15 *of Hanford*, 221 Cal.App.3d at p. 736.

16 A range of alternatives to a proposed project must be presented "in meaningful detail."  
17 *Laurel Heights*, 47 Cal.3d at p. 406. "[E]ven if alternatives are rejected, an EIR must explain why  
18 each suggested alternative either does not satisfy the goals of the proposed project, does not offer  
19 substantial environmental advantages, or cannot be accomplished. (*San Joaquin Raptor/Wildlife*  
20 *Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4<sup>th</sup> 713, 737.) If an agency concludes  
21 that the alternatives it analyzed are infeasible, it must present "the reasons and facts [it] claims  
22 support its conclusion." *Laurel Heights*, 47 Cal.3d at p. 406. Those reasons and facts must be  
23 set forth "in meaningful detail." *Marin Mun. Water District v. KG Land California Corp.*  
24 (1991) 235 Cal.App.3d 1652, 1664.

25 *Kings County Farm Bureau v. City of Hartford*, 221 Cal.App.3d at p. 701, emphasizes that  
26 the outcome of an alternatives analysis may not be predetermined by adhering to the applicant's  
27 unreasonable project objectives:

28 Since CEQA charges the agency, not the applicant, with the task of  
determining whether alternatives are feasible, the circumstances that  
led the applicant in the planning stage to select the project for which  
approval is sought and to reject alternatives cannot be determinative

1 of their feasibility. The lead agency must independently participate,  
2 review, analyze and discuss the alternatives in good faith. [Citation.]

3 \* \* \*

4 The applicant's reasons for deciding upon the project as proposed  
5 are merely a part of the evidence to be considered. The current  
6 circumstances must also be a part of the feasibility equation. "The  
7 CEQA reporting process is not designed to freeze the ultimate  
8 proposal in the precise mold of the initial project; indeed, new and  
9 unforeseen insights may emerge during investigation, evoking  
10 revision of the original proposal." [Citation.] Otherwise, CEQA's  
11 mandate to consider alternatives would be meaningless.

12 For two interrelated reasons, the City's EIR alternatives analysis fail to meets these  
13 standards.

14 **1. Use of Developers' Project Objectives preordained selection of its**  
15 **project**

16 First and foremost, the use of the developer's objectives precluded any meaningful CEQA  
17 alternatives analysis. As recited above, only one possible project meets these objectives, the  
18 specific Lodi Shopping Center Wal-Mart Supercenter desired by the developer. For example, the  
19 location is fixed by the following objectives: "large, undeveloped lot," "complete the  
20 development of the 'Four Corners' area," and "30 net acres." AR 42-43. No other location  
21 satisfies these objectives. See AR 174 (no undeveloped site within City greater that 23 gross  
22 acres). Similarly, the developer's specific development project (220,000 square foot superstore  
23 and 100,000 square foot associated commercial development) is fixed by the following objectives:  
24 "to provide a commercial center consisting of 30 net acres to provide sufficient a mixture of uses  
25 . . . in addition to a major anchor tenant," "to provide large scale retail activities," and "to  
26 complete development of the 'Four Corners' area by providing a large scale retail center." No  
27 other development but the mixture of proposed uses satisfies these objectives. And lastly, the  
28 City drafted the EIR with the presumption that a Wal-Mart Supercenter will be anchor tenant even  
though Wal-Mart is neither the property owner, the developer, nor permit recipient. *See e.g.*, AR  
28 (project description), 795 (response to comment re deleting the Wal-Mart), and 2973-2986  
(resolution approving the project).

1           The EIR fails to provide the City with a “reasoned choice.” In the EIR’s section entitled  
2 “Selection of Alternatives to be Evaluated” (AR 172-175), the City admits it presents no real  
3 alternative for consideration. The City dismisses any thought of an Alternative Land Use option.  
4 AR 173. The City also dismisses from consideration a “Reduced Density Alternative.” AR 173-  
5 174. For the Reduced Project Size alternative, the City candidly states that such an alternative  
6 would not represent a “meaningful alternative under CEQA” and therefore “a reduced project  
7 sized alternative was not selected for further consideration.” AR 174. Likewise for the  
8 Alternative Project Location alternative, the City concluded that no feasible site existed. *Id.*  
9 However, for both of these later alternatives, the City decided to include them for illustrative  
10 purposes only. AR 174, 175 (“Nevertheless, in order to present an alternative that would allow  
11 comparison of [either a reduced project size or different location was included for further  
12 review.]” Alternatives used for illustrative purposes, however, deprive the City of a “reasoned  
13 choice” between the proposed project and meaningful options. Since the EIR’s project  
14 objectives are drafted in such a way as to deny the City such a reasoned choice, the EIR fails in its  
15 essential purpose and must be remanded for correction.

16           **2. The EIR contains no legally adequate alternatives**

17           The impact of the illegally constrained project objectives reveals itself in full in the EIR’s  
18 alternatives analysis. As described above, CEQA mandates that for public agencies to have a  
19 meaningful choice alternatives to the proposed project must possess two critical components: (1)  
20 feasibility of most of the project objectives, and (2) avoidance or substantial reduction of any of  
21 the significant effects of the proposed project. See CEQA Guidelines §§ 15126.6(a), (c), (f). The  
22 EIR’s alternatives fail to meet these two additive minimum criteria.

23           The alternatives section, along with the mitigation section, is the core of an EIR. (See *Goleta*  
24 *Valley*, 52 Cal.3d at p. 564; Guidelines, § 15126.6(a).) “The purpose of an environmental impact  
25 report is to identify the significant effects on the environment of a project, *to identify alternatives to*  
26 *the project*, and to indicate the manner in which those significant effects can be mitigated or  
27 avoided. Pub. Resources Code, § 21002.1(a) (emphasis added); see also Pub. Resources Code, §  
28 21061. It is a fundamental statutory policy of this state that public agencies will consider

1 alternatives to proposed action affecting the environment prior to approving such actions. (See  
2 Pub. Resources Code, § 21001(g); *Laurel Heights I, supra*, 47 Cal.3d at p. 400.)

3 In preparing an EIR, a lead agency must ensure “that all reasonable alternatives to proposed  
4 projects are thoroughly assessed.” *San Joaquin Raptor/Wildlife Rescue Center, supra*, 27  
5 Cal.App.4th at p. 717; quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; Pub.  
6 Resources Code, § 21001(g) (lead agency must “consider alternatives to proposed actions  
7 affecting the environment”); *Laurel Heights I*, 47 Cal.3d at p. 400. The EIR must “describe a  
8 range of reasonable alternatives to the project, or to the location of the project, which would  
9 feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the  
10 alternatives.” Guidelines, § 15126.6(a). An EIR’s alternatives discussion must focus on  
11 alternatives that avoid or substantially lessen any significant effects of the project. Guidelines,  
12 § 15126.6(b); *Goleta Valley, supra*, 52 Cal.3d at p. 556 (EIR must consider alternatives that  
13 “offer substantial environmental advantages”). The range must be sufficient “to permit a  
14 reasonable choice of alternatives so far as environmental aspects are concerned.” *San Bernardino*  
15 *Valley Audubon Soc’y v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750; see also  
16 *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1217-18, 1222 (EIR that only  
17 considered two alternatives for less development was not a range of reasonable alternatives).  
18 Although there is no rule governing the number of alternatives that must be considered, the range  
19 is governed by the “rule of reason.” Guidelines, § 15126.6(f). The range of alternatives,  
20 however, must be selected and discussed in a manner that allows for meaningful public  
21 participation and informed decisionmaking. *Id.*

22 The EIR analyzes three alternatives (albeit only for illustrative purposes only): the No  
23 Project, Reduced Project Size, and Alternative Location. AR 175-185. The Alternative Location  
24 alternative (Flag City) fails to avoid or significantly reduce any of the significant effects of the  
25 Four Corners proposed project for every category assessed. AR 182-185. The EIR bluntly  
26 summarizes the comparative environmental impacts as follows:

27 In summary, the impacts associated with development of the Flag  
28 City site would be somewhat greater than for the proposed project  
site. Although the impacts for many categories would be similar for

1 both project locations, development of the Flag City site would result  
2 in negative effects in terms of land use policy, and the resulting  
3 potential for growth inducement, which would not occur with the  
4 proposed project site. Traffic impacts would be greater for the Flag  
5 City site, as would impacts to utilities and public services . . . . More  
6 importantly, the alternative project site would result in the same  
7 significant but unavoidable impacts to agricultural resources and air  
8 quality as are associated with the proposed project. Therefore, the  
9 alternative site would not lessen or avoid the significant and  
10 unavoidable impacts of the project.

11 AR 185; see also AR 2969 (the City's CEQA findings regarding this alternative). Thus, the Flag  
12 City alternative is not a meaningful alternative because it does not offer any environmental  
13 benefits, only similar or greater adverse impacts and does not meet the Section 15126.6 criteria.

14 Next, City itself admits that the Reduced Size Alternative is not a "meaningful  
15 alternative under CEQA." AR 174. According to the City, the Reduced Project Alternative –  
16 construction of just the Wal-Mart Supercenter (226,000 square feet) and not the unrelated  
17 100,000 commercial square footage thereby converting 24 instead of 40 acres of open space –  
18 does not avoid or substantially lessen any of the significant impacts of the proposed project. See  
19 AR 180 ("In summary, the Reduced Project Size alternative would result in a slight reduction in  
20 the levels of impact . . . ."); AR 2969 (Of the three project alternatives considered, only the No  
21 Project alternative would avoid or substantially lessen the significant impacts of the project.");  
22 AR 180 ("Reduced Project Size alternative would be slightly superior to the proposed to the  
23 proposed project . . . ." (emphasis added)); AR 185.5 ("The Reduced Project Sized alternative  
24 was found to result in the same significant and unavoidable impacts to agricultural and air quality  
25 as the proposed project."); AR 174 (noting that any potential environmental gain from reducing  
26 the size of the project would be "ultimately be illusory" because the remaining acreage would be  
27 developed). Since the City found that the Reduced Project Size alternative did not avoid or  
28 substantially reduce any significant environmental impact, it cannot be considered to be a  
qualifying alternative.

In addition, the Reduced Project Size alternative does not meet the feasibility test. In  
order to be meaningful, an alternative must "feasibly attain most of the basic objectives of the  
project." CEQA Guidelines 15126.6(f). The City found that any development less than 30

1 acres would be infeasible. AR 174, 180185.5; AR 2970 (Reduced Project Size alternative not  
2 selected “because it would not fulfill the project objective of a 30-acre minimum project size  
3 needed for project feasibility.” Although the Reduced Project Size alternative would complete  
4 development of the Four Corners area (AR 43), the City found that the alternative would be  
5 “substantially less effective . . . in fulfilling the City’s objectives of enhancing its fiscal resources  
6 sales tax and property tax revenues, or in meeting the objectives of creating new jobs and  
7 reversing retail sales leakage.” AR 185.5; *see also*, AR 2970. Indeed, the City never discusses  
8 nor finds that the Reduced Project Size alternative would attain one or two much less “most” of  
9 the basic objectives of the project.<sup>3</sup>

10 Lastly, the No Project alternative, while mandated for inclusion, does not also meet  
11 the feasibility test. The No Project alternative would leave the area as prime agricultural land.  
12 The alternative therefore would not meet any of project objectives list in the DEIR. AR 42-43.

13 In summary, the EIR presented the City with no alternative that both met most of the  
14 project objectives and avoided or substantially reduced a significant environmental impact of the  
15 project.<sup>4</sup> As a consequence, the City could not make a reasoned choice between a set of  
16 reasonable alternatives and therefore did not meet the requirements of Section 15126.6. The  
17 absence of meaningful choice is a fatal defect that must be cured through remand, revision,  
18 recirculation, and reconsideration by the City.

19 **D. The EIR Failed to Adopt Reasonable Mitigation For Agricultural Resources**

20 The protection of prime farmland in California occupies a central position in numerous state  
21 laws and CEQA itself. Through the Williamson Act, the Agricultural Land Stewardship Program  
22 Act of 1995 and other laws, the California Legislature recognizes the importance of preserving  
23 farmland from direct conversion and the resultant indirect development pressures. AR 849-851.  
24 State law also provides encouragement and specific measures (such as farmland conservation

25  
26 <sup>3</sup> The City states only that the reduced size (24 acres) “appears” feasible because that  
is the minimum area necessary to build a supercenter. AR 795.

27 <sup>4</sup> One number of commenters noted the absence of “reasonable” alternatives. See  
28 e.g. AR 839 (Comment F-13). The City chooses to misinterpret these comments as requesting a  
greater number of alternatives rather than as a critique of the three alternatives themselves. See  
AR 794 (Response F-13).

1 easements) to combat both direct and indirect forces promoting conversion. *Id.* CEQA itself  
2 contains multiple provisions aimed specifically at assessing and addressing loss of agricultural  
3 lands. *See e.g.*, Pub. Resources Code §§ 21060.1, 21095.

4 Using these provisions, the City concluded that (1) the proposed project 40-acre site  
5 consisted of prime farmland (AR 53), that the development of Lodi Shopping Center project  
6 would eliminate all of prime farmland (AR 55), and that this loss constitutes a significant  
7 environmental impact (AR 56). The effects on the environment consist of both direct and  
8 indirect impacts. CEQA Guidelines § 15358 (Definition of “Effects”). The direct effects of  
9 conversion include the loss of the land converted, in this case the 40-acres of prime farmland.  
10 The indirect effects of the instant project, particularly when aggregated with other similar  
11 incremental conversion, include the resultant increased development pressures on remaining  
12 farmland. *See* AR 168 (multiple projects in Lodi planning area contribute to cumulative  
13 incremental loss of prime farmland); AR 851 (judicial recognition that incremental loss of  
14 farmland creates development pressure on remaining farmlands); *Citizens for Sensible*  
15 *Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App3d 151, 171 (economic and  
16 social consequences of proposal may indirectly lead to physical impacts to the environment);  
17 *DeVita v. County of Napa* (1995) 9 Cal.4<sup>th</sup> 763, 791 (consequences of agricultural land  
18 conversion); J. Safran, *Zero Sum Game: The Debate Over Off-Site Agricultural Mitigation*  
19 *Measures*, (2005) 6 Vt. J. Env'tl. L. 15 (“off-site agricultural mitigation enables farmland subject  
20 to the greatest development pressure, where long-term agricultural uses are least viable, to be  
21 developed as part of a comprehensive pattern of contiguous development while simultaneously  
22 providing permanent protection for other viable farmland that might otherwise be in the path of  
23 future development.”).

24 Upon finding a significant environmental effect (whether direct or indirect), CEQA  
25 mandates its mitigation unless no possible measures exist. Pub. Resources Code § 21002  
26 (public agencies may not approve projects where feasible mitigation available). Unlike effects,  
27 mitigation is not divided into direct or indirect but rather into operative categories. CEQA  
28 Guidelines §15370 (Definition of “Mitigation”). In general, mitigation includes avoiding or

1 altering the causative action (§15370(a), (b)), attacking the resultant impact through restoration,  
2 rehabilitation or preservation (§15370(c), (d)) or compensating for impact through resource  
3 replacement or substitution (§15370(e)). The Legislature has found that conservation easements,  
4 which fall into the later category, may be used to mitigate impacts associated with conversion of  
5 unique land types. Pub. Resources Code § 21083.4 (b) (Conversion of oak woodlands may be  
6 mitigated through direct purchase of oak woodland conversation easements or contribution of  
7 funds to a conservation easement acquisition program.).<sup>5</sup> Indeed, many communities have  
8 ongoing programs that use conservation easements to mitigate the effects of conversion of  
9 agricultural lands. See AR 848 (“The cities of Davis and Vacaville impose [an acre-for-acre  
10 mitigation] requirement on project approvals.”).

11 Examples of each type of mitigation exist in the City’s EIR. For instance, the City  
12 mitigated significant impacts to Regional Air Quality (a significant and ultimately unavoidable  
13 impact) by requiring “project design measures” and a Transportation Demand Management plan  
14 to reduce the project’s production of ozone precursors. AR 149-150 (Mitigation J3)(note that  
15 even with these mitigation measures the impacts to Regional Air Quality remain significant). The  
16 City also found that any impacts to cultural impacts can be successfully mitigated to  
17 insignificance through a program of expert consultation upon discovery and preservation. AR 67  
18 (Mitigation F1).

19 And most significant for the debate over agricultural resources, the City utilized a resource  
20 compensation scheme under Guidelines Section 15370(e) to offset the loss of 40 acres of special  
21 status wildlife species foraging habitat. AR 90 (Mitigation M3). The City found that it could  
22 fully mitigate the loss of this habitat by requiring the developer to pay in-lieu mitigation fees to  
23 the San Joaquin Multi-Species Conservation Plan (SJMSCP). AR 90. Under the SJMSCP, the  
24 fees are aggregated and used to create “preserves.” These preserves “will primarily consist of

25 <sup>5</sup> Cases recognize the efficacy and legality of conservation easements as mitigation for  
26 conversion of unique land forms to development. See e.g., *Gentry v. City of Murrieta* (1995) 36  
27 Cal.App.4th 1359, 1409 (mention of a condition of approval of a subdivision, the developer  
28 would have to pay mitigation fees for the loss of habitat of a threatened species and establish an  
off-site open space to protect another species); *A Local and Regional Monitor v. City of Los  
Angeles* (1993) 12 Cal.App.4th 1773, 1783 (developer was required to pay a fee to support open  
space in the area to be developed).

1 productive agricultural lands within the county with easements purchased from landowners.” AR  
2 342 (DEIR Appendix E (Biological Resources Report, July 2004)). Thus, the City found that by  
3 purchasing conservation easements on existing habitat lands elsewhere in the county it can fully  
4 compensate for the destruction of 40 acres of wildlife habitat at the project site – the functional  
5 equivalent to agricultural conservation easements.<sup>6</sup>

6 The City, however, refused to adopt any measures to mitigate the significant adverse  
7 environmental impact of eliminating 40 acres of prime farmland to a build a Wal-Mart  
8 Supercenter. Time and again, the City asserted that no possible mitigation exists for loss of  
9 agricultural lands and that CEQA is not the proper vehicle to address these impacts. AR 56-60;  
10 178; 180; 766; 773; 778-779; 810; 2945-2947; 2964-2966. The standard City line in the EIR  
11 dismissing any mitigation is this:

12 As stated in the DEIR at page 29, it is not possible to provide direct  
13 mitigation for the loss of a specific parcel of agricultural land, either  
14 in whole or in part. Unlike other natural resources such as wildlife  
15 habitat, prime farmland cannot be created where none previously  
16 existed. Therefore, replacement habitat through creation of  
17 equivalent acreage elsewhere is not feasible.<sup>7</sup> Other techniques  
18 related to the overall protection of agricultural land, such as  
19 conservation easements, are commonly employed, and are discussed  
20 in the DEIR for informational purposes only. In the case of  
21 conservation easements, this technique is used to protect other  
22 existing agricultural lands and does not create new equivalent  
23 agricultural lands which would compensate for the conversion of the  
24 subject lands to urban uses. In other words, the easements apply to  
25 agricultural lands that already physically exist, so “preserving” such  
26 land from future conversion, which may or may not occur, does  
27 nothing to compensate for the reduction in the overall supply of  
28 farmland. Therefore, such easements do not provide true mitigation  
for the loss of a particular parcel of agricultural land, and as such  
cannot be considered project-specific mitigation for agricultural

22 <sup>6</sup> In numerous places, the City incorrectly implies that its mitigation for loss of  
23 wildlife habitat involves the creation of new habitat rather preservation of existing habitat. *See*  
24 *e.g.*, AR 778 (“Unlike other natural resources such as wildlife habitat, prime farmland cannot be  
created where none existed before.”)(emphasis added).

25 <sup>7</sup> The City use of the term “feasible” in this context is puzzling. For CEQA  
26 purposes, “feasible” mean “capable of being accomplished in a successful manner within a  
27 reasonable period of time, taking into account economic, environmental, legal, social and  
28 technological factors.” CEQA Guidelines §15364. Implementation of conservation easements  
is, in this sense feasible as established by the City’s reliance on the SJMSCP to mitigate impacts  
to wildlife. It appears that the City is instead arguing the *efficacy* of conservation easement in the  
agricultural setting, i.e. whether conservation easements actually compensate for an impact within  
the meaning of §15370(e). As established in this brief, the answer to that question is an  
unequivocal “yes.”

1 conversion due to a development project. While the overall objective  
2 of preserving agricultural land may be desirable from a public policy  
3 standpoint, its implementation through the EIR process is not  
4 appropriate or required under CEQA.

5 AR 805-806 (Response to Comment H-6). A broad range of interested parties continually  
6 questioned the validity of the City's startling and illegal position, including a City Council  
7 member (AR 2619); a Planning Commissioner (AR 810); Caltrans (AR 819-820), and various  
8 members of the public (AR 826, 830).<sup>8</sup>

9 The core fallacy of the City's position is the conclusion that no mitigation can  
10 possibly exist for the loss of agricultural land. As an initial matter, the City concludes without  
11 any evidentiary support that replacement land cannot be created. The City ignores that farmland  
12 is not a natural state of land. Rather farmers through hard labor turn natural soils into productive  
13 farmland. The City fails to demonstrate why lands that contain these soils (and perhaps were  
14 once productive farmlands) but were at some point converted to other uses could not be restored  
15 (*i.e.*, unproductive development removed and agricultural productivity regained).

16 While conservation easements do not create replacement farmland, they certainly  
17 qualify as feasible mitigate because easements ameliorate a range of impacts associated  
18 agricultural conversions. As set forth in the unpublished opinion of Third District Court of  
19 Appeals (*South County Citizens for Responsible Growth, et al., v. City of Elk Grove, et al.*, No.  
20 CO2302, 2004 WL 219789)(AR 844-869), conservation easements reduce the development  
21 pressures on agricultural lands created projects such as the Lodi Shopping Center. AR 850.

22 That conservation easements constitute feasible mitigation is support by the authorities cited  
23 above. Moreover, the Legislature has foreclosed any argument that such easements constitute  
24 CEQA mitigation by specifically enacting such protections for oak woodlands. Pub. Resources

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25 <sup>8</sup> Caltrans' pithy comment is worth quoting in full: "[The DEIR] requests an  
26 adoption of a statement of overriding concerns with regards to impacts and the cumulative impacts  
27 of agricultural land uses. But in the document, there are discussions of various feasible mitigation  
28 measures that could reduce the cumulative loss of agricultural lands impacts. The reader is  
confused why this project does not include fair-share funding for implementing some, if not all,  
of the mitigation measures discussed if the could, at the least, limit the cumulative impacts for the  
loss of agricultural land." In response, the City, *inter alia*, chided Caltrans for making this

1 Code § 21083.4. The City cannot maintain logical consistency by finding that conservation  
2 easements on existing wildlife habitat constitutes mitigation and dismissing the efficacy of exactly  
3 the same device for agricultural resources.<sup>9</sup> Conservation easements provide a feasible, legal  
4 vehicle to mitigate the impacts to agricultural resources. As such CEQA requires their  
5 consideration in this case as a matter of law.<sup>10</sup>

6 Finally, the City in the EIR asserts that its position on agricultural easements is support by  
7 court decisions. See *e.g.*, AR 779 (relying on *Defend the Bay v. City of Irvine* (2004) 119  
8 Cal.App.4<sup>th</sup> 1261 and the depublished case *Friends of the Kangaroo Rat v. Department of*  
9 *Corrections* (2003) 4 Cal.Rptr.3d 558) (“*Friends of the Rat*”). Neither case is apposite.  
10 *Defend the Bay* is wholly distinguishable on its facts and in fact illustrates the City’s flawed  
11 reasoning. In *Defend the Bay*, the City of Irvine certified a programmatic EIR for a general plan  
12 amendment and zoning change for a 7,743-acre development. The EIR concluded that no feasible  
13 mitigation existed for the conversion of 3,100 acres of agricultural land. However, Irvine’s  
14 infeasibility determination rested on a conclusion that large-scale agriculture no longer remained  
15 viable in Orange County because of high land values, regulatory controls, high water and labor  
16 costs, stiff property taxes and competition from other parts of the State and foreign countries. *Id.*,  
17 119 Cal.App.4<sup>th</sup> at 1269-1272.

18 In addition, Irvine found that on-site mitigation would impede achieving an improved  
19 balance between housing and jobs. The Court of Appeals held there was nothing impermissible  
20 in concluding that since agriculture was not economically feasible in the long run, conserving  
21 farmland in Orange County would be futile and therefore infeasible under Pub. Resources Code  
22 § 21061.1. Contrary to Orange County, the City of Lodi and San Joaquin County actively

23  
24 common sense observation because it was not “within an area of substantive expertise of”  
Caltrans. AR 766.

25 <sup>9</sup> As a result of the functional equivalence, the City must either accept conservation  
easements as mitigation for wildlife and agricultural resources or must reject them for both.

26 <sup>10</sup> To assert, as the City does, that CEQA is not an appropriate or legal place for  
27 mitigation (protection) of prime agricultural lands is nonsensical given the basic purpose of  
28 CEQA: protection of the California environment (which includes prime farmland). Apparently,  
the City believes that by labeling petitioner’s objections as simply a debate over agricultural  
preservation policy it may obfuscate its obligation to mitigate the loss of prime farmlands. It may  
not.

1 promote the conservation and preservation of agricultural lands. The City's General Plan states  
2 that it "shall encourage the preservation of agricultural lands surrounding the City." AR 54  
3 (Section 3, Goal B, Policy 1). In fact, the City commits itself to "promote land use decisions  
4 within the designated urbanized area that allow and encourage the continuation of viable  
5 agricultural activity around the City. AR 55 (Section 3, Goal B, Policy 5). Because the City has  
6 reached the exact opposite conclusion of Orange County and Irvine regarding the continued  
7 viability of agriculture, it may not rely upon the factual premises in *Defend the Bay* that permitted  
8 Irvine to declare that mitigating significant impacts to farmland was infeasible.

9 The City reliance on the *Friends of the Rat* case is also misplaced as the case is wrongly  
10 decided and it preceded the Legislature's action approving of conservation easements as  
11 mitigation. The analysis in the *Friends of the Rat* case suffers from the same narrowness as does  
12 the City. By focusing exclusively on mitigating the impacts to the specific parcel of farmland  
13 instead of to agricultural resources generally, the Court misses the larger pressure incremental  
14 development creates on remaining farmland recognized by the *South County Citizens* case.  
15 Moreover, the *Friends of the Rat* case was decided prior to the Legislature adopting Pub.  
16 Resources Code Section 21083.4 in 2004. The Legislature has now precluded the argument that  
17 conservation easements cannot qualify as mitigation for conversion of unique land classifications.

18 In summary, the City's conclusion that conservation cannot as a matter of law mitigate the  
19 loss of 40-acres of prime farmland does not withstand scrutiny. The EIR is therefore legally  
20 deficient and must be remanded.

21 **F. Statement Of Overriding Considerations Is Not Supported By Substantial**  
22 **Evidence**

23 In the Lodi Shopping Center EIR, the City concluded that no feasible alternatives or  
24 mitigation measures existed to avoid or lessen the significant adverse effects of the project on  
25 agricultural resources and air quality. *See generally*, AR 2944-2972 (Resolution 2005-26).<sup>11</sup> As  
26 a consequence of these findings, CEQA provides the City with a choice: it may either disapprove  
27 the project or approve the project but with a finding that specific overriding economic, legal,  
28

1 social, technological or other benefits of the project outweigh the significant effects on the  
2 environment.” Pub. Resources Code § 21081(b); see also CEQA Guidelines § 15093. In order  
3 for the City to approve the project using a “Statement of Overriding Considerations,” each  
4 finding must be supported by substantial evidence laid out in the administrative record. Pub.  
5 Resources Code § 21081.5; *Sierra Club v. Contra Costa County*, 10 Cal.App.4<sup>th</sup> at pp. 1222-  
6 1224. In turn, substantial evidence does not include “argument, speculation, unsubstantiated  
7 opinion or narrative” or expert assumption or opinion unsupported by facts. CEQA Guidelines  
8 §15384.

9 On February 3, 2005, the City adopted a Statement of Overriding Considerations in order to  
10 approve the Lodi Shopping Center as proposed by the developer. In order to sidestep the  
11 decreases in air quality and concomitant health risks, the continual incremental loss of prime  
12 farmland and the suspect lack of any feasible project alternatives, the City asserted that these  
13 adverse environmental consequences will be outweighed by the project’s alleged economic  
14 benefits to sales taxes and resident jobs, infrastructure improvements, plan implementation, and  
15 “a high quality design at the western gateway” to the City. AR 2971. The administrative record,  
16 however, lacks the necessary factual support for the City’s findings.

17 **1. The Record does not support claimed economic benefits**

18 The City asserts that the net economic result of the project will be increased sales tax and  
19 property tax. AR 2971 (Finding 1). The record, however, does not support this conclusion. In  
20 order to examine the economic impact on Lodi of the proposed Lodi Shopping Center anchored  
21 by a Wal-Mart Supercenter, it is necessary to determine the source of the retailers’ sales. The  
22 City’s economic analysis candidly admits that sales for the project will not arise from new  
23 sources outside the City. “The emerging competition will make it nearly impossible for the  
24 superstore to expand the market area boundaries across a broader geography. \* \* \* [T]he new  
25 Wal-Mart Supercenter store will not expand Lodi’s market area, and attract new customers to the  
26 community. Thus, the new stores will compete with existing stores for a limited supply of

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27  
28 <sup>11</sup> As shown above, the City’s findings regarding alternatives and mitigating  
agricultural resource impacts are flawed.

1 sales.” AR 244-245. Indeed, the opening of a new Wal-Mart Supercenter just 10 miles away  
2 will likely draw Wal-Mart customers away from the Lodi Supercenter. AR 813.

3 As a consequence of not expanding the overall sales pie, the source of sales for the project  
4 is two-fold: Lodi residents who spend consumer dollars outside the City (“spending leakages”)  
5 and existing sales already occurring within the City (labeled “established store earnings”). See  
6 e.g., AR 245 (Table 6). In the retail group, the City leaks approximately 31.7 million dollars in  
7 annual sales. AR 237 (Table 3). Capturing spending leakages, according to the developer’s  
8 consultant, will be speculative. For example, Lodi residents leak 13.3 million dollars to  
9 superstores. *Id.* However, “the establishment of a superstore in Lodi will only capture some of  
10 the spending leakages in the superstore category.” AR 240 (n.4); see also, AR 261 (the  
11 attraction of a super Wal-Mart or Target to Lodi could capture some superstore leakages  
12 currently leaving the community.” (emphasis added)). For the remaining leakage categories  
13 (apparel store, specialty retail, building materials and home furnishing), the City loses  
14 approximately 17.5 million dollars despite the presence of existing stores in Lodi successfully  
15 selling those items (\$110.7 million of existing annual sales).<sup>12</sup> Therefore, in order to capture this  
16 later category of leakage the remaining Lodi Shopping Center stores would have to offer  
17 something Lodi’s existing other stores presently do not.<sup>13</sup> Indeed, the consultant states that  
18 rather than competing with stores outside Lodi for sales leakage, “[t]he proposed project will  
19 primarily compete with other retailers located in Lodi.” AR 262.

20 Given these facts, the economic projection offered by the developer’s consultant and  
21 accepted by the City arrived at some surprising conclusions. The consultant assessed the  
22 anticipated economic impact of the proposed project by first calculating the anticipated sales from  
23 the new retail stores in the center. AR 272. (Table 10, column 2). It then determined made an  
24 assumption about how much “leakage” the project would retain. AR 270-271; AR 272 (Table

25 \_\_\_\_\_  
26 <sup>12</sup> The “leakage” table (AR 259) reveals that Lodi loses no grocery sales to stores outside  
of the city.

27 <sup>13</sup> For the major elements of these categories (apparel and furniture/home furnishing), the  
28 consultant was likewise circumspect on the possibilities of capturing leakage. See AR 261 (“the  
potential attraction of apparel stores could capture spending leakages now leaving the City.”); AR

1 10, column 5). It then subtracted the retained leakage sales (column 5) from the new project sales  
2 (column 2) to arrive at the "Spending Taken Away from Established [Lodi] Stores" (column 6).  
3 The consultant then calculated an average "percentage sale lost" for various retail categories (up  
4 to 14%) by dividing column 6 (spending taken away) by column 4 (established earnings). AR  
5 272 (Table 10, column 7). The consultant then used the average percentage sales lost figures to  
6 determine whether stores would close given the anticipated lost sales. AR 272-275. The  
7 consultant concluded that no stores would close because the 11 to 14% lost sales is a "low  
8 percentage." AR 274.

9 The consultant's conclusions, however, do not withstand close scrutiny. For example,  
10 despite stating that the City could expect to "only capture some of the spending leakages in the  
11 superstore category" (AR 240) the consultant proceeds to "assume that the proposed Wal-Mart  
12 Supercenter will captures 100% of the spending leakages" in the superstore category without any  
13 explanation. AR 271 (emphasis added). Similarly, the consultant assumes without explanation  
14 that the proposed project will capture 100% of the apparel, furniture/home furnishing, specialty  
15 retail leakages. AR 271. This assumption not only is questionable for the analysis, but results in  
16 meaningless numbers for the City for tax revenue purposes because it is entire speculative  
17 whether the developer will lease space to these type of entities.<sup>14</sup> It is entirely speculative  
18 therefore what increased sales tax, if any, the City will see from the proposed project.<sup>15</sup>

19 The consultant also makes another factually unsupported assumption to the detriment of  
20 grocery retailers when it divides the leakages retained from the supercenter category into 70%  
21 grocery and 30% discount store. AR 272 (Table 10, Notes). In other words, of the \$13.3 million  
22 in sales going to superstores outside Lodi, the consultant simply assumed that residents are  
23 spending 70% of it on groceries. No facts, of course, are cited in support of this assumption and  
24

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25 262 (the consultant hazards no guess at to how new Furniture/Home Furnishing retails could  
capture leakage when there already exists a number of such stores in Lodi appeal).

26 <sup>14</sup> The City imposed no permit conditions on the development that would reflect its  
desire to capture spending leakages as opposed retailers who would just compete with local  
27 stores.

28 <sup>15</sup> The net effect of the unsupportable assumptions regarding leakage is to reduce the  
impact to local retailers by shifting sales taken from them (Table 10, column 6) to "leakages  
retained."

1 the absence of any sales leakage in the grocery category (AR 259) directly undermines it.  
2 Moreover, the consultant's own projections reveal that it anticipates the new Wal-Mart  
3 Supercenter will earn \$24.5 million in grocery sales of the \$79.4 million overall sales, or 31%,  
4 the exact opposite of the consultant's assumption. AR 272 (Table 10).

5 Turning back to the consultant's conclusions regarding groceries stores, if one assumes  
6 optimistically that the Wal-Mart retains 50% of the superstore category (as used by the City in  
7 responses to comments (AR 785)) and invert the grocery/discount store percentage to comport  
8 with the data, the \$13.5 million in leakages captured is reduced to \$6.75 million and then taking  
9 30% results in \$2.025 million in retained grocery leakages with \$22.475 million coming out of  
10 local supermarkets. This figure then represents an approximate 17% percent reduction in average  
11 grocery store earnings.<sup>16</sup> Is this impact small enough to stave off store closure? The consultant  
12 is silent of this question?

13 The use of average percentage sales loss is, furthermore, misleading because it masks the  
14 real impact to specific stores. For example, in its first study, the consultant determines that the  
15 proposed pharmacy in the Lodi Shopping Center will cause \$1.4 million in lost sales from the  
16 downtown Lodi pharmacy or 22% of its sales. AR 246. Can a business survive a 22% hit on  
17 sales? Yet, the City does not cite these figures. Instead, the next study looks at pharmacies  
18 overall and uses an industry average loss of 14% when spread over all pharmacies in Lodi  
19 regardless of their location in relation to the proposed project. Returning to grocery stores,  
20 uncontroverted evidence in the record establishes that when Wal-Mart opens a supercenter, some  
21 supermarkets cannot compete and close. AR 871-891. By using average percentages, the City  
22 fails to determine whether any particular store will fail costing the City lost sales tax revenue and  
23 jobs.

24 In addition, the fact that the Lodi Shopping Center will unlikely capture significant leakage  
25 and will likely result in store closures undermine any conclusion that the project's beneficial  
26

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27 <sup>16</sup> In a critique of the EIR's economic report, an expert cited industry literature that  
28 states the average Wal-Mart Supercenter grocery section has annual sales of \$44.5 million. If  
this number is used instead of Wal-Mart consultant's, the average percentage of lost sales climbs  
to 31%.

1 impact to job opportunities for Lodi citizens. Moreover, the bulk of the new jobs created by the  
2 are low wage/benefit when compared to the jobs lost in competing sectors. *See* AR 894-940;  
3 1765-1872. In sum, although the City assert that the proposed project will have economic  
4 benefits, the economic analyses contained in the record, do not support such a finding.

5 **2. The Record established no beneficial infrastructure improvements**

6 As its third basis to override the environmental detriments of the project, the City asserts that  
7 it will result in infrastructure improvements on the roadways adjacent to the project and payment  
8 of “impacts” fees for the City. Nothing in the record indicates, however, that a present need  
9 exists to made the roadway improvements but for the project. Moreover, the improvements  
10 appear to benefit solely the project area. AR 42. It is unclear therefore how infrastructure  
11 included in the project will benefit some need of City residents that would otherwise go  
12 unsatisfied if the project were not built. Similarly, the City’s reliance on impacts fees ignores that  
13 these fees are directly related and proportional to the impact caused by the development. That is,  
14 the project will have an impact on City services and these fees will offset that impact. *See e.g.*, AR  
15 187-188 (infrastructure and fees narrowly tailored to avoid any growth-inducing effects). To  
16 claim any excess fees would appear to be an unconstitutional exaction. Thus, the net effect on the  
17 public theoretically should be neutral. The record does not appear to contain any evidence  
18 indicating a specific project that will be implemented that will benefit the public beyond the  
19 impacts caused by the project. As a consequence, the City cannot rely on infrastructure  
20 improvements to override the project’s significant environmental impacts.

21 **3. Compliance with “plans” is not a independent specific**  
22 **economic, social or other benefit under CEQA**

23 As its fourth and fifth basis to override, the City contends that project implements adopted  
24 plans and policies and completes development of the Four Corners area. AR 2971. These  
25 contentions, in and of themselves do constitute the type of factors the Legislature intended to  
26 override serious environmental degradation. First, it is questionable whether the proposed Lodi  
27 Shopping Center “implements” the City’s plans. Rather, the proposed development is  
28 consistent with applicable zoning, as is the current agricultural use. Second, and more

1 importantly, the City's plans that authorize various land uses and development patterns are merely  
2 expressions of various specific economic and social goals: economic prosperity, safe affordable  
3 housing, etc. *See e.g.*, Government Code § 65302 (setting forth required elements of a general  
4 plan for land use transport, conservation, etc.). Since the goal of commercial development  
5 appears to be economic, the actual specific benefit the City is referencing is a reiteration of the  
6 sales tax/jobs argument discussed and dismissed above. The plan consistency arguments  
7 therefore add no additional weight to offset environmental harm.

8         The fifth benefit relied upon by the City is that the Wal-Mart supercenter was designed to  
9 meet aesthetic objectives and "effectively implement" a general plan goal of an "identifiable,  
10 visually appealing, and memorable" entrance to the City. AR 2971. Currently, the entrance to  
11 the City is of rural, agricultural open space into development. AR 95. The proposed project will  
12 change this view from rural to development. AR 96. The City found that existing commercial  
13 projects degrade the rural open setting to such an extent that the addition of the Wal-Mart would  
14 not have a noticeable degrading effect. Nowhere in its discussion of aesthetics, however, does the  
15 City find that the proposed project will actually increase scenic values with a visually appealing  
16 entrance to the City. AR 96-97; *see also* AR 37-38 (photosimulations of the proposed  
17 buildings). In fact, the western façade of the shopping center greeting the public is the storm  
18 water detention basin, a masonry wall, the Wal-Mart shipping docks and a the drive-through side  
19 of a fast food restaurant. AR 960, 958, 37. Petitioners submit that from the record, it is difficult  
20 to imagine how this development constitutes a visually appealing memorable entrance to the City,  
21 let alone an attraction sufficient to override the adverse consequences of the proposal.

22         Since the administrative record lack substantial evidence of the articulated specific economic,  
23 social or other benefits allegedly arising from the project, the City's statement of overriding  
24 considerations fails to meet the CEQA requirements and must be remanded.

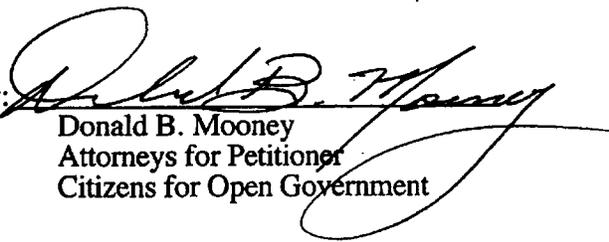
#### 25 **IV. CONCLUSION**

26         CEQA requires that public agencies like the City of Lodi take a hard, searching look at  
27 proposed actions like the Lodi Shopping Center, and stop and examine its choices. Are there  
28 ways that we as a society of creative and entrepreneurial people avoid or lessen our actions on our

1 environment through alternatives or mitigations? If not, do very good reasons exist why we  
2 should nonetheless move forward? Citizens for Open Government believes that the City of Lodi  
3 did not seriously ask these questions as the feverous expansion of superstores occurred around  
4 it. As a consequence, the City certified as legally adequate an EIR that did present any real choice  
5 of alternative projects for it to deliberate. With regard the incremental loss of prime agricultural  
6 land in the Central Valley, the City again took the easy course by contending that we must accept  
7 these losses of farmland without finding creative ways to mitigate and combat the resultant  
8 development pressures. Finally, and perhaps most disappointingly, the City accepted the  
9 developer's shoddy economic study and promises economic benefit without demanding a  
10 rigorous analysis of the true impact to the community's fiscal health. The Petitioner respectfully  
11 request that the Court order the City to step back and reexamine its decision in light of true  
12 alternatives, feasible mitigations, and honest assessment of the net benefits of the project.

13  
14 Dated: September 2, 2005

15 Respectfully submitted,  
16 LAW OFFICE OF DONALD B. MOONEY

17  
18 By:   
19 Donald B. Mooney  
20 Attorneys for Petitioner  
21 Citizens for Open Government  
22  
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28

1 **PROOF OF SERVICE**

2 I am employed in the County of Yolo; my business address is 129 C Street, Suite 2, Davis,  
3 California; I am over the age of 18 years and not a party to the foregoing action. On September 2,  
2005, I served a true and correct copy of

4 **PETITIONER'S OPENNING BRIEF IN SUPPORT OF PETITION FOR WRIT OF**  
5 **MANDATE**

6 X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure  
§1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox  
7 in the City of Davis, California.

8 \_\_\_ (by overnight delivery service) via Federal Express to the person at the address set forth  
below:

9 \_\_\_ (by personal delivery) by personally delivering a true copy thereof to the person and at the  
address set forth below:

10 X (by facsimile transmission) to the person at the address and phone number set forth below:

11 Jonathon P. Hobbs  
12 Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
13 Sacramento, CA 95814-4416

*Representing City of Lodi*

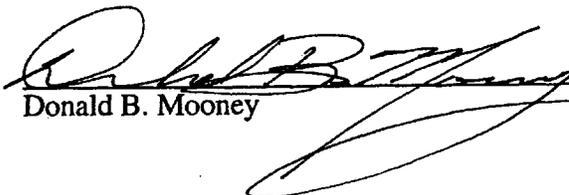
14 D. Stephen Schwabauer  
15 Office of the City Attorney  
City of Lodi  
221 West Pine Street  
16 Lodi, CA 95240

*Representing City of Lodi*

17 Jim Moose  
18 Remy, Thomas, Moose and Manley  
455 Capitol Mall  
Sacramento, CA 95814

*Representing Real Party in Interest*

19 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
20 September 2, 2005, at Davis, California.

21   
22 Donald B. Mooney  
23  
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## **APPENDIX B**

**ATTACHMENT TO COMMENT LETTER FROM ANN CERNEY  
(COMMENT LETTER #21)**

## Attachment



Economic &  
Planning Systems  
*Real Estate Economics*  
*Regional Economics*  
*Public Finance*  
*Land Use Policy*

## MEMORANDUM

---

To: Law Offices of Donald B. Mooney  
From: Jason Moody and Shane Melnitzer  
Subject: Lodi Shopping Center Economic Impact/Urban Decay Analysis Peer Review;  
EPS #17166  
Date: December 07, 2007

---

Economic & Planning Systems (EPS) was retained by the Law Offices of Donald B. Mooney to review the Lodi Shopping Center Economic Impact/Urban Decay Analysis prepared by Bay Area Economics (BAE) in October 2007. Despite estimating sizable economic impacts on the Lodi trade area and across numerous sub sectors, the BAE Report concludes that the Center will not create conditions conducive to urban decay. This memorandum will review the subject study and assess the methodology, assumptions, data sources, and conclusions of BAE in their analyses.

### SUMMARY OF KEY FINDINGS

The following summarizes our key findings upon reviewing the BAE Report.

- 1. The BAE Report's central conclusion that urban decay is not a likely outcome appears inconsistent with the reports' general research findings which estimate considerable sales losses to existing retailers and documents vulnerable market conditions.**

According to the BAE Report, the proposed Center will capture about \$56 million in annual sales from existing retailers, or about 6 percent of the sales in the Trade Area. In addition, the Report documents the existing under-performance of several major tenants (e.g., Kmart) and even urban decay in several locations (e.g., Sacramento Street) as well as household income and growth levels below the County average. Projected sales losses of this magnitude combined with unfavorable market conditions would, on the face of it, suggest the potential for the Center to precipitate urban decay.

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Phone: 916-649-8010  
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DENVER  
Phone: 303-623-3557  
Fax: 303-623-9049

Indeed, the BAE Report acknowledges that the cumulative or combined impact of the proposed Center and the equally large Reynolds Ranch project will lead to conditions conducive to urban decay. It then relies on considerations outside its own analysis to dismiss this outcome. Specifically, the Report states "an oversupply of retail space could result in... a cycle of long-term vacancies... and the eventual possibility of physical deterioration and urban decay" (page 76). However, BAE concludes that aggressive government intervention will prevent commercial landlords from neglecting their properties. In other words, the BAE's central argument against urban decay appears to be based on a policy rather than an economic rationale.

The Report's presumption of effective government intervention raises several issues. First, it begs the question of the intent of an economic impact analysis to begin with. In other words, the BAE Report appears to argue that its own economic findings are irrelevant because adequate regulatory protections already exist to prevent urban decay regardless of market forces. Though an important consideration, the question of the policy intentions or future capacity of Lodi public officials is external to the economic analysis, and should not change the study's central conclusions. Second, the Report provides little in the way of policy analysis to support its finding that government intervention will be adequate and effective. For example, specific mitigations are not proposed or evaluated. Rather the Report assumes that the City will have the resources and ability to off-set fundamental economic forces (even without addressing the Centers' impact on the City budget, as discussed below). However, their own mapping of existing downtown vacancies and physical deterioration stands in stark contrast to this assumption.

- 2. The BAE Report fails to assess the impact of the proposed Center on the City's fiscal health and thus its ability to combat urban decay if it were to occur. Moreover, based on the Report's own calculations, over 90 percent of the sales tax revenues from the Center will be transferred away from existing businesses, and thus will not represent net new revenue to the City.**

Developments of the magnitude of the proposed Center result in fiscal costs in addition to benefits. The BAE Report estimates the project will capture only \$14 million in taxable sales from outside the trade area, or only 8.5 percent of projected \$164 million in taxable sales expected from the project, with the rest captured from businesses currently operating in the trade area. Since sales tax revenue to the City represents 1 percent of the total, this equals only \$140,000 in new revenues. From this must be factored the fiscal costs associated with the project, such as police, fire, road maintenance, administration etc., leaving little to no benefit to the City. Additionally, if costs outweigh benefits, the City is further limited in its ability to undertake efforts to combat urban decay.

- 3. The BAE Report consistently underestimates the impact of the project on small and/or specialized retailers, including those in Lodi's downtown, by overstating the importance of product differentiation.**

The BAE report states that, "... smaller food stores... are assumed to have a level of sales that already accounts for supermarket-type competition; an additional large supermarket is unlikely to draw a substantial number of shoppers away from these

small stores..." (page 22). Though it is true that product differentiation is an important means for Lodi's smaller retailers to compete against supermarkets and other large retailers, it is incorrect to assume that such product differentiation protects them from growth in large retailers. Because product differentiation occurs along a continuum, consumers are willing to substitute apparently dissimilar products if there are differences in convenience or price. This is especially likely in the case of Wal-Mart consumers, who may be disproportionately moderate to low income. These customers are more responsive to marginal savings in price and time-cost, and therefore especially likely to forsake specialized retailers.

Retailers like Wal-Mart are also constantly evolving their product lines and market strategies to capture additional demand segments. Indeed, national retailers such as Wal-Mart are increasingly targeting consumers with specialized tastes. The greater visibility and increased diversity of large retailers in niche markets enhances the intensity of competition. By way of example, Wal-Mart operates "stores of the community" which offer specialized product lines tailored to the particular community of their locale, and in 2006 undertook months of new initiatives to reorient their selection to target six key demographic groups. For instance, Wal-Mart has been developing their selection of organic and natural products to increase their appeal to health-conscious consumers.

Another concern relating to the Center's customer appeal is that the BAE Report does not account for the reduced patronage across retailers because of the efficiency savings from combining grocery and retail purchases in the Center's Wal-Mart supercenter. Supercenters, as opposed to a standard Wal-Mart, aim to capture more customers than would either a supermarket or general merchandiser alone by lowering the time cost needed to acquire either of those goods, satisfying both impulse and regular demand. This should amplify the effect of any lower price and enhance willingness to substitute Wal-Mart products for other goods.

Finally, BAE's conclusions regarding the lack of any closures in downtown resulting from the impact of the proposed shopping center appear inconsistent with its own literature review. In projecting impacts of the project upon Lodi's downtown, the BAE analysis reviews six distinct studies, which without exception estimate shifts away from small retail stores to Wal-Mart. The BAE Report estimates a decline of about 7 percent in downtown retail sales, an area which they describe as vulnerable, especially since City funds buffering the area's growth in recent years have dried up. Projecting an economic downturn equivalent to a medium-sized recession in an already "fragile" retail district would appear to put this area at risk of urban decay, contrary to the Report's conclusion.

**4. BAE's conclusion that the Center's impacts on specific retail categories will result in few store closures is not supported by its findings.**

**Supermarkets:** BAE's Report estimates a 16 percent decrease in the City's overall supermarket sales per square foot to \$326, which at \$390 are already found to be slightly below national levels. Of the two supermarkets in the immediate vicinity of the proposed Wal-Mart, the Safeway is in the most precarious position, as "any reduction in sales may put this store... at risk of closure." Despite this finding, the BAE Report

concludes that Safeway's closure is unlikely because of recent attempts to differentiate its product by appealing to a wealthier demographic and the possibility that managers may expect that newly developing residential areas will boost sales. This position seems untenable given that the magnitude of expected losses from the new Wal-Mart (likely close to 30 percent or more given its proximity) would completely deflate already subpar performance, and the fact that Wal-Mart also is attempting to enhance its appeal to attract more affluent customers. The BAE Report's conclusions that the S-mart will not close because of recent change in corporate ownership, and that the Apple Marketplace will not close because it "may" have lower break even requirements, also do not appear justifiable given earlier findings regarding the already poor performance of these establishments. In all of these cases, the BAE Report appears to dismiss its own quantitative analysis based on qualitative or anecdotal considerations that have not been fully evaluated, an approach that reoccurs throughout the Report.

**General Merchandise:** Lodi's general merchandise sector is composed of three major retailers, Wal-Mart, Kmart, and Target. Of these the Kmart is reported as having "extremely poor" sales, to the point that any additional competition risks closure. Although BAE projects a 46 percent decline in sales per square foot in general merchandise over the trade area, it refrains from predicting whether the Kmart will actually close, though it mentions the possibility.

**Other Establishments:** Despite estimating that the Center (with Wal-Mart and other stores) will generate an average 13 percent citywide decrease in sales at existing pharmacies, an 8 percent reduction in sales in existing eating and drinking establishments, and a 6 percent reduction in sales in other existing retail stores, the report predicts *no closures in any of these categories*. This conclusion appears particularly unsupported given the low profit margins typical of retail markets, and the likelihood of a wide degree of variation around these averages, implying that some stores will face more severe drop-offs. The 13 percent reduction in pharmacy sales is particularly concerning given that the Report notes that an existing drug store is the most successful tenant in a "fragile" downtown retail market.

## **APPENDIX C**

**MINUTES OF LODI PLANNING COMMISSION REGULAR MEETING,  
WEDNESDAY, NOVEMBER 14, 2007**

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, NOVEMBER 14, 2007**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of November 14, 2007, was called to order by Chair Mattheis at 7:16 p.m.

Present: Planning Commissioners – Cummins, Hennecke, Kirsten, Kiser, Kuehne, White, and Chair Mattheis

Absent: Planning Commissioners – None

Also Present: Community Development Director Randy Hatch, Planning Manager Peter Pirnejad, Senior Planner David Morimoto, Junior Planners Immanuel Bereket and Rick Caguiat, Deputy City Attorney Janice Magdich, and Administrative Secretary Kari Chadwick

2. MINUTES

“February 14, 2007”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kuehne, Kiser second, approved the Minutes of February 14, 2007 as written. (Commissioner White abstained because he was not present at the meeting & Commissioner Hennecke & Kirsten abstained because they were not on the Commission at this time)

“March 28, 2007” – Not available for this meeting.

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Mattheis called for the public hearing to consider the request of the Planning Commission for approval of Growth Management Allocations, a General Plan Amendment, a Rezoning and an associated Mitigated Negative Declaration to permit construction of up to 47 residential units at the southwest corner of Lower Sacramento Road and Turner Road for Farmers and Merchants Bank.

Commissioner Hennecke recused himself due to the conflict of his business office falling within the 500 foot radius of this project.

Senior Planner Morimoto gave a brief PowerPoint presentation based on the staff report. Senior Planner Morimoto went over the allocations that have been granted within the last year.

Commissioner Kuehne asked what allocations have been allocated. Senior Planner Morimoto gave a summary of the Reynolds Ranch, Southwest Gateway, and Westside allocations. Peter Pirnejad, Planning Manager, stated that the allocations for these major developments will not be allocated all at once or all from one year.

Commissioner Kuehne asked how the Reynolds Ranch project ended up with all low density allocations when a blended allocation was approved. Planning Manager Pirnejad stated that the allocations were taken in a blended rate to come up with an amount per year for allocations for that project. The project will only be allocated the per year amount no matter which category they come from. Director Hatch added that the amount per year was the average for the entire project. All the projects that have been approved for allocations will have to come back to the Commission with a final Development Plan.

Chair Mattheis asked about the proposed development plans and the fact that the 47 allocations are right on the edge between the low and medium density separation. Senior Planner Morimoto stated that staff decided to proceed with this application because if the plan changes it will result in fewer dwellings not more. Chair Mattheis stated that that would then change the density and therefore change where the allocations come from. Planning Manager Pirnejad stated that that is correct. The allocations are based on a percentage with less in the medium and more in the low and high density ranges. This process is to approve the allocations based on our current figures and then when the

*Continued*

project comes back to the Commission at the Development Plan level that will determine which category the allocations will come from.

Senior Planner Morimoto introduced the consultant that prepared the Mitigated Negative Declaration (MND), Insite Environmental Inc., to address any questions regarding this document.

Charlie Simpson, Insite Environmental Inc., came forward to address any questions regarding the MND.

Chair Mattheis asked about stormwater pre-treatment. Mr. Simpson stated that information regarding that was not made available to them and is being left to the design phase. Once the Notice of Intent is taken to the State it is implied that the local and state stormwater regulations will be followed.

Chair Mattheis stated that the noise impact of construction allowed from 7am to 10pm is a little too early and a little to late for this project, especially with the project being right up against a residential neighborhood. Director Hatch stated that those are the City's current construction hours.

Commissioner Kuehne asked about the traffic study and what the increase would be for an exit on both Lower Sacramento and Turner Roads. Mr. Simpson stated that the traffic impact was discussed with the Traffic Engineer with the City and it was determined that the number of trips would not affect the current category that the affected streets are in.

Chair Mattheis asked if this traffic impact took into consideration the recent annexations (Southwest, Westside, and Reynolds Ranch). Mr. Simpson stated that those projects were considered in the figures.

#### Hearing Opened to the Public

- Kent Steinwert, President of F & M Bank - applicant, came forward to answer questions. Mr. Steinwert gave a brief background of the property. He feels that the higher density plan would provide for more affordable housing. Artist renderings of possible architecture to be used were shown and with the use of the PowerPoint slide of the development plan option, an explanation of possible layout was described.
- Commissioner Kirsten asked if there is a possibility of developing the property under the current zoning if this plan isn't approved. Mr. Steinwert confirmed that to be correct.
- Chair Mattheis asked some questions regarding the two different options. Mr. Steinwert stated that option one offers much more affordable dwellings.
- Steve Pechin, Baumbach & Piazza, came forward to answer questions. Mr. Pechin stated that the conditions were not made available to the applicant until early this week and in resolution 07-38 condition #6 and #9 are not conditions that are acceptable and come as a surprise. Condition #11b impacts the development to a point that the project would not be feasible. Mr. Pechin would like to see the project approved with the conditions in the resolution used more as a guideline. A continuance of the public hearing would be the best option to give the applicant a chance to talk with City Staff and work out some of the issues that the applicant has with the current conditions.
- Commissioner Kuehne asked Mr. Pechin to address the fact that the Fire Marshall is concerned with both plans, when this is brought back to the Commission.

#### Public Portion of Hearing Closed

- Commissioner Kuehne stated that he feels that the MND is an adequate environmental document and the plan has merit.
- Chair Mattheis stated his concern regarding the time limit for construction noise that he would like to have addressed at the continued hearing.

*Continued*

MOTION / VOTE:

The Planning Commission, on motion of Vice Chair Kiser, Cummins second, continued the public hearing for item 3a to a date certain of January 23, 2008. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser, Kuehne, White, and Chair Mattheis  
Noes: Commissioners – None  
Abstain: Commissioners – Hennecke

Chair Mattheis called for a brief recess.

Chair Mattheis called the meeting back to order.

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Mattheis called for the public hearing to consider a Use Permit for an On-sale General Alcohol License for a proposed restaurant to be located at 27 South Sacramento Street for Rashid Fayeq.

Commissioner Kirsten recused himself due to a conflict of owning property within the 500 foot radius.

Junior Planner Bereket gave a brief PowerPoint based on the staff report. Junior Planner Bereket stated that this project came before the Planning Commission on June 27, 2007 as a nightclub and restaurant. After that meeting, the applicant decided to drop the nightclub from the application and replaced it with a restaurant and bar.

Chair Mattheis suggested taking the public hearing in two stages with the Use Permit first and then the site plan and architecture review.

Hearing Opened to the Public

- Wayne Craig, representing the applicant, came forward to answer questions. Mr. Craig gave a brief report of the merits of this project. He pointed out the prime location next to the multi-modal station.
- Chair Mattheis asked about the seating arrangement in the bar and restaurant and the possibility of the alcohol sales not exceeding the required percentage of food sales. Mr. Craig stated that the only seats that food would not be sold at would be the seats at the bar itself.

Public Portion of Hearing Closed

- None

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kuehne, White second, approved the request for a Use Permit for an On-sale General Alcohol License for a proposed restaurant to be located at 27 South Sacramento Street subject to the conditions in Resolution PC 07-18. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kiser, Kuehne, Hennecke, White, and Chair Mattheis  
Noes: Commissioners – None  
Abstain: Commissioners – Kirsten

Chair Mattheis called for the second part of the public hearing to consider a site plan and architecture review for a building to be located at 27 South Sacramento Street for Rashid Fayeq.

Continued

Hearing Opened to the Public

- Wayne Craig, representing the applicant, came forward to answer questions.
- Chair Mattheis expressed his concerns with the look of the facade. Mr. Craig stated that the applicant will work with staff to make sure that the look is compactable with the area.
- Commissioner Kuehne asked if all three entrances accessed Sacramento Street. Mr. Craig stated that they did.

Public Portion of Hearing Closed

- Chair Mattheis stated that he would like to see more brick brought to the front elevation possibly up to the first story cornice, some kind of awning or cornice over the two entrances on either side of the main entrance, and individual lettering for the signage.
- Commissioner Hennecke agreed.

MOTION / VOTE:

The Planning Commission, on motion of Vice Chair Kiser, Cummins second, approved the site plan and architecture for a proposed restaurant to be located at 27 South Sacramento Street subject to the conditions in Resolution PC 07-20 with the addition of the verbiage as stated below.

Randy Hatch stated the verbiage to be added to condition number 3: "Including façade definition (canopies) over the north and south entrances, increasing the amount of brickwork on the first floor, and all signage is to be made up of individual letters."

The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kiser, Kuehne, Hennecke, White, and Chair Mattheis  
Noes: Commissioners – None  
Abstain: Commissioners – Kirsten

4. PLANNING MATTERS

- a. Receive public comments for the Revisions to the Environmental Impact Report for the Lodi Shopping Center.

Randy Hatch, Director, gave a brief presentation with the use of document slides. Director Hatch stated the background for this project, the topics being addressed in this Environmental Document based on the judgment handed down from the San Joaquin Superior Court, and what the next steps are. Director Hatch stated that the public comment period has been extended to December 7, 2007 to provide additional time for the public to make comments. The comments that address the topics within the Environmental document will be the only comments analyzed in the Response to Comments document.

Chair Mattheis stated some of his concerns regarding the cumulative economic impacts to the other shopping centers around Lodi. Director Hatch stated that there is a potential for other retail stores to close, but there is expected to be a healthy viable re-use of the spaces that are vacated, therefore this does not rise to the CEQA standard of a physical decay impact.

Director Hatch introduced Mr. Verrips, PMC consultant.

Bert Verrips, PMC consultant, came forward to address the Urban Decay possibility. Legally there isn't any evidence to support that there would be any urban decay. CEQA states that hypothetical impacts are not considered.

*Continued*

Chair Mattheis asked what was addressed in this document that was not in the first. Mr. Verrips stated that the cumulative impacts in regards to the other Super Wal-Marts in the north Stockton area and in Galt were not addressed in the first document but are now addressed in this one.

Chair Mattheis asked for confirmation that the previous conditions were wiped away by the City Council. Director Hatch confirmed that was correct.

Commissioner Hennecke asked if there will be a net gain or loss in revenue. Director Hatch stated that the current upward trend of the downtown economically will more than likely stall until increases in the area population catches up.

Chair Mattheis does not feel that the conclusions are correct regarding urban decay.

Vice Chair Kiser asked if there is a size limit to the Big Box stores. Mr. Schwabauer stated that there is not a size limit on the stores. Vice Chair Kiser asked how this project can be a positive thing for Lodi if it stops the upward trend of the main tourist focus in the downtown area that Lodi has had.

#### Hearing Opened to the Public

- Darrell Browman, Browman Companies applicant came forward to answer questions and show his support for the project moving forward.
- Von Elseworth was called forward to speak. He stated from his chair in the audience that the Vice Chair had already addressed his concerns.
- Anne Cerney, West Vine Street, came forward to raise some of the inadequacies within the Environmental document. Air Pollution as it relates to construction with the emphasis on the diesel trucks used, health risks during construction, Ag mitigation fails to address the item sufficiently, greenhouse gas emissions, the document doesn't address all of the buildings planned for this development, energy and others. Ms. Cerney also handed in a letter that she had received regarding the project.
- Don Mooney, attorney for Citizens for Open Government, came forward to address the impact of urban decay to the downtown. Leakage of sales tax revenue, energy – the cumulative impact is not analyzed sufficiently, and the document is completely silent on the Air Pollution emissions. The economic analysis does not take into account the effect that the renting out of the old Wal-Mart space will also put an added strain to the economic impact to the downtown.
- Michael Folkner, West Kettleman Lane – Manager of the Wal Mart in Lodi, came forward to support the project and the environmental document. Revenue increases and 200 more jobs will be a part of this project.
- Norma Smith, Corbin Lane, came forward to support the project. She would like to address the impact to the Seniors of this community. There are not many stores that take into consideration people on fixed incomes. The Wal Marts that are all along the southern and eastern portion of the United States do not detract from the communities that they are in.
- Jeanette Moore, Murry Street, came forward to support the project. The jobs in Lodi are scarce and this would be a great benefit to those people that are in need of those positions.
- Dennis Norton came forward to support the project.
- Harold Jackson, Gateway Circle, came forward to support the project. The same fears are still around as when the current Wal Mart came into town. The closing of other stores and the downfall of downtown, they haven't happen yet and won't when the Super Wal Mart comes in.

Continued

- Lorinda Jonard, Watson Street, came forward to address some of the possible impacts to the water runoff, the loss of Ag land, the extra traffic created, and the loss of local businesses and the trickle down effect that that can have on the community.
- Kenneth Lopes, Bordola Drive, came forward to support this project. The possibility of the land being used for Ag is far fetched because the people won't allow all the spraying of pesticides with the land being surrounded by homes and businesses.
- Roger Oster, Oxford Way, came forward to support this project. Mr. Ostar stated that the issue of urban decay being caused to the downtown by this Wal Mart shouldn't even be an issue. The downtown caters to a different set of people.

Public Portion of Hearing Closed

Chair Mattheis called for a brief recess to allow the public to file out.

Chair Mattheis called the meeting back to order.

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Hatch reported that the new International Building Codes have been adopted and the second reading of the ordinances will be at the Nov. 21<sup>st</sup> meeting along with the re-adoption of the current building fees.

7. GENERAL PLAN UPDATE

None

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

None

9. UPDATE ON COMMUNITY SEPARATOR/GREENBELT TASK FORCE

None

10. ART IN PUBLIC PLACES

None

11. COMMENTS BY THE PUBLIC

Anne Cerney, West Vine Street, came forward to express her thanks to the Commission allowing for all the comments tonight.

12. COMMENTS BY STAFF AND COMMISSIONERS

Randy Hatch followed-up on the request to find out if the police department is enforcing the parking in alley ways and they confirmed that they are.

Chair Mattheis asked if someone would look into the signage at the 24 hour fitness. Staff acknowledged the request.

13. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 10:55 p.m.

ATTEST:

*Continued*

Randy Hatch  
Community Development Director



## **APPENDIX D**

**TRANSCRIPT OF PUBLIC HEARING – LODI PLANNING COMMISSION  
REGULAR MEETING, WEDNESDAY, NOVEMBER 14, 2007 – ITEM 4 –  
PUBLIC COMMENTS ON THE REVISIONS TO THE ENVIRONMENTAL  
IMPACT REPORT FOR THE LODI SHOPPING CENTER**

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LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, NOVEMBER 14, 2007

Item 4. Planning Matters

a. Receiving public comments for the Revisions to the Environmental Impact Report for the Lodi Shopping Center.

Chair Mattheis:

We have arrived at the moment you've all been waiting for. Before we get into this item, um, we're looking at item 4a which is the Planning Commission receiving public comments for the Revisions to the Environmental Impact Report for the Lodi Shopping Center. And, I just want to um, reiterate, as we did early in the meeting, that we are accepting cards for speaking. Those who would wish to speak this evening, uh, on this item. Uh, we are going to limit your comments to 3 minutes um, and I would ask that uh if others have spoken in front of you that have said the same the points that you're bringing forward if you would just refer to them instead of repeating what they have brought forward, I think we can all get out of here a lot earlier. Uh, however, we do want to hear from all of you who wish to speak um and again we are looking at specific issues related to the EIR, okay, as it's written and amended, okay, so that's what we're looking for. Uh, next, Mr. Hatch.

MR. HATCH:

Thank you. Um, in looking at (not understandable) any public comments on the draft Environmental Report of the Lodi Shopping Center. The shopping center is located at the Southwest corner (inaudible) and North Hammer Road. The (not understandable) shaded blue indicates city limits (inaudible) Gateway Project and the other four, other three of the four corners are developed with community level commercial uses. (Inaudible) background, why are we here, what's happen (inaudible) now the City Council did approve the Lodi Shopping Center in February of 200\_ (inaudible) a lawsuit was filed in the San Joaquin Superior Court (inaudible) and sufficient in all other areas that occurred in (inaudible) 2005. The City Council (inaudible) in all of its prior approvals of the Lodi Shopping Center project and in compliance with that towards timing and initiated the process to prepare revisions to the EIR. That occurred in May of 2006.

1 The EIR specifically (inaudible) topic of the revisions include urban decay impacts, the economic  
2 results of the proposed Center as they affect the physical changes. The issue of economic impact  
3 to another business were looked at and were analyzed and it was determined that although there  
4 be various forms of economic impact that may result in other uses and other businesses having  
5 the potential to close that would not result in a physical (inaudible) urban decay impact so that the  
6 EIR (inaudible) but those don't rise to the level of a physical impact because (inaudible)  
7 documentation indicated that there's a healthy market for (inaudible) and would not fall into the  
8 situation that is required for an environmental impact of physical deterioration, abandonment  
9 would be included in lack of maintenance, overgrown weeds, fire hazard, it's that level of  
10 physical deterioration and urban decay that would have to be determined in order to have a  
11 CEQA (inaudible). That does not mean that (inaudible)...potential approvals you would choose  
12 to add a condition of approval relative economic effects. (Inaudible) it won't be a CEQA  
13 condition, but it could be a condition of approval on the associate (inaudible) or parcel map. The  
14 other item that the Court found to be deficient as the analysis of energy and so this document has  
15 done an extensive analysis of the energy issues (inaudible) adding additional information  
16 regarding agricultural resources (inaudible) wanted to recognize that the original EIR indicated  
17 there it would be a loss of prime land and that is indeed a significant environmental impact  
18 (inaudible) you can't mitigate. You can't bring in new, prime land if you're developing it, we are  
19 however, um in this document, recommending some mitigations. The other document did not  
20 however recommend (inaudible) that they purchase agricultural easement on other live property  
21 on an acre per acre basis. So that while they are not (inaudible) at least like amount would be  
22 retained in the future for agricultural use and that is the state of the art in terms of environmental  
23 effects regarding agricultural resources (inaudible) it was originally approved that has evolved in  
24 this particular county (inaudible) to address but not eliminate uh the significant impact. We also  
25 did some minor modifications to the project objectives 'cause some of those were no longer  
26 applicable. Some of them were very specific to with the project and so we generalized them and  
27 project alternatives and alternative (inaudible) was shown in the South part of the City along the  
28 I-5, uh no, yeah Hwy. 99 freeway, in fact that piece has now been developed as the Reynolds

1 Ranch project and is no longer a project alternative for the purpose (inaudible) outside the  
2 existing City limits which is the 5 City area as a possible project alternative site and analyze that  
3 for the purposes of (inaudible). No other topics (inaudible) all the same as (inaudible) noise,  
4 traffic, water retention and so on. (Inaudible) is that we are, um, this is in the middle of our  
5 public comment period. The public comment period opened on October, the 17<sup>th</sup> and if continues  
6 this, we're still looking for (inaudible) responses, the purpose meeting is to try to get, to provide  
7 an opportunity for all responses to the EIR and its analysis and I might add as a additional um  
8 (inaudible) what's the word I'm looking for, opportunity to provide comment, we originally had  
9 the comment period running through the end of this month, on the 30<sup>th</sup> and we decided, um  
10 internally, on the advice of the City Attorney to extend that for an additional (inaudible) so we are  
11 extending the comment period to Friday the (inaudible). We will be sending out notices this  
12 Friday to all those who have indicated that they want to receive notices concerning this. Uh, I  
13 also have a couple of copies of the notice of extension here tonight um and we are posting it in  
14 our website and we're also putting it in the environmental document um, notice board (inaudible)  
15 so um so tonight's really the first public unveiling of that time extension, we just finalized that,  
16 literally today. (Inaudible is to provide additional opportunities for the public to make comments.  
17 At the conclusion of, at 5 o'clock, December the 7<sup>th</sup>, we will then start the process of analyzing  
18 these comments and we will then prepare (inaudible) a response to comments report; where all of  
19 the written comments and the oral comments that are made here tonight will be summarized and  
20 then we will respond to those, either by indicating where in these documents they are covered or  
21 (inaudible) and analyze that impact as it relates to those items that we're focused on. If someone  
22 were to, as an example, if someone were to state an impact relative to traffic since that is not the  
23 focus of these revisions to the EIR, that comment would not be (inaudible) an accurately response  
24 to comments report is prepared, we will then bring all this back to the Planning Commission at a  
25 public hearing where we will look at the adequacy of the EIR and then the project approvals.  
26 That being the use permit and the tentative parcel map. We're looking at perhaps the last meeting  
27 in January (inaudible) or just continue the other item (inaudible) or perhaps the first (inaudible).  
28 A lot of that has to do with the amount and complexity of analyzing the responses (inaudible).

1 That's where we're looking ahead and if you have any particular questions I'll be happy to  
2 analyze them (inaudible) overhead and an aid and we do have environmental consultant available  
3 to answer questions or provide clarifications tonight (inaudible).

4 CHAIR MATTHEIS:

5 Okay, thank you Mr. Hatch. This is also an opportunity for the Planning Commission to  
6 ask questions as well as to....

7 (TAPE ENDS)

8 (TAPE BEGINS)

9 UNIDENTIFIED PERSON 1:

10 ...a couple things, I'm looking on page 48 and 49, and I look at, this an analysis of you  
11 know the various retail areas around Lodi and their, the cumulative impact of Reynolds Ranch  
12 and this project on this and the top of 48 it says, "the construction of Reynolds Ranch in  
13 combination with Lodi Shopping Center or even alone could lead to an over supply of retail space  
14 in Lodi area." And then we go on and you read each of the you know probably half of the retail  
15 centers that are identified, you know say that these, that there is going to be potential closures you  
16 know, from the Cherokee Retail Center, the new shopping center, you know, it puts Mervyn's  
17 particularly at risk of closure, (voice in background says "K-Mart") K-Mart, the Lodi Hutchins  
18 um cumulative impacts of substantial new retail space added by Reynolds Ranch would place a  
19 greater risk of closure. And then we go on and on and then um you know the cumulative  
20 economic impacts resulting from the Lodi Shopping Center in combination with Reynolds Ranch  
21 could result in closure of existing retail outlets in Lodi and make it more difficult to re-lease  
22 vacated space due to large addition of inventory and a relatively slow growing Lodi area. And  
23 then we come down to the conclusions and it basically says, as I read this and maybe you can tell  
24 me where I'm wrong, is that we're relying on the City of Lodi's um proactive enforcement  
25 compliance with its Building codes to not have any of that happen. Or not have decay. And it to  
26 me, I just don't see the nexus between, what, you know the Court said there's no, you know, you  
27 got to come back and readdress this, there's issues and then analysis shows all these issues and no  
28 results. I, I don't get that part.

1 RANDY HATCH:

2 As I tried to summarize on my points in talking about this that yes indeed we recognize  
3 that there are likely or reasonably anticipated economic impacts associated with a large new  
4 shopping center (inaudible) and in addition to the summary material we have an appendix which  
5 goes through each of the shopping centers and determines yes there is potential for (inaudible)  
6 loss of retail sales (inaudible) affect that business. We then looked at what is, should that  
7 (inaudible) one of the ones that were identified, K-Mart on Cherokee, that should be become  
8 vacant, does it then continue a logical progression leading to an urban decay site and is there  
9 physical deterioration that would then be reasonably foreseeable given the closure and  
10 abandonment by K-Mart of their particular (inaudible) fight. And then we then documented  
11 through that that there is a healthy and viable reuse market. Would it be a general retail? Maybe  
12 not, but there are other uses that would occupy that space and in fact the um the owner of that  
13 building, in this particular case was contacted and he indicated that he thought that yes indeed I  
14 could re-tenant this space; it won't be a general um discount merchandiser but it would be  
15 something else (inaudible)we have a lot of uses that take large space such as um dance studios or  
16 martial arts studios and what have you (inaudible) are investor areas now. This may be just a  
17 prime location for that. Therefore is that an effect, yes, but is it a physical effect, and we would  
18 argue no that the building is not deteriorated, doesn't fall into an abandonment situation, it does  
19 not result in physical deterioration or urban decay and that's the standard for following that chain  
20 of economic effect to result to hard physical impact. When we come back to you for the actual  
21 (inaudible) of approval, you can bet outside of the realm of CEQA impact you can look at  
22 (inaudible) and make judgments, that's well within your authority (inaudible) that's why it's a  
23 little bit part one, part two and part one is we really are looking for physical effects (inaudible)  
24 and identify part of the City's Code enforcement and part of our efforts and so forth is, not is the  
25 sole reason by any means but as an additional reason why we do not (inaudible) physical  
26 deterioration or urban decay (inaudible).

27 CHAIR MATTHEIS:

28 Is it, this is something that is subjective in its determination or is there an objective

1 analysis?

2 RANDY HATCH:

3 A good time to introduce the, Mr. Verrips, our uh consultant in the uh, is at the ready and  
4 he'll introduce himself and respond.

5 BERT VERRIPS:

6 Thank you Randy and Mr. Chair, Members of the Commission, Bert Verrips.

7 CHAIR MATTHEIS:

8 Last name again, I'm sorry.

9 BERT VERRIPS:

10 V-E-R-R-I-P-S. And um actually there's some very strict standards in CEQA that seem  
11 squishy to the lay, layperson but one of the standards that the Courts really, are pretty insistent on  
12 is that once you get to the point in your analysis, if you go down a chain of logic, okay, we're  
13 going to have x number of, x percent of decline in retail sales across the City, okay that may  
14 result in closures now which closures, where are those closures gonna to occur and we looked at  
15 the places where those might occur, we analyzed those in detail and then at the point where you  
16 have to make a decision analytically, is that going to result in urban decay? Is that landowner  
17 going to let that property slip into complete abandonment and disrepair and graffiti and weeds and  
18 abandoned whatever, and CEQA says at that point if you can't make a judgment at that point, that  
19 speculative and you can't make a conclusion and that's what we did.

20 CHAIR MATTHEIS:

21 So, you're saying basically by default, because there isn't another answer...

22 BERT VERRIPS:

23 Well there's an evidence, legally there's no evidence to support a finding that there would  
24 be urban decay.

25 CHAIR MATTHEIS:

26 What about...

27 BERT VERRIPS:

28 And there's no evidence to support that there would be, you know so, and then in support,

1 so, given that, then we look to the Building codes where City Council apparently reinforced their  
2 intent that the codes be enforced aggressively and that properties be surveyed for violations, so  
3 on. Last year in, we took that seriously as a serious intent that that would apply to any buildings  
4 that might fall into disrepair.

5 CHAIR MATTHEIS:

6 Right, I guess what I, and I would like to see, you know as you're answering these  
7 questions, more discussion about your analysis because it seems a little bit at cross purposes to  
8 cite the code for the City ordinance for enforcement of abandoned properties when what we're  
9 trying to say is there going to be abandoned properties because of the project?

10 BERT VERRIPS:

11 Right.

12 CHAIR MATTHEIS:

13 Now, you're citing something that's going to visually remedy, remedy something that  
14 we're trying to say is there an impact...

15 BERT VERRIPS:

16 Right.

17 CHAIR MATTHEIS:

18 ...that causes that in the first place.

19 BERT VERRIPS:

20 Right. And I think the answer is, you know I have to separate this up from, there's two,  
21 there's two analysis, there's a project-specific analysis that is would it affect the Lodi Shopping  
22 Center alone and the conclusion is there are no, there are no impacts. There's no, there's no  
23 physical decay impacts. But when you consider the combined, the crux is in the combined effects  
24 of Reynolds Ranch and, and Lodi Shopping Center, and there, you when add a million square feet  
25 of regional retail (chuckle), it's going to have a big economic effect, I mean there's no denying  
26 that. But, so we follow that chain of analysis and, and came to the conclusion that we couldn't  
27 make a conclusion and no one in the state, yet, has, that we're aware of, has been able to make  
28 conclusion of urban decay because they haven't found evidence to support the chain of, you

1 know, increasingly improbably hypothesis going off into, you know, CEQA just says forget it,  
2 you know, that's not fact, that, that, that becomes speculation so we're saying, so that analysis  
3 states that we don't know whether it is or it isn't really, it's, there's no evidence for it, there's no  
4 evidence against it, we can't make a call that there's an impact. But even, hypothetically if the  
5 impact occurs or might occur it'll be the the the the um the operation of the City codes will, will  
6 act as a backstop toward or against the creation of urban decay as a result of economic impacts.

7 CHAIR MATTHEIS:

8 What was the specific, um, direction or ruling of the Judge that felt this issue was  
9 inadequate that needed to be addressed and how have you addressed it?

10 BERT VERRIPS:

11 I'm glad you asked that because it is a pretty key issue, the Judge found no fault with the  
12 economic analysis itself, as far as conclusions of the impacts, the problem lied in the fact that  
13 between the time that the draft EIR came out, back in 2004, and the time that the final EIR cam  
14 out two other Wal-Mart projects had been proposed in the area, one at 8-mile and one at Hammer  
15 Lane, and the original economic analysis did not evaluate those because the economists did not  
16 know about them, in the cumulative context. In the final EIR, we added some analysis saying  
17 what, in effect, what's going to happen is these other Wal-Marts are gonna have their own trade  
18 area, the trade area for this Wal-Mart is going to shrink, they're going to be mutually exclusive  
19 because people aren't going to bypass this Wal-Mart to go to 8-mile or go to Hammer, they're  
20 gonna have their own trade areas, trade areas are gonna shrink but it's not gonna to have an effect  
21 on Lodi 'cause Lodi shoppers are going to Wal-Mart, they're gonna go to one or the other, or the  
22 other, they're not gonna go to more Wal-Marts, so the impact is the same, cumulatively. But the  
23 Judge did not buy that argument, Judge said too late, you didn't really analyze it in enough detail,  
24 that was the only issue that the Judge threw back, was you didn't analyze those two Wal-Marts.  
25 But because of the passage of time, economic conditions changed, Reynolds Ranch came along,  
26 we doing, we're redoing the economic study anyway, we had to start over and here we are but,  
27 but you asked, what the Judge asked for and they only asked for...

1 CHAIR MATTHEIS:

2 Right.

3 BERT VERRIPS:

4 ...and they only asked for the reconsideration for cumulative impacts.

5 CHAIR MATTHEIS:

6 So all of the, I believe all of the underlying text is added since the last version...

7 BERT VERRIPS:

8 Right, improving new, yes.

9 CHAIR MATTHEIS:

10 ...okay. And then maybe this is a question for staff as well, the um, the, because the City  
11 Council abandoned all approvals of the project to date, their condition that for the lease of the  
12 existing Wal-Mart is no longer, it's out the window, as well and that is not a part now of the  
13 mitigation that is required as part of this issue, is that correct?

14 UNIDENTIFIED PERSON 2:

15 All the approvals were, we had to void those because without an adequate environmental  
16 document nothing else can occur, now that the City has a big box ordinance which is part in  
17 parcel of our Municipal code. The condition that (inaudible) with the additional approval where  
18 we state that conditions that are in our ordinance, that ordinance is fully in effect and applies to  
19 any community shopping centers of a big box nature so all of those same (inaudible) of the empty  
20 space (inaudible) demolition of that empty space all still apply 'cause those are (inaudible)  
21 existing code.

22 CHAIR MATTHEIS:

23 The Big Box ordinance says that?

24 MR. HATCH:

25 Yeah.

26 CHAIR MATTHEIS:

27 Anyway, I don't recall that but...

28 ///

1 MR. HATCH:

2 And again that is something that we will ensure as part of the condition of approval on the  
3 discretionary um (inaudible) use permit and tentative parcel map. That's not a CEQA um  
4 condition, that is (inaudible) and we have every intention to have those (inaudible).

5 CHAIR MATTHEIS:

6 Okay, we have several comments here, Commissioner Hennecke.

7 COMM. HENNECKE:

8 Um, I just wanted to say um the just of your report is, is stating that there is no loss  
9 downtown, just no growth for a period of years, um, so I guess the just of the report is what for  
10 the City of Lodi a, a net gain in commercial business and, and revenue or a net loss?

11 MR. HATCH:

12 We are saying that um yes there is an economic impact associated with (inaudible) that  
13 downtown, for lack of a better word, will have a pause and is presently it's in an upward  
14 movement now and would (inaudible) your analysis that that upward climb will flatten for a  
15 period of years until such time as the City's additional population and economic growth will then  
16 absorb the proposed Lodi Shopping Center (inaudible) and continue in an upward climb. In no  
17 way are we saying that this proposal has no economic effect what we are saying is that this  
18 proposal has no CEQA economic (inaudible) and I apologize for splitting hairs, that the nature of  
19 the (inaudible) CEQA law. So um what we're really looking at is comment on the CEQA impact  
20 we anticipate that there would be opportunity to hear and address the anticipated economic effects  
21 of this proposal but that's not under the umbrella of CEQA. That would be under the umbrella of  
22 (inaudible) in late January, early February with the inclusion of the use permit and tentative  
23 parcel map.

24 CHAIR MATTHEIS:

25 Okay, I guess just to be real clear, I'm concerned that the conclusions are not correct in  
26 the analysis on urban decay so I, that will be my voice of comment for this hearing, taken up by  
27 other, I'm sure. Let's see, Commission Kiser.

28 ///

1 COMM. KISER:

2 Yeah, I uh, have a few questions. Uh, first question is you said that what was approved  
3 before, no longer exists so don't we have a restriction on the footage of how a big box store can  
4 be in Lodi at this time? And wouldn't a super center be bigger or did we void that?

5 UNIDENTIFIED PERSON 3:

6 We never had that, we never had a restriction.

7 UNIDENTIFIED PERSON 4:

8 There was a, there was an initiative...

9 COMM. KISER:

10 I, I, I thought the most ... we had a restriction on the size

11 UNIDENTIFIED PERSON 5:

12 There was an initiative that was circulated to limit the square footage of a big box store in  
13 Lodi and the initiative failed, it did not pass.

14 COMM. KISER:

15 Okay. And then the other question that I have is that uh, we are constantly working  
16 toward keeping out downtown point in an upward direction to bring our tourism in and to create  
17 this element of a wine tourist network or a little map on number two and if that spins our  
18 downtown area, how is that at positive thing and then has no effect on our economical stature and  
19 how is that a positive thing to have a Wal-Mart out there and let that go?

20 MR. HATCH:

21 That, that's an area for you to evaluate whether or not you will approve the (inaudible) or  
22 the parcel map (inaudible) CEQA economic impact does not in any way prevent you from  
23 evaluating the economic effect or decide whether you wish to (inaudible) this project. Two  
24 different decisions, two difference yardsticks of evaluation (inaudible) when you look at the use  
25 permit and tentative parcel map, you can (inaudible) from a strict, narrow box that is CEQA law  
26 (inaudible) so you can look at that (inaudible) economic effects on the community as a whole and  
27 use your judgment to evaluate part of your duties is to have a quasi-judicial role when you  
28 evaluate the (inaudible) that's not CEQA's role. CEQA says disclose all of the economic

1 (inaudible). All of the environmental impacts that are likely to occur from this project. CEQA's  
2 first and foremost an informational document that is for all that information, does it do an  
3 adequate job of disclosing the information that's analyzed, that is the primary (inaudible) once  
4 you determine that it has adequately analyzed and disclosed all of the effects you then (inaudible)  
5 the next step which then is you know that. (Inaudible).

6 UNIDENTIFIED PERSON 6:

7 I think another way of saying it, is the object tonight is to receive public comments,  
8 including yours if you have them on the environmental effects of the project, not the economic  
9 effects, now CEQA has gotten a little squirrely because the Courts have said economic effects  
10 can be environmental if they lead to urban decay so the object tonight is not to decide the merits  
11 of the this project whether Wal-Mart is good or bad for anyone in particular or is good or back the  
12 economy of the City of Lodi, it's about deciding whether or not this document, and not really  
13 deciding, 'cause you'll decide that later but receiving public comment from the public about  
14 whether or not this document adequately addresses the environmental consequences of the  
15 construction of this project. That's why we're here tonight and um

16 Comm. Kiser: (interruption)... real hard to separate the two...

17 UNIDENTIFIED PERSON 7:

18 ...gettin' into the economics of it is really not what we're about except to the extent that  
19 those economics result in urban decay.

20 MR. HATCH:

21 You're right it is difficult to make that distinction.

22 COMM. KISER:

23 Okay. Thank you.

24 CHAIR MATTHEIS:

25 Okay, I don't see any other comments by Commissioners and um we will open this to the  
26 public again. Do I have all the cards that are here at this point for those that would wish to speak  
27 on this item? And if so, they're at the back of the room if you would like to um fill one out and  
28 bring it up the Department Secretary. Uh, so first in the discussion, yeah again, 3 minutes per

1 speaker and again if you've heard someone say exactly what you're going to bring forward if you  
2 would just reference their discussion in support of that, it would be appreciated. Um, we'll begin  
3 when we open the public hearing with the applicant or the proponent of the project and their  
4 representative if they are here and we'll go from there. So, open the public hearing. Proponent  
5 for applicant would like to come forward for the project. If you have anything to say (laughing).  
6 Name and address for the record please.

7 DARRELL BROWMAN:

8 Um, Darrell Browman, Browman Development Company. Um, we're just happy to be  
9 back before you with this document. It's taken two years to get to this stage, there's been an  
10 extensive amount of uh, of work done on the EIR, it's been independently done through the City  
11 and uh, we're looking forward to getting back either in front of you and having an opportunity to  
12 explain the project and you know I'm available for questions. Thank you very much.

13 CHAIR MATTHEIS:

14 Thank you Mr. Browman. Okay on the first card I have Von Elseworth.

15 VON ELSEWORTH:

16 Vice Chair, Vice Chairman already brought up my concern. Thank you.

17 CHAIR MATTHEIS:

18 Okay. Thank you. Uh, next is Dave Elseworth.

19 DAVE ELSEWORTH:

20 (Inaudible).

21 CHAIR MATTHEIS:

22 Okay. Well I like the way we're moving through these. This is excellent. Uh, Robert  
23 McGary. Robert McGary, did I, am I, am I pronouncing that correctly? Either I'm pronouncing  
24 it very poorly or he isn't here. Okay, so we'll move on. Yeah, this is working out. Uh, ahh,  
25 Aline Sanees.

26 UNIDENTIFIED PERSON 8:

27 They left.

28 (Laughter)

1 CHAIR MATTHEIS:

2 I now I saw her here earlier. Okay, uh, Ms. Anne Cerney. Your address Ms. Cerney.

3 ANNE CERNEY:

4 Uh, 900 West Vine Street in Lodi. First a person dropped off a letter to me and then  
5 fortunately I got a copy, I made some copies, her name is Barbara Flockhart and she asked me if I  
6 would just deliver her written comment and I would get the original tomorrow, I'll bring it to the  
7 Planning Department. Um, my, Mr. Chairman, Members of the Commission and Members of the  
8 Staff, I just wanted to quickly address about five issues and I was to iterate that our attorney for  
9 Citizens for Open Government is here, a member, and I am a speaking member for them but he is  
10 representing the, he will present our comments. These comments are comments which pertain the  
11 more some more technical issues which a number of people in town have discussed with me. It is  
12 my understanding that a letter be it within the proper time along these lines will be submitted by  
13 some citizens and there, I just simply want to raise them here tonight orally. The draft EIR does  
14 not respond to the San Joaquin Valley Air Pollution Control District's response to the Notice of  
15 Preparation which calls for the City's attention that EIR... contentions of the EIR, uh okay,  
16 calling attention to the City's need to um, uh to have the EIR comply with Rule 95.10. That calls  
17 for measures to mitigate construction emissions that are specified in detail giving guidance that  
18 quantifies the reduction of exhaust emissions during construction. This especially applies to the  
19 requirement that state, to, to uh, divulge state levels of nitrogen oxide in terms of comparison to  
20 statewide fleet average, primarily this deals with the fact that diesel trucks that are used in  
21 construction, diesel vehicles do emit carcinogens in their exhaust. The next point is that the EIR  
22 needs to analyze and disclose health risks during the construction of the projects. A health risk  
23 analysis could be used to cover this point probably is the appropriate manner in which to do so.  
24 A large number of diesel powered vehicles emitting diesel exhaust, particularly which is  
25 carcinogenic need to, are needed in the project of this dimension. A Redding Well Mart, Wal-  
26 Mart expansion project of only 92,000 square feet showed that the truck trips required to build the  
27 expansion would result in an increased health risk by causing an increase of cancer at the rate of  
28 13 cases per million. That rate increase potentially poses a significant risk to sensitive receptors.

1 Remember that the overall project does include not only Wal-Mart but an additional 12 buildings  
2 with 130,000 additional square feet of retail space. A health risk analysis should consider the  
3 residential, that residential uses have been approved to the south of the project and that mitigation  
4 should prohibit trucks from idling while loading or dropping off. The next point is that Ag  
5 Mitigation component fails to address adequate endowment. A San Joaquin County, the San  
6 Joaquin County's Ag Mitigation ordinance, section 9-1080 et seq. would demand that an adequate  
7 fee for managing the agent, easements in perpetuity is required. The issue of adequacy is  
8 illustrated by the amount that is set by the of 1775 per acre for the Central Valley Land Trust  
9 which requires 5% of an appraised value with a \$10,000 minimum.

10 UNIDENTIFIED PERSON 9:

11 Chair it's been 3 minutes.

12 CHAIR MATTHEIS:

13 Yeah, we're working on that, if you could get to the 3 or 4 points quickly, we're at about,  
14 past 3 minutes.

15 ANNE CERNEY:

16 Okay. Energy use contributes to global climate, global climate change has to be  
17 minimized, there a mere mention in the state, to the state legislation to reduce gas house,  
18 greenhouse gas emissions and there is no information regarding carbon footprint contribution to  
19 the climate change. The document needs to disclose and evaluate the greenhouse gas emissions  
20 as to the character and amount. The Court ordered that an analysis for the project but the EIR  
21 appears to comply only to, apply only to the water, Wal-Mart portion and doesn't take into  
22 account the other 12 buildings. Um, the issues that could be addressed regarding the reduction of  
23 carbon footprint would be following, such as to follow the minimum ratings for the lead system,  
24 that's the leadership in energy and environmental design just google that and you'd see what I'm  
25 talking about, particularly with the commercial interiors, the core and shell development and the  
26 retail construction sections. Secondly, the increased energy efficiency above the California

27 UNIDENTIFIED PERON 10:

28 Point of order, chair, point of order. We're way above 3 minutes.

1 CHAIR MATTHEIS:

2 Well, just, whoa whoa whoa, wait gentlemen, gentlemen. Please, lights, first, okay and  
3 then we'll... Ms. Cerney, we are past 5 minutes.

4 ANNE CERNEY:

5 I have one, two, three, four, five lines, can I say those? The energy...

6 CHAIR MATTHEIS:

7 Make it quick.

8 ANNE CERNEY:

9 ...increase (not able to understand) above the California Title XXIV requirement for the  
10 efficient, such as efficient lighting, heating, cooling systems, increased wall and ceiling insulation  
11 and energy efficient and last should require construction of solar power component for the project  
12 and also require solar water heating. Thanks. Bye.

13 CHAIR MATTHEIS:

14 Thank you Mrs. Cerney.

15 STEVE SCHWAUBAUER:

16 Mr. Chair, may I make a brief observation.

17 CHAIR MATTHEIS:

18 Sure.

19 STEVE SCHWAUBAUER:

20 That is um, the public comment period does not close tonight so the fact that you run out  
21 of your 3 minutes, I want to make sure that citizens understand that they still have an opportunity  
22 to submit written comments and there are still further public hearings. Public comment isn't  
23 closing tonight um so there is still lots more time to submit written comments and/or other  
24 comments at the future public hearings that will be held.

25 CHAIR MATTHEIS:

26 Great, thank you for that Mr. Schwabauer. Okay, Don Mooney.

27 DON MOONEY:

28 Good evening, my name's Don Mooney, I'm the attorney for Citizens for Open

1 Government. A couple, couple of comments um 3 minutes is not a lot of time, on the urban  
2 decay issues. The analysis that was done, interesting part about the analysis, while it's a  
3 complicated issue, the analysis indicates that there really is no leakage of the sales tax or the sales  
4 now and that's different from the previous analysis that was done for the original EIR. So what  
5 that really means is what you're having here is a redistribution of the sales within Lodi and that  
6 redistribution is would have an impact on the downtown and that's a concern. Um, and also in a  
7 sense that if the community has spent a lot of money on the revitalization of the downtown and  
8 there is the impact of the urban decay to the downtown then the City has to spend more City  
9 money on that issue you essentially have the City subsidizing the impacts from the Wal-Mart or  
10 the entire shopping center, not just Wal-Mart. Um and interestingly the basis, part of the basis  
11 and the findings of (not able to understand) overriding considerations was in the previous  
12 approval was the leakage of the sales tax revenue and the leakage of the sales at Lodi and the  
13 current analysis indicates that no such leakage or there's no significant leakage. With regards to  
14 the energy, again, there's no analysis of the greenhouse gas emissions. Um the standard  
15 significance that is used is inadequate, it's just whether not there's efficient use of energy. That's  
16 not an appropriate analysis for whether or not there are cumulative impacts associated with  
17 greenhouse gas emissions. State of California has indicated you know that this is a huge issue  
18 we're, we're attempting to reduce the greenhouse emissions if you have projects that are adding  
19 to those emissions, those greenhouse gas emissions that becomes a cumulative impact that is not  
20 addressed in this EIR and simply saying that as long as the energy is used efficiently uh, there's  
21 no impact, that simply does not comply with the cumulative impact analysis required by CEQA.  
22 Um, on the uh, again the letter from the Air Quality Air Pollution Control District indicates that  
23 there needs to be additional analysis with regards to Rule 95.10. This Rule did not exist the first  
24 time around, it does exist now, this is, un changed circumstances with regards to the type of  
25 analysis that needs to be done in the air quality analysis where the document is completely silent  
26 as to that, as to those issues and the issues are raised by the Air Pollution Control District. Um,  
27 Ag Mitigation: the analysis in the Ag Mitigation is uh, and this was a big issue, of the suit that  
28 we had brought, is while there is some now add, there is some additional mitigation, the analysis

1 really hasn't changed and you also have to conclude in terms of determining whether or not there  
2 are feasible alternatives to the mitigation, there's just simply an analysis of essentially the 1:1  
3 mitigation but there's no discussion if it would be feasible to even increase that mitigation ratio of  
4 say 2:1, 3:1 or something like that, there simply, and then if the document doesn't address that so  
5 if there comes to be a time for a findings with regards to statement of overriding considerations  
6 because it's an impact that's still found to be significant but unavoidable, uh, simply to say that  
7 there are no feasible mitigation measures that would further reduce it, uh the document would not  
8 support such a finding because there is no further analysis. Also, there's no analysis in terms of  
9 even converting disturbed lands in terms, back to agricultural. Uh, the other thing, just kind of  
10 jump back, um, with regards to the economic analysis, I think the economic analysis in looking at  
11 the economic or the urban decay analysis also doesn't take into consideration is that if the  
12 existing Wal-Mart is rented out for additional space, you have then that competing retail space  
13 also with the downtown area and my understanding is the previous approval they were either to  
14 rent that space out within a certain period of time and if it was not rented out then the building  
15 would have to be removed. If the building is rented out, you have additional retail space that is  
16 now competing with the downtown and the urban decay analysis was silent as to that issue.

17 CHAIR MATTHEIS:

18 'Kay, 'bout a minute.

19 DON MOONEY:

20 Thank you. Um, the, I'll also comment on the stepped up code enforcement for the public  
21 nuisance that was talked about a little bit earlier. Um, there's no demonstration in the document,  
22 there's nothing in there in that document that indicates that increase code enforcement would in  
23 fact reduce the, the urban decay or reduce the public nuisance aspect of it. If you have, and then  
24 there's also nothing in the document that talks about the back-up. What if the increase  
25 enforcement does not work. Um, you're going to end up with the urban decay. With regards to  
26 the alternative analysis, um it continues to be inadequate, it was inadequate last time, the City  
27 agreed to revise it as part of our stipulation, that dismissed our lawsuit, um, it, it really hasn't  
28 changed uh, it's actually in some ways, it's more restrictive. The project objectives are done so

1 narrowly that it's really only to meet the project objectives. The only alternative would be a Wal-  
2 Mart Supercenter, uh, there needs to be a broader project objectives that are discussed.

3 CHAIR MATTHEIS:

4 You can summarize your main points.

5 DON MOONEY:

6 Okay and then um, and then one of the alternatives is the modernization of the existing  
7 Wal-Mart which would have a smaller area, smaller footprint. Um, and the other alternatives are  
8 simply, basically to end up being determined to be infeasible but CEQA requires uh a range of  
9 feasible alternatives and this document lacks that. Thank you very much. We will be submitting,  
10 obviously, some pretty substantial written comments.

11 CHAIR MATTHEIS:

12 Okay, thank you Mr. Mooney. Michael Folkner.

13 MICHAEL FOLKNER:

14 Michael Folkner, uh, 2350 West Kettleman Lane, Lodi. Um, I am the store manager of  
15 the Lodi Wal-Mart in question. Um, I've been with Wal-Mart for about 16 years, actually, this  
16 week. Um, we're talking about the environmental impact and the urban decay, um, that everyone  
17 is speculating on. Two years ago we didn't even realize what the urban decay would be in any  
18 area of what the economic system has gone through over the last two years and we're speculating  
19 off of what might happen without, with the urban decay in this area and it's been proven that this  
20 Supercenter will not cause the urban decay according to this study. And we have went through  
21 several difference analysis with this, there is no urban decay on the downtown or supermarket  
22 areas according to the EIR. Um, there is uh, not concluded that any grocery stores will be closing  
23 as a result of the Supercenter, that I read within this. We currently do have, as it was brought up  
24 with the environmental air pollution of the trucks idling within side of the Wal-Marts, we  
25 currently have a no idling policy. Our trucks do not idle while they're in our stores, or while  
26 they're at our stores. They shut down. I don't know where that's brought up in the past that it's  
27 not a part of what Wal-Mart does. We have a project um that this impact will not hurt our energy  
28 resources, on the impact that I've read, um, I do not, uh want to say that we are going to uh totally

1 broad off the entire community but we are for the community. We have about 10,000 customers  
2 that walk through our stores every single day and with those 10,000 customers, we are just  
3 looking for a large place for them to shop and to, to um, to have a, a better environment for them  
4 of what they're asking for. Um, we currently will revenue about almost \$800,000 a year in an  
5 average Supercenter in the State of California, um, I don't know if was also brought up in this um  
6 environmental study impact. Also approximately 200 more jobs will be coming to this area. I  
7 know they mentioned that there were businesses like K-Mart, Mervyn's, I think were specifically  
8 named as businesses that would go out of business if this Supercenter was to go into place and um  
9 the only question that I would basically have um is that I don't know how that would speculated  
10 knowing off of businesses because I don't know of any of us that know of what business  
11 tomorrow will go out business for whatever reason. Um, I think it's speculation on, on our part to  
12 believe that any particular business might not just thrive for what they do in their own business so  
13 I want to thank the Commission and the Chair for their time.

14 CHAIR MATTHEIS:

15 Great. Thank you Mr. Folkner. Norma J. Smith.

16 NORMA SMITH:

17 I'm Norma Smith. I live at 1600 Corbin Lane. I have been reading of everything that's  
18 been going on with this, almost a fiasco anymore. These citizens, we did vote and we did say that  
19 we wanted the Supercenter in Lodi. I want you to know that I, I don't work for Wal-Mart, I'm  
20 not on welfare, I don't owe thousands of dollars in credits. I don't owe anyone but I am a  
21 concerned senior citizen in what is happening here. I've seen these same types of things happen  
22 other places that I've lived. Um, we lived in Florida right after my husband retired we went down  
23 there so that we could cruise the islands and uh, enjoy his retirement a little more. I want you to  
24 know that there were Supercenters all over through the South. They did not detract from any of  
25 the communities. I lived in the Fort Meyers area, on the Colusa-Hatchee River; we had our  
26 property. I want you to know one thing that I see in the paper and everyone seems worried that  
27 the grocery stores are going to just go out of business. They're going to lose their customers. I  
28 never did my grocery shopping at Wal-Mart. I had my favorite grocery store. I was a nice, clean

1 neighborhood grocery store and that's where I did my shopping. Most of my friends, I don't  
2 know anyone that did their grocery shopping at Wal-Mart. Now I will say that sometimes when  
3 we had been the beach or something and we were out and maybe I needed one item, I might, we  
4 might stop if we drove by and just get one item, two items but it was a clean environment. The  
5 buildings were well kept, they were well landscaped to the community, their buildings were build  
6 to the environment there. And I think as I read earlier, I think that I heard comments and read in  
7 the paper that Wal-Mart is willing to do this and I, I would almost be able to say 100% that they,  
8 whatever they build there will be an asset to the community.

9 CHAIR MATTHEIS:

10 Ms. Smith, I thank you. We hear that you are supporting the project.

11 NORMA SMITH:

12 I most certainly am.

13 CHAIR MATTHEIS:

14 And we have another 30 seconds, 45 seconds, are there specific comments to the EIR that  
15 you have?

16 NORMA SMITH:

17 Yes, I do. Abandoned properties. They're not going to abandon, they want to build our  
18 community a larger store so that they can better serve. I notice that a few years ago, I think it was  
19 about 3, it said that Lodi was the only area in the community where there, revenue went down.  
20 I've never seen it published again but I am, from what's going on here, I would think it continues  
21 to go down. I, myself, have promised that if there's (not understandable) and denying the store to  
22 come in here, I will make every effort to not shop in Lodi. I find it necessary to go other places to  
23 shop.

24 CHAIR MATTHEIS:

25 Your 3 minutes is up, thank you very much.

26 NORMA SMITH:

27 And, I want you to know that a lot of senior citizens feel this way. I need a place where I  
28 can go and not have to walk.

1 CHAIR MATTHEIS:

2 Thank you for your comments.

3 NORMA SMITH:

4 Um hum.

5 CHAIR MATTHEIS:

6 Appreciate you being here. Jeanette Moore.

7 JANET MOORE:

8 Hi, I'm Janet Moore. I live at 529 Murry Street over by the (not understandable). Um, I  
9 was born in Lodi. I have deep family roots here, I have family that was here before Lodi was  
10 Lodi. Um, I left for 15 years after I graduated from Lodi High. I returned in 2001 and things like  
11 this makes me wonder why I did. Um, this project has already been approved by the majority of  
12 Lodi's registered voters, at least the ones who bothered to go to the polls. Um, as someone who  
13 is looking for work, I know how scarce [sic] jobs are. I've been actually having to look other  
14 places for jobs which I don't want to do. Um, and so, you know, the 200+ jobs that this could  
15 bring to us, you know, we need 'em. Um, ...

16 CHAIR MATTHEIS:

17 Ms. Moore, um, we understand that you support the Wal-Mart project. Are there any  
18 specific, jobs aren't addressed in the EIR, are there specific EIR issues that you wish to address?

19 JANET MOORE:

20 Okay, um, well as, as, as far um, as a consumer I um, it's not going to change my buying  
21 habits. Um, I'm most the stuff that's offered downtown, I can't afford um, yeah so I'm not going  
22 to be spending money down, I do do a little bit of stuff downtown but it's like Tom's Used  
23 Bookstore. Um, I occasionally get a, a, a Italian soda at Tilley's, that's not gonna change. Um,  
24 as it is, basically, it'll help me be able to spend my money here in Lodi, bring in sales tax that I  
25 end up spending in Stockton when I can't find what I need at our current store, at our current  
26 Wal-Mart store. Um, so that's gonna help, you know. Um,

27 CHAIR MATTHEIS:

28 Anything specifically to the EIR that you want to bring forward.

1 JANET MOORE:

2 Besides um I just don't for the majority of the people who shop, shop at Wal-Mart, it's not  
3 gonna change, change, I don't see how it's going to cause other stores that don't, that don't  
4 compete with Wal-Mart or even some that do. If K-Mart closes down it's not gonna be because  
5 of Wal-Mart. The entire chain of K-Mart has problems that has nothing to do with their  
6 competition in Lodi. Um, you know the quality that you can get at K-Mart just doesn't cut it. So,  
7 um you know and as far as alternate sites such as Flag City (?), I depend on public transportation.  
8 I couldn't get out there. Um, plus that stretch of Hwy. 12 is very dangerous, we don't need to add  
9 to that, you know so it's like that site is a much better site than a site out in Flag City, you know  
10 somewhere like that.

11 CHAIR MATTHEIS:

12 Coming up on 3 minutes so if you could sum up your points.

13 JANET MOORE:

14 I'm pretty, yeah I written out something that's got totally off track so, I mean as far as  
15 what I've written but just there's just more positive than negative to the store and it's been voted  
16 on and we just need to go forward.

17 CHAIR MATTHEIS:

18 Okay.

19 JANET MOORE:

20 And if I had the money, I would have left Lodi yesterday because of stuff like this. Thank  
21 you.

22 CHAIR MATTHEIS:

23 Thank you very much Ms. Moore. I'd like to remind everyone who's speaking that we  
24 are addressing specifically EIR questions this evening. We're not, as a Commission making any  
25 votes or any motions, recommendations or anything like that. Um, we're really here and we see  
26 all the supporters of Wal-Mart with the tags and that kind of thing and um so if you have things  
27 that are specific to the EIR, we really want to hear from you but try to keep it to those, to those  
28 issues. Um, next is Dennis Norton.

1 DENNIS NORTON:

2           Okay, now I got somethin' to tell ya. My wife speaks broken English, she's from Mexico,  
3 she speaks broken English. Um, she was lookin' for a job, she went to Smart Food, I mean the  
4 stores, Lucky's, every one of 'em, Raley's, nobody would hire her, she went over to Wal-Mart  
5 because, Wal-Mart Supercenter, and she wanted to see if she, you know I told her, go ahead, fill  
6 out an application, you'll get in. She got the job, broken English, but if you ever walk into a Wal-  
7 Mart, you look at the disabled people that they hire, they hire the disabled, where the grocery  
8 stores will not. I'm down on that part, that's the part that I don't think is right, they should hire  
9 the disabled ones just as well as Wal-Marts [sic] does. Wal-Mart, I'll go over to Wal-Mart  
10 Supercenter and I see it.

11 CHAIR MATTHEIS:

12           Okay Mr. Norton, we appreciate that you, is there something specific to the EIR that...

13 DENNIS NORTON:

14           I'm for the Wal-Marts to come in here. 100%.

15 CHAIR MATTHEIS:

16           Okay.

17 DENNIS NORTON:

18           Because I'd rather drive my wife to the one on Kettleman Lane than the one way out there  
19 at Hammer Lane and uh, that's what, that's what I'm for. And I want the Wal-Mart Supercenter  
20 here.

21 CHAIR MATTHEIS:

22           Okay, thank you.

23 DENNIS NORTON:

24           Okay.

25 CHAIR MATTHEIS:

26           Thank you. Harold Jaxell.

27 HAROLD JAXELL:

28           Mr. Chair, Commission, my name is Harold Jaxell, I live at 2263 Gateway Circle, here in

1 Lodi. And this is déjà vu, we go through the exact same thing when the Wal-Mart came to town  
2 several years ago. Everybody was scared to death that it was going to close downtown and  
3 environmental pact, impact, the blight the misery it was gonna cost [sic], it was gonna cost the  
4 City for the extra police and it was gonna run stores out of business, there were gonna be  
5 business, the people were all gonna leave from downtown, Wal-Mart didn't close K-Mart, K-  
6 Mart's still busy. Mervyn's is still goin', they still do business and Wal-Mart's there. But they  
7 didn't say that much when Target moved in. They didn't say that much when Lowe's Center  
8 and that whole shopping center came in from the impact, but we voted this in, years ago, but the  
9 impact and the few can change it, it's not a democracy when you do that. This impact is just  
10 another way to say we don't want the Wal-Mart here. And um, it doesn't have an impact, the  
11 stores are still there and they will be. And we're not gonna, not gonna lose any business, we're  
12 gonna increase business, we're gonna increase employment, we're gonna increase sales tax, we're  
13 gonna have, everything's gonna be a lot better, I've been around Wal-Mart ever since they started  
14 in the '60's and its never been nothin' but good, it's never been, it hasn't been a bad impact any  
15 place its ever went. K-Mart is in a world of hurt, they're closin' like a lawn chair, and it's not  
16 because of Wal-Mart. Thank you.

17 CHAIR MATTHEIS:

18 Thank you Mr. Jaxell. Mary Laughlin. Mary Laughlin. Okay, Lisa Fidely, Fidely.  
19 I'm butchering the name, I'm sure but I got, I'm probably close. Okay, I'm glad she wasn't here  
20 to hear that. Uh, I believe it's Leo Manson. Or Masue? Leo Masue, 627 West Locust, Lodi.  
21 (phone chirping in background) Whoever's phone that is if you could turn that off, I'd appreciate  
22 that. (Background mumble – not understandable). It's mine? (Laughter.) I don't think, mine's in  
23 the car.

24 UNIDENTIFIED PERSON 11:

25 That should be a fine.

26 (Laughter)

27 CHAIR MATTHEIS:

28 I know that's not true, mine's in the car.

1 (Mumbling)...

2 CHAIR MATTHEIS:

3 ...it's booby-trapped, I think we have terrorists in here. Okay, you guys set this on me,  
4 didn't you?

5 (Laughter)

6 CHAIR MATTHEIS:

7 That's good.

8 UNIDENTIFIED PERSON 12:

9 I believe that would be the Mayor.

10 CHAIR MATTHEIS:

11 ...your 3 minutes are up. Exit stage right, okay, um, so no Leo Mansue. Lorina Genaro.  
12 And I'm sorry if I mispronounce your last name.

13 LORINDA GENARO:

14 I'm Lorinda Genaro and I live at 336 Watson Street in Lodi. I'll try to articulate this in 3  
15 minutes but I have several thoughts. I studied environmental studies at U.C. Santa Barbara so I  
16 come from a background of realizing that um, environmental impact has multi-faceted, like I look  
17 at that is a piece of land that currently is absorbing the rain that's going into the soil that it could  
18 affect the water table, that part I don't know. The potential for that land being used for growing  
19 food in future generations would be lost by the building being there and all the asphalt. Um, I  
20 also wonder about the building materials as they're going to be built and the impact they would  
21 have in terms one day being a landfill, I mean there's just so many different factors and I'm trying  
22 to address also if you have 10,000 customers, that's a lot of cars, that's a lot more traffic and a lot  
23 more CO<sub>2</sub> emissions that could possibly affect the greenhouse effect and air pollution. Um, I  
24 have thoughts about the urban decay issue and not only are there stores, like K-Mart and S-Mart  
25 and other markets. The peripheral stores around them and the businesses in town that have  
26 specialized in products for years. There's some many multi-generational businesses that sell  
27 flooring and other products and um, that frankly they won't be able to compete with what Wal-  
28 Mart can sell things for. And I'm thinking about all the families that have lived in Lodi, own

1 homes, higher employees, um and have established businesses and they won't and if those  
2 companies, those established businesses cannot stay financially viable and they go out of business  
3 because they can't compete, those people are gonna lose their jobs and that could have  
4 repercussions on families moving out because they can't find employment here because they  
5 specialize in one type of business in their knowledge. As far as...

6 Chair: About another minute um.

7 LORINA GENARO:

8 I think what I need to do actually is to put this into thought and onto paper, but I really  
9 appreciate the fact that you listened to all of us and um, thanks for hearing me tonight.

10 CHAIR MATTHEIS:

11 Okay. Thank you Ms. Genaro. You have until December 7<sup>th</sup>, is that right? Yeah. A day  
12 to live in infamy, or something like that. Kenneth Lopez or Lopes. Okay Mr. Lopes if you could  
13 go to the podium please.

14 KENNETH LOPES:

15 My name is Kenneth Lopes and I live on Bordola Drive in Lodi. Now I don't know about  
16 Wal-Mart or any other place but urban decay (not understandable) by Lodi, I know for 40 years  
17 and if I've seen any decay, it's the K-Mart store. It looks like a zoo. It's filthy in there, that's  
18 decay. How many times do you think a truck is gonna pull into the Wal-Mart store and leave his  
19 engine running at \$5/gallon for diesel? What do you think these imbeciles driving these trucks?  
20 That's decay, okay? Now we all sit here, I don't, but we all sit here and we drink this fancy  
21 coffee, there's one of them, I don't know if you know it or not, there are 9 coffee shops in Lodi  
22 that sell that fancy coffee, I don't even know what the hell you call it. (Laughter). But I don't  
23 drink it, I go to the coffee shop and get a doughnut, they're still in business. They had 9 coffee  
24 shops build here with all these fancy deals but they're still running. They didn't run 'em outta  
25 business. Okay. Next of all, in agriculture. I was lucky enough to have been in agriculture all  
26 the time I've been in Lodi, worked for Blackwell, was in Rio Vista. Do you think that piece of  
27 land out there in [sic] Sacramento Road is gonna grow anything? Are you gonna allow them to  
28 go out there a spray? You see me walk up here? I'm on oxygen. I have no lungs; do you know

1 why? Because I spent them 40 years I've been here at Blackwell (sp?), in the fields! Tomato  
2 fields in Tracy and Lodi. Do you think all this stuff they're growing and spraying on these grapes  
3 out here are good for your children? They're not. They're poison! That's what you're getting'  
4 for agriculture. Now this, (he chuckles), oh man,

5 CHAIR MATTHEIS:

6 About another minute, Mr. Lopes.

7 KENNETH LOPES:

8 And their objective is, I go in Wal-Mart occasionally, you know I can't walk very far and  
9 but all of the older people in this town go to that store because we really can't afford to in our car  
10 and drive to Target and they don't have it. We drive to K-Mart and they haven't got it. So we go  
11 to Wal-Mart and they've got it. They've got one of everything. It's like they oughta change the  
12 name to One of Everything. And once you get my age, what do you do? You can't be, I can't be  
13 walkin' around all these stores. We gotta be serious about this business. These people are in  
14 business and they're certainly trying to help us. They've hired, they have people in wheelchairs  
15 working in that store. Hum? Maybe they'll even hire me! I might ask 'em. Well, I'm too close  
16 to 80 so I can't do that. But of all the things I heard about this, especially that agriculture issue,  
17 please don't think of that piece of land as any agricultural issue. Forget it! This morning I went,  
18 all of the old people my age, met at McDonald's and we have a coffee in the morning, downtown,  
19 okay? Do you know how many people that were in there with 3 and 4 and 5 children? K-Mart  
20 closed their eyes. This world is growing! Wal-Mart no longer has 2100 or 21, I mean Lodi's a  
21 city! They have to have some place to go!

22 CHAIR MATTHEIS:

23 We're at 3 minutes if you could sum, summarize your points.

24 KENNETH LOPES:

25 Okay. And that's where they should go; in my estimation. Thank you.

26 CHAIR MATTHEIS:

27 Thank you Mr. Lopes. The last card I have, if there are any other cards out there, if you  
28 could bring them forward to the Department Secretary. Uh, Roger Oster.

1 ROGER OSTER:

2 My name is Roger Oster and I live at 2026 Oxford Way. I've been born and raised in  
3 Lodi, I've lived here for my 70 years. I even ran for City Council twice. The fact about urban  
4 decay and they talk about downtown, they keep bringing up downtown. Wal-Mart doesn't  
5 compete against downtown. They don't have the umpteen bars and restaurants, which we now  
6 approved another one, in Wal-Mart. All the closing shops, the things they have are specialty  
7 shops for tourists. Wal-Mart's not for tourists. So you can't call it urban decay if you bring in a  
8 Super Wal-Mart. You talk about the agricultural. They brought up a lot of good points about  
9 agricultural, that's a bunch of crap, the (not understandable) \_\_\_\_\_ hasn't been used.  
10 Besides isn't it just south of the projected Wal-Mart where you're going to put in homes on that  
11 agricultural land? Does that make sense? Are the contractors gonna have to do the same thing  
12 you want Wal-Mart to do? And get 2 or 3 times more land or other resources someplace else?  
13 No! Wal-Mart, like many of the people here who've said caters to the people. We have voted on  
14 it. We want the Super Wal-Mart here in Stockton. I'm gonna go the same as ...

15 CHAIR MATTHEIS:

16 We're in Lodi actually.

17 (Laughter.)

18 ROGER OSTER:

19 ... okay, same as this one lady who said that if this project is turned down, down the road,  
20 I will no longer shop in Lodi. I shop at Raley's. I shop at S-Mart. I shop at Safeway. I shop at  
21 Lowe's. However, I have found that big Lowe's store, my house is 45 years old. They don't  
22 have parts for 45 year old homes. I have to go over to Ace, which is a little store. And they talk  
23 about the possibility of Mervyn's and those closing. Well, for a fact, Mervyn's is going to be  
24 closing but it's not because of Wal-Mart coming into Lodi. It's because Target has sold off the  
25 chain because they're not making any money. K-Mart is also in trouble, but it's not because of  
26 the Super Wal-Mart in Lodi. It's because of the chain itself. So, think about it. Lodi needs the  
27 Wal-Mart.

28 ///

1 CHAIR MATTHEIS:

2 Thank you Mr. Oster. Okay any other cards? Last call for cards and speakers. Uh on the  
3 EIR comment period. Seeing none, we will close that public hearing and imprint. Any further  
4 comment from Commissioners on this item? Commissioners? Okay. I would like to thank you  
5 all for coming out. That will end item 4a, oop oop, did I, ooo, I apologize Mr. Hennecke, I did  
6 not see that light. Almost.

7 COMM. HENNECKE:

8 I just want to make a personal comment. Um, I know all of you are frustrated that the  
9 voters approved this and I, I think our job up here, everybody looks to us to make these grand  
10 decisions; and I just see our job as following the will of the voters, following the laws and  
11 whatever the will of the voters is and if it falls within the law of the land here; I see our job here  
12 trying to make it as little impact as possible and make it a plus for our community. That's all I  
13 have to say.

14 (Applause).

15 CHAIR MATTHEIS:

16 Okay, thank you all for coming out, we do have um, the comment period open until  
17 December 7<sup>th</sup>. So, written comments will be accepted at City Hall. Right? So thank you very  
18 much.

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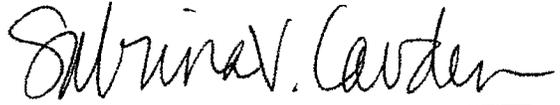
CERTIFICATION

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I, Sabrina V. Carden, declare as follows:

I am a secretary employed with the law offices of Kronick, Moskovitz, Tiedemann & Girard. I have person knowledge of the following facts and if called upon to testify, I could and would competently do so. The transcript to which this certification is appended was prepared by me by listening to the official audiotapes provided by the City of Lodi for the November 14, 2007 Lodi Planning Commission meeting. From those audiotapes, I prepared the attached written transcript which is a true and accurate representation of the oral comments made at the Planning Commission meeting of November 14, 2007 relating to the Lodi Shopping Center Project.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 8, 2008, at Sacramento, California.

  
\_\_\_\_\_  
Sabrina V. Carden



## **APPENDIX E**

***AMERICAN CANYON COMMUNITY UNITED FOR RESPONSIBLE GROWTH  
VS. CITY OF AMERICAN CANYON, COUNTY OF NAPA SUPERIOR COURT,  
CASE NO. 26-27462, MAY 22, 2007***

**FILED**

MAY 22 2007

Clerk of the Napa Superior Court  
By: M. Field  
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA

AMERICAN CANYON COMMUNITY  
UNITED FOR RESPONSIBLE GROWTH,

Petitioner,

vs.

CITY OF AMERICAN CANYON, BY AND  
THROUGH THE CITY COUNCIL, et al.,

Defendants,

LAKE STREET VENTURES, LLC, et al.,

Real Parties-In-Interest.

Case No.: 26-27462

Order Discharging the Writ of Mandate

CITIZENS AGAINST POOR PLANNING, et  
al.,

Petitioners,

vs.

CITY OF AMERICAN CANYON, BY AND  
THROUGH THE CITY COUNCIL, et al.,

Defendants,

LAKE STREET VENTURES, LLC, et al.,

Real Parties-In-Interest.

Case No.: 26-27534

Order Discharging the Writ of Mandate

Order Discharging the Writ of Mandate  
Case Nos. 26-27462 and 26-27534

INTRODUCTION

In these consolidated actions, Petitioners American Canyon Community United for Responsible Growth (Am Can) and Citizens Against Poor Planning and Stacy Su (CAPP) (Collectively the Citizen Groups) petitioned this court for a writ of mandate to direct the City of American Canyon by and through the City Council (the City), to set aside and void all of its approvals, resolutions and permits relating to the Napa Junction Project Phase II (the Project). The Court had denied the petitions, but the Citizen Groups appealed that decision, which was ultimately reversed by the Court of Appeal in *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062. The Court of Appeal remanded the matters back to this court with instructions "to issue a writ of mandate requiring the City to comply with Public Resources Code section 21166 and its own zoning code, consistent with the views expressed in the opinion."<sup>1</sup> (*Id.* at p. 1085.) This court did issue the writ of mandate as instructed by the Court of Appeal and ordered the City to file a return to the writ to show compliance therewith.

On April 26, 2007, the City filed a return to the writ of mandate indicating that on April 24, 2007, after a duly noticed public hearing at which documentary evidence and public testimony were received, the City re-approved the Project after approving and certifying an addendum (the Addendum) to the previously certified mitigated negative declaration (MND), as well as approval of the various land use permits at issue.

The CAPP petitioners object to the return on the basis that the Addendum is legally inadequate to support the decision to re-approve the Project. Their challenge to the return came on for hearing before the court on May 14, 2007.

Having read and considered all the papers filed and heard oral argument, the court took the matter under submission and now rules as follows:

The CAPP petitioners object to the adequacy of the Addendum on three bases: (1) it fails to adequately analyze cumulative impacts within the regional market area; (2) the traffic analysis does not include a newly identified tenant in the Project, specifically a Chevron gas station with 12 fueling stations; and (3) it fails to analyze the Project's impact on climate change. The court will address each of these challenges below.

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise specified.

STANDARD OF REVIEW

Issue

In reviewing the City's return to the writ, the issue before the court is whether it was appropriate under CEQA for the City to have re-approved the Project without requiring the preparation of an EIR or subsequent negative declaration addressing the proposed changes' potential impacts that were not previously addressed in the MND. The statutory guidance on this issue is found in section 21166, under which an agency is prohibited from requiring a subsequent EIR (or negative declaration<sup>2</sup>) unless one or more of the following events occur:

- "(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report [or negative declaration].
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report [or negative declaration].
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." *(bracketed material added.)*

As applied to this case, the triggering events set forth in Section 21166 can be paraphrased as a change in the Project or circumstances surrounding the Project, or new information that was not known and could not have been known, which requires preparation of an EIR or modification of the negative declaration because the change or new information reveals an additional impact, direct or indirect, that will result in a potentially substantial adverse change in the physical environment.

By re-approving the Project without requiring additional environmental review, the City implicitly determined that the changes in the Project would not result in significant impacts not previously addressed in the MND. It is this determination that must be supported by substantial evidence in order for the writ to be properly discharged at this time.

In general, substantial evidence has been defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307.) The CEQA Guidelines define substantial evidence as "enough relevant information and reasonable inferences from this

information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached....Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence....Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (14 Cal. Code Regs. § 15384.)

When faced with this type of review under CEQA, the court is to resolve all reasonable doubts and conflicts in the evidence in favor of the administrative decision. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 6 Cal.4th at p. 1135.) Moreover, courts must indulge all reasonable inferences from the evidence that would support the agency's determinations. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 117.)

#### WAIVER OF OBJECTIONS

Before addressing the CAPP Petitioners' objections, the court first addresses the argument made by Real Parties In Interest, Wal-Mart Stores, Inc. and Lake Street Ventures, LLC ("Real Parties") that petitioners have waived their objections by failing to comply with their burden of presenting in their brief the evidence supporting the City's determination. (See *Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91.) The court in *Megaplex* held that the citizen group challenging a finding that none of the section 21166 events had occurred bore the burden of demonstrating to the court that there is insufficient evidence in the record to justify the City's action. (*Id.* at p. 113.) To do so, the court held, "they must set forth in their brief all the material evidence on the point." (*Id.* at pp. 113-114.) "A failure to do so is deemed a concession that the evidence supports the findings. [Citation.] The reason for this is that 'if the appellants fail to present us with all the relevant evidence, then the appellants cannot carry their burden of showing the evidence was insufficient to support the agency's decision because support for that decision may lie in the evidence the appellants ignore.' [Citation.] This failure to present all relevant evidence on the point 'is fatal.'" [Citation.] 'A reviewing court will

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<sup>3</sup> As confirmed by the Court of Appeal, section 21166 also applies when the initial environmental document was a negative declaration, rather than an EIR. (See *American Canyon Community United for Responsible Growth v. City of American Canyon, supra*, 145 Cal.App.4th at pp. 1071-1072.)

not independently review the record to make up for appellant's failure to carry his burden." [Citation.] (*Id.* at p. 114.)

In response to this argument by Real Parties, the CAPP petitioners argued at the May 14 2007 hearing in this case that the *Megaplex* case is procedurally distinguishable since it was up on appeal after an initial petition for writ of mandate and that the procedural requirement of setting forth the evidence in support of the City's decision does not apply here where it is the City's burden to show compliance with the writ of mandate.

The parties have not cited, nor has the court found any authority specifically addressing the respective burdens of proof on return from a writ of mandate. The CEQA Guidelines require the court to "retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division." (§ 21168.9.) Because the trial court has to determine whether there is compliance, it is arguable that it is the trial court's burden to review the entire record, rather than the petitioner's burden to set forth supportive evidence.

Regardless of the applicable burdens of proof, to the extent there is a procedural deficiency in the petitioners' challenge to the return, the court opts to overlook it and continues on to address the substantive issues raised by their objections.

#### THE OBJECTIONS

##### **I. Insufficient Analysis of Cumulative Impacts.**

One of the reasons the Court of Appeal reversed the denial of the writ of mandate was that the City had failed to adequately consider urban decay impacts in areas outside the city limits. The Addendum relied on by the City this time around rectifies that problem. The CAPP Petitioners argue that the Addendum is nevertheless deficient in its analysis of the market region cumulative impacts. More specifically, they allege that "the combined effects of the planned White Slough Supercenter in Vallejo [which includes another Wal-Mart Supercenter approximately 4 miles from the Project], the American Canyon Supercenter, and the looming closure of the current Vallejo Wal-Mart Discount Store are not analyzed in the Addendum. The court disagrees.

Contrary to petitioners' argument, the Addendum does address the cumulative potential for urban decay within the defined market region. Appendix E to the Addendum provides a rather extensive analysis of the potential for store closures resulting not just from the subject

Order Discharging the Writ of Mandate  
Case Nos. 26-27462 and 26-27534

Project, but also reasonably foreseeable future projects, including the proposed Vallejo Wal-Mart Supercenter. The urban decay discussion is based on physical observation and detailed market data analysis. The discussion addresses the planned closure of the current Vallejo Wal-Mart, which the evidence reflects is already in contract to be re-leased to the Home Depot. The discussion concludes that because of anticipated growth in the community and because numerous retail categories are currently underserved in the market region, any stores closing as a result of Project and other planned projects will most likely be re-tenanted within short periods of time, thus minimizing any potential for urban decay. This analysis was also positively peer reviewed by Dr. Grandier from Stanford University.

The court further disagrees with petitioners that the market area described in the Addendum is "inadequate and entirely subjective." The City was required to consider the cumulative environmental impacts of other past, present and reasonably foreseeable retail projects in the market area served by the proposed supercenter. (See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1218.) Page 7 of CBRE's urban decay analysis in Appendix E explains that the experts determined the Supercenter's market area by mapping the locations of all existing and planned Wal-Mart stores to determine from which communities people would frequent the American Canyon store. The market area they determined included not only the City of American Canyon, but also the surrounding cities of Vallejo and Benicia. Presumably, a person from a community with an existing Wal-Mart, such as Napa or Fairfield, is not likely to drive to the American Canyon Wal-Mart. Nothing about the market area determination appears to the court to be inadequate or inappropriately subjective.

Based on the foregoing, the court finds that the urban decay analyses set forth in the Addendum and Appendix E constitute relevant evidence that a reasonable mind could accept as adequate to support the conclusion that the changes in the Project will not result in significant urban decay impacts requiring supplemental environmental review. (See *Hosford v. State Personnel Bd.*, *supra*, 74 Cal.App.3d at p. 307.)

## **2. Inadequate Traffic Analysis.**

Another reason the Court of Appeal reversed the denial of the writ of mandate was that the previous traffic analysis relied on by the City was based on inaccurate identification of the size and type of retail proposed in the Project. The court finds that the current traffic analysis is

Order Discharging the Writ of Mandate  
Case Nos. 26-27462 and 26-27534

based on an accurate identification of the size and type of all commercial development proposed. And the CAPP petitioners do not contest the issue.

What the CAPP petitioners do argue, however, is that the traffic analysis in the Addendum is deficient because, although it acknowledges the proposed Chevron Gas Station with 12 fueling stations, it does not analyze the station's traffic generating contribution. Again, the court disagrees.

Although the written analysis does not separately discuss the impact of the Chevron Gas Station alone, the station's traffic contribution is clearly included in the overall calculations, which are then discussed in terms of the total additional traffic contribution. And the City's decision was not based on just one traffic study. The Addendum includes a traffic study by DKS, an independent traffic study by KHA, DKS' peer review of KHA's traffic study, and Omni-Means' peer review of both DKS' traffic study and KHA's traffic study. It is clarified throughout the reports that the studies focus on the difference in traffic generated from the original project and the revised project, which replaces the originally proposed 196,000 square feet of shopping center with 173,015 of Wal-Mart Supercenter plus 13,781 square feet of outdoor garden center (and 7,625 square feet of outdoor seasonal sales area), 39,225 square feet of shopping center, 3 service bay oil change shop and 12 fueling position gas station. All three expert entities concluded that the changes to the Project would not result in significant impacts that were not adequately addressed in the MND.

The court finds that these traffic studies and the peer reviews thereof constitute relevant evidence that a reasonable mind could accept as adequate to support the conclusion that the changes in the Project will not result in significant traffic impacts requiring supplemental environmental review. (See *Hosford v. State Personnel Bd.*, *supra*, 74 Cal.App.3d at p. 307.)

### 3. Lack of Analysis of Impacts on Climate Change.

Finally, petitioners argue that the Addendum is inadequate because it does not include an analysis of the Project's greenhouse gas emissions and global warming impacts. The court, again, disagrees.

In reversing the denial of the writ, the Court of Appeal did not indicate that the City had erred in failing to specifically address climate change impacts. And petitioners have failed to provide any authority currently requiring the City to have undertaken such an analysis at this stage of the proceedings. Nor has the court found any such authority.

Order Discharging the Writ of Mandate  
Case Nos. 26-27462 and 26-27534

AB32  
Climate  
Change

Under the writ of mandate, the City was required to comply with section 21166. Under section 21166, the City was prohibited from requiring an EIR or subsequent negative declaration unless one of the three events listed in the statute has occurred. Petitioners seem to be suggesting that the new legislation AB 32 should have triggered further review pursuant to section 21166. However, as explained in petitioners' brief, AB 32 simply "charges the California Air Resources Board to develop regulations on how the state would address climate change impacts." While it is possible that the promulgation of new climate change regulations may trigger further environmental review of projects undergoing section 21166 scrutiny in the future, the court fails to see how a mere legislative mandate for the creation of regulations could have triggered review under section 21166 in the City's re-approval of this Project.

If petitioners are attempting to classify AB 32 as "new information" that could not have been known, the court does not agree that it is the type of new information contemplated by section 21166. CEQA Guideline 15162, which augments section 21166, clarifies that the "new information" must show something about the particular project's effects, i.e., that the project will have one or more significant effects not discussed in the previous negative declaration. New legislation requiring creation of state regulations certainly does not pertain to this particular Project or its effects. Thus, the court concludes that AB 32 is not the kind of "new information" contemplated by section 21166.

For these reasons, the court finds that the CAPP petitioners' objection regarding climate change are not well taken.

#### CONCLUSION

The CAPP petitioners' objections notwithstanding, it appears to the court that the City has adequately complied with the writ of mandate and that its decision to re-approve the Project was not an abuse of discretion or contrary to law. Thus, the court hereby discharges the writ of mandate and dissolves the March 20, 2007 order reconfirming the stay.

Dated: 5/21/07

  
Raymond A. Guadagni, Judge

Order Discharging the Writ of Mandate  
Case Nos. 26-27462 and 26-27534

**CERTIFICATE OF MAILING**

**Napa Courts**

**Civil, Probate, Criminal, Appeals, Small Claims**

**AMERICAN CANYON COMMUNITY UNITED FOR  
RESPONSIBLE GROWTH,**

**Petitioner,**

**LEAD CASE NO.: 26-27462**

**vs.**

**CITY OF AMERICAN CANYON, BY AND THROUGH  
THE CITY COUNCIL, et al.,**

**Defendants,**

**LAKE STREET VENTURES, LLC, et al.,**

**Real Parties-In-Interest.**

**CITIZENS AGAINST POOR PLANNING, et al.,**

**Petitioners,**

**CASE NO.: 26-27534**

**vs.**

**CITY OF AMERICAN CANYON, BY AND THROUGH THE  
CITY COUNCIL, et al.,**

**Defendants,**

**LAKE STREET VENTURES, LLC, et al.,**

**Real Parties-In-Interest.**

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I hereby certify that I am not a party to this cause and that copies of the attached **ORDER DISCHARGING THE WRIT OF MANDATE** mailed (first class postage pre-paid) to the above parties at Napa, California on this date and that this certificate is executed at Napa, California this date.

5/22/07  
DATE

M. Fields  
Deputy Court Executive Officer

Page 2

## **APPENDIX F**

***HIGHLAND SPRINGS CONFERENCE AND TRAINING CENTER VS.  
CITY OF BANNING, COUNTY OF RIVERSIDE SUPERIOR COURT,  
CASE NO. RIC 460950, JANUARY 29, 2008***

2-21  
9/42

Highland Springs Conference and Training Center, *Petitioner*

v.

City of Banning, *Respondent*

SCC/Black Bench, LLC, *Real Party*

and all consolidated cases

RIC 460950 (master file); RIC 460967; RIC 461035; RIC 461069

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JAN 29 2008

K. Rahlwes

*KR* 1/31/08

JAN 31 2008  
LRE

**RULING ON SUBMITTED MATTER**

*PRELIMINARY NOTE*

The court will refer to the administrative record by tab and page number, consistent with the method used by the parties. Thus, "T28 AR 1936" refers to tab 28, page 1936 of the record.

The final Environmental Impact Report ("EIR") contains two exhibits labeled 4.1-4. The first of these exhibits appears at T28 AR 2060, and is entitled, "Relationship of the Proposed Access Road to Existing Off-Site Trails." It has been relabeled as 4.1-3 in the enlarged format that was introduced as exhibit 2 at the hearing of the petition. The same exhibit also appears in the draft EIR at T27 AR 1552A, but there it is correctly labeled as 4.1-3. (The actual exhibit 4.1-4 is at T28 AR 2061, and is entitled "TTM 31614.")

For convenience the court will sometimes refer to respondents and real party jointly as "respondents."

**INTRODUCTION**

In these consolidated actions petitioners challenge certain decisions of respondent City of Banning, claiming an abuse of discretion under the California Environmental Quality Act ("CEQA"). The issues pertain to a proposed housing project on the "Black Bench," an area at the southern base of the San Bernardino Mountains.

All four petitions name the City of Banning ("the City") as respondent, and two of the cases (RIC 460967 and RIC 461069) also name the City Council of the City of Banning as a second respondent. All four petitions name real party developer, SCC/Black Bench, LLC, dba SunCal Companies ("SunCal").

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RIC 460950

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In RIC 460950 (master file) petitioner is Highland Springs Conference and Training Center, dba Highland Springs Resort ("Highland Springs"). Petitioner is a nature resort, with many hiking trails, located immediately to the south of the project site. The petition is formatted into five causes of action: (1) violation of CEQA for inadequate analysis of impacts; (2) violation of CEQA for inadequate analysis of mitigation measures and alternatives; (3) violation of CEQA for adoption of deferred and vague mitigation measures; (4) violation of CEQA for lack of substantial evidence to support the statement of overriding considerations; and (5) procedural violations in the processing of the EIR.

In RIC 460967 petitioner is Center for Biological Diversity, a public interest corporation dedicated to environmental and species-preservation issues. The petition is formatted into three causes of action: (1) violation of CEQA for inadequate analysis of impacts; (2) violation of CEQA for inadequate analysis of mitigation measures and alternatives; and (3) violation of CEQA for lack of substantial evidence to support the statement of overriding considerations.

In RIC 461035 petitioners are Cherry Valley Pass Acres and Neighbors, and Cherry Valley Environmental Planning Group (jointly "Cherry Valley" herein). These petitioners are non-profit corporations comprised of residents of Cherry Valley, an unincorporated area of Riverside County located to the west of the proposed project. Their petition is not formatted into causes of action, but seeks mandate under CEQA on many of the same grounds asserted in the other three cases.

In RIC 461069 petitioner is Banning Bench Community of Interest Association, Inc. ("Banning Bench"), a non-profit corporation comprised of property owners in the Banning Bench, an unincorporated area of Riverside County located just to the east of the proposed project. Its petition is formatted into three causes of action: (1) for mandate under PRC §21168 for failure to comply with CEQA; (2) for mandate under CCP §1085 for failure to comply with the State Planning and Zoning Law; and (3) for declaratory relief as to interpretation of a Development Agreement entered into in 1994 between respondent and the predecessor in interest of real party.

By way of background, in 1993 the City annexed approximately 1000 acres, comprising the easterly portion of the proposed project, pursuant to an annexation agreement with SunCal's predecessor in interest. The annexation was approved by the Local Agency Formation Commission, and was followed by a development agreement in 1994. T28 AR 2063; T37 AR 4105-4119. That agreement anticipated development of the site, approximately 1500 acres in total, involved in this litigation. The location and general nature of the site are shown in certain exhibits to the final EIR, at T28 AR 2001-2003 and T28 AR 2080. The San Bernardino National Forest abuts it to the north and east. T28 AR 2003. A large unincorporated area lies just to the south of the site, separating it from the historic boundaries of the City of Banning, and the Highland Springs resort is located in that unincorporated area. T28 AR 2002, 2179.

2/24  
RIC 460950

The development agreement provided that the City would, upon request of the landowner, redesignate the property as a "Specific Plan Overlay Development Zone." Such redesignation would require the landowner "to prepare and process a 'Specific Plan' detailing the permitted uses of the Property." T37 AR 4107. The development agreement went on to set forth certain provisions to be included in the specific plan. For instance, the specific plan would need to provide for at least 500 acres of open space, and would authorize subdivision of the property into as many as 1,500 residential lots. *Id.* The agreement also recited that future processing of a specific plan and subdivision map was subject to "appropriate environmental documentation, which may include an environmental impact report..." T37 AR 4108. The development agreement reserves to the City "its absolute discretion to take any action in conformance with, allowed by or required by CEQA," and includes a waiver by landowner of any right to sue the City for taking any such action. The agreement also reserves to the landowner "the right to refrain from proceeding with development of the Property," if the landowner determines "that any environmental mitigation or condition makes the project infeasible, or for any other reason." T37 AR 4109.

The proposed project then sat dormant for nine years, until fall of 2003, when the current owner of the property started to prepare the required documents. T38 AR 4121-4122. The project as proposed involves construction of 1,453 residential units, a school site, neighborhood park, nature park, and related roadways and utilities. T28 AR 1952; T289 AR 12760.

#### ACTIONS TAKEN BY THE CITY OF BANNING

Petitioners challenge four actions taken by the City:

- (1) Adoption of Resolution No. 2006-128 on October 11, 2006, certifying the Final Environmental Impact Report in reference to the three other actions enumerated below, and adopting a statement of overriding considerations and mitigation monitoring program;
- (2) Adoption of Resolution No. 2006-129 on October 11, 2006, approving General Plan Amendment #06-2502 to modify the circulation element of the General Plan to accommodate the project;
- (3) Adoption of Resolution No. 2006-130 on October 24, 2006, approving Lot Split #04-4509 (Tentative Tract Map 34001); and
- (4) Adoption of Ordinance No. 1353 on November 14, 2006, approving Specific Plan #04-209.

Documentation of those official actions appears at T284 AR 12740-12743 (EIR certification); T264 AR 11901-11904 (change to circulation plan); T289 AR 12759-12763 (tentative tract map approval); and T304 AR 13059-13061 (approval of specific plan). The final EIR appears in two volumes at T28 AR 1936-2441, followed by another volume setting forth responses to comments as well as certain attachments. The General Plan appears at T32 AR 3664-4086, and the changes to the circulation element are

3/24  
RIC 460950

described in the resolution itself, and also at T227 AR 11428-11429. The tentative tract map appears at T28 AR 2442. The specific plan is at T19 AR 524-739.

#### HEARING ON THE PETITIONS

The matter was argued on December 19, 2007. Jan Chatten-Brown appeared on behalf of petitioner Highland Springs. Matthew Vespa appeared on behalf of petitioner Center for Biological Diversity. Robert C. Goodman and D. Kevin Shipp appeared on behalf of the Cherry Valley petitioners. John G. McClendon and Alisha M. Santana appeared on behalf of petitioner Banning Bench Community of Interest Association. GERALYN L. SKAPIK and Amy E. Morgan appeared for respondents City of Banning and City Council of the City of Banning. Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones appeared on behalf of real party SCC/Black Bench, LLC.

At the hearing petitioners' exhibits 1, 2, and 3, consisting of enlargements of items already part of the administrative record, were received into evidence. Respondents sought to introduce their exhibits A and B, but petitioners objected on the ground that each of those exhibits consists of an amalgamation of data in the record, and accordingly they each constitute late briefing. In addition, petitioner Highland Springs objected that Exhibit A was inaccurate. The court overruled those objections, stating that the exhibits would be received, and that if there were any inaccuracies the court would take that point into account in determining their weight. (This ruling is modified slightly, hereinbelow.)

All of the requests for judicial notice were granted without objection, except for one item that was taken under submission and is determined in the ruling set forth hereinbelow.

All issues in the petitions were argued and taken under submission.

#### STANDARD OF REVIEW

It is the function of this court to determine if there was a prejudicial abuse of discretion by the public agency. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." PRC §21168.5. The court is also cognizant of the deference that must be accorded an agency determination under 14 CCR 15268 subd. (a), and applicable caselaw.

#### SUMMARY OF CONCLUSIONS

Having in mind the statutory standard of review, the court concludes that mandate must be granted because the City of Banning abused its discretion as follows:

4/24  
RIC 460950

1. The City did not proceed in a manner required by law because it relied upon an EIR that did not analyze water supply according to the legal principles set forth by statute and by applicable case authorities; and because the EIR did not set forth information on water supply that was sufficiently reliable for the City and the public to make an informed decision.
2. There is no substantial evidence in the record to support the finding in the EIR, relied upon by the City, that there is adequate water supply for the project.
3. The City did not proceed in a manner required by law because it piecemealed this project, leaving the selection of an access road for later determination.
4. There is no substantial evidence in the record to support the finding in the EIR, relied upon by the City, that the proposed project is consistent with the goals and objectives of the Air Quality Management Plan of the South Coast Air Quality Management District.
5. The City did not proceed in a manner required by law because it relied upon an EIR that did not analyze growth-inducing aspects of the project according to the approach required by the CEQA Guidelines as set forth in the California Code of Regulations.
6. Because of uncertainty as to the location of the access road, there is no substantial evidence in the record to support the findings in the EIR, relied upon by the City, that the project would have less than significant effects (after mitigation) on historical and archeological resources, land use and aesthetics, noise impacts, hydrology, and certain aspects of traffic and circulation.
7. The City did not proceed in a manner required by law because it relied upon an EIR that assumed that a local noise ordinance made CEQA analysis of construction noise unnecessary.
8. The City did not proceed in a manner required by law because it rejected two alternative proposals without providing legally sufficient reasons.
9. The City did not proceed in a manner required by law because the EIR acknowledged that the impact of the project on air quality, and on traffic at certain intersections, could not be mitigated, yet the statement of overriding considerations was insufficient under the applicable statute.

#### RULINGS

Exhibits A and B, offered by respondents at the hearing, are not received as evidence or as part of the administrative record. They will be considered by the court as permissible argument, in conjunction with respondents' oral presentation. The court finds that petitioners are not prejudiced by the late tender of those documents.

Respondents' objection to item 3 of petitioners' supplemental request for judicial notice (a document from the California Department of Fish & Game) is sustained.

The petitions for mandate are granted. It is ordered that a peremptory writ of mandate issue directing that respondent City of Banning set aside its certification of the

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Environmental Impact Report and its approval of the project, including its adoption of Resolution No. 2006-129, Resolution 2006-130, and Ordinance 1353.

Pursuant to PRC §21168.9 subd. (a)(2), the court finds that any amount of grading, or any other physical commencement of the project will prejudice alternatives such as the 330 home alternative, the 1,192 home alternative, and the "no project" alternative, all of which were discussed in the EIR. Pursuant to the same code provision the court finds that any amount of grading, or any other physical commencement of the project will prejudice a variety of mitigation measures that are set forth in the EIR. Therefore respondent and real party are hereby enjoined from proceeding with grading, construction, or any other physical implementation of the project, until such time as the project is brought into compliance with the California Environmental Quality Act.

Because petitioner Banning Bench Community of Interest Association, Inc., included a cause of action for declaratory relief (its third cause of action), and that part of the case remains pending, the court cannot issue the writ or a final judgment at this time. See *Morehart v. County of Santa Barbara* (1994) 7 Cal. 4<sup>th</sup> 725, 733-734. Accordingly the court hereby sets a status conference for February 21, 2008, 10:00 AM, in Dept. 42.

After judgment the court shall retain jurisdiction over the proceedings pursuant to PRC §21168.9 subd. (b) and (c), but the judgment to be entered shall be final and appealable. Costs may subsequently be claimed according to law.

The court does not direct respondent City to exercise its lawful discretion in any particular way. Nothing in this ruling should be construed as requiring respondent or real party to go forward with the project, reapprove the project, or to take any particular action other than as specifically set forth herein.

## REASONS

### A. *Water supply*

The law requires a Water Supply Assessment ("WSA") to be prepared in connection with environmental review of any residential development exceeding 500 units. WC §§10910,10912. Further, the law requires a written verification from the proposed supplier, confirming that there is sufficient supply for the proposed development. GC §66473.7. The WSA need not be composed on a blank slate; if the proposed project "was accounted for" in the City's last Urban Water Management Plan ("UWMP") then the WSA may incorporate information from that document. WC §10910 subd. (c)(2).

That is the approach taken by respondents herein. The WSA borrows heavily from the city's UWMP, incorporating much of the language and many of the tables. The EIR then reiterates much of the same material. Again, this approach is permissible, but it means that the court must start with the UWMP in order to review the water supply issues in this mandate proceeding.

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The City adopted its most recent UWMP in 2005, pursuant to the requirements of the *Water Code* (sections 10620, *et. seq.*). That document, including its appendices, is set forth in the administrative record. T2 AR 20-212. Appendix C to the UWMP is a stipulated judgment from 2004 in Riverside Superior Court case no. RIC 389197, adjudicating groundwater rights in the Beaumont Basin. T2 AR 120-174. The judgment recites that the maximum safe yield from the basin is 8,650 afy (acre feet per year), and that total groundwater production has consistently exceeded that figure. T2 AR 122. The judgment notes a "temporary surplus" in the basin (with a technical definition provided at T2 AR 144), justifying an allowance to the City of 5,910 afy for 10 years. T2 AR 45, 167. After that, according to the UWMP, the City's share from the basin will be reduced to "a minimum of 400" afy. T2 AR 45.

It is difficult to find the 400 afy figure in the stipulated judgment, though it is obvious from the judgment that the City's share will substantially diminish after those first ten years, so the court will simply accept the UWMP's figure of 400 afy. Further, ten years from the judgment would put us at 2014, yet table 2-1 in the UWMP shows the reduction from 5,900 to 400 occurring in 2010. T2 AR 46. That table also shows water from that source increasing from 400 afy to 4,000 afy in 2025, but the court is not able to find anything in the UWMP to explain that projected increase.

The same table (at T2 AR 46) shows various other sources of water for the City, including non-adjudicated groundwater basins, and anticipated flow from the State Water Project ("SWP"). It shows SWP supply to the City increasing from zero in 2005 to 8,771 afy by 2015, yet gives scant explanation of those figures.

According to the EIR that 8,771 afy is comprised of 4,667 afy by way of "SWP Table A Entitlement" plus 4,104 afy from "SWP Additional Table A." Phase I of the East Branch Extension of the SWP is apparently almost operational, and involves a contractual "entitlement" for the San Geronio Pass Water Agency ("SGPWA") of 8,650 afy. Phase II of that extension is in the environmental review phase, and if built, may involve an additional contractual entitlement of 8,650 afy. T2 AR 54; T3 AR 228; T28 AR 2308-2310. A report from 2001 notes that the SWP has been able to deliver on average only 71% of contractual entitlements each year. *Id.* In the past, allocation of water among the various agencies comprising SGPWA has been accomplished pro rata based upon assessed valuation, and the UWMP predicts that the additional SWP water from the East Branch Extension will be allocated by that same method, and will likely result in the City obtaining 38% of that water. *Id.* Thus, 8,650 afy for each phase would be 17,300 afy in total; 71% of that figure equals 12,283; and 38% of that figure equals 4,667 afy. Again, that number appears as "SWP Table A Entitlement" on Table 2-1 of the UWMP. The court is not able to find in the UWMP any explanation of the other entry, for another 4,104 afy, other than a conclusory statement that additional water "can easily be taken" based upon anticipated flow capacity of the two phases of the East Branch Extension. T2 AR 54. Of course, the anticipated flow capacity of a pipe or aqueduct is to be distinguished from legal entitlement, and both are to be distinguished from the physical quantity of water that nature will actually provide. See, *e.g.*, *Planning*

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& *Conservation League v. Department of Water Resources* (2000) 83 C.A. 4<sup>th</sup> 892, 908; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 C.A. 4<sup>th</sup> 715, 720-722. Moreover, as suggested by the discussion above, even the first 4,667 afy is subject to considerable doubt because Phase II of the East Branch Extension is still in the planning stage, and it also remains uncertain how much water SGPWA will receive from Phase I.

The EIR and the WSA both incorporate Table 2-1 from the UWMP. It appears as Table 4 in the WSA. T171 AR 10144. It appears as Table 4.11-7 in the EIR. T28 AR 2310. The table has been changed slightly, however for incorporation into these documents. Specifically, both the WSA and the EIR lump together the 4,667 afy that is explained by the UWMP with the 4,104 that is not explained, in order to present one combined figure for SWP water. Thus, the table as presented in those documents simply shows 8,771 afy from SWP for 2015. That figure also increases to 9,266 afy, without explanation, starting in 2020.

The Supreme Court has recently clarified the law in this area, in the important case of *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova, et. al.* (2007) 40 Cal. 4<sup>th</sup> 412. In that case the County of Sacramento had approved a community plan for a large mixed-use development, as well as a specific plan for its first phase, and a focused EIR for those plans. Several organizations sought mandate, challenging the development on a variety of grounds including insufficient study of water supply. The trial court and Court of Appeal had denied mandate, but the Supreme Court reversed, finding that the EIR did not adequately inform decision makers or the public of the plan for long-term provision of water. The Court reached that result although the EIR had relied upon an extensive prior analysis and report with regard to water issues in the region.

In granting mandate, the Court cited section 21100 of the *Public Resources Code*, which requires that an EIR "shall include a detailed statement setting forth...[a]ll significant effects on the environment of the proposed project." The Court then identified the issue in the case as "what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan." *Vineyard, supra*, at 428. The Court favorably cited *Santa Clarita, supra*; and with respect to water anticipated from SWP "entitlements" the court stated: "[B]ecause the State Water Project [has] never been fully constructed 'there is a huge gap between what is promised and what can be delivered,' rendering State Water Project entitlements nothing more than 'hopes, expectations, water futures or, as the parties refer to them, 'paper water.'"" *Vineyard, supra*, at 430 [citing from *Planning & Conservation League, supra*]. The Court also cited *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 C.A. 4<sup>th</sup> 342 to emphasize that, when uncertainty exists as to one anticipated source of water, an EIR then must then address alternative sources and discuss "at least in general terms" the environmental consequences of tapping such resources." *Vineyard, supra*, at 430, 432. The Court insisted upon "an analytically complete and coherent explanation," not merely an acknowledgment that future sources are possible and will be subjected to later environmental review. *Supra* at 440.

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*Vineyard* goes on to articulate four controlling principles in this issue area: "First, CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.'" *Supra* at 430-431 [citing from *Santiago County Water Dist. v. County of Orange* (1981) 118 C.A. 3d 818].

"Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. ... [T]he future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis." *Supra* at 431.

"Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA." *Supra* at 432 [citing *Santa Clarita, supra*]. An EIR for a land use project must address the impacts of *likely* future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. *Id.* [citing *California Oak Foundation v. City of Santa Clarita* (2005) 133 C.A. 4<sup>th</sup> 1219]; emphasis in original.

"Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." *Id.* [citing *Napa Citizens, supra*].

Before applying these four principles to the case at bar, it is necessary to recognize a factual distinction between *Vineyard* and our case. In *Vineyard* the EIR addressed a community plan and a specific plan, but not a tract map. This is important because it means that the level of specificity and analysis required by each of these four principles is even more stringent in our case than in *Vineyard*. Thus, the Court states: "The plans and estimates that *Water Code* section 10910 mandates for future water supplies at the time of *any* approval subject to CEQA must, under *Government Code* section 66473.7, be replaced by firm assurances at the subdivision map approval stage. To interpret CEQA itself as requiring such firm assurances of future water supplies at relatively early stages of the land use planning and approval process would put CEQA in tension with these more specific water planning statutes. ... ¶ ... Consistent with the foregoing, we emphasize that the burden of identifying likely water sources for a project varies with the stage of project approval involved; the necessary degree of confidence involved for approval of a conceptual plan is much lower than for issuance of building permits." *Supra* at 434; emphasis in original.

When we then apply the first three *Vineyard* principles herein, it becomes clear that the analysis of water supply set forth in the EIR is insufficient, and that mandate must be

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granted. As discussed above, the EIR assumes that 8,771 afy will be forthcoming from SWP by 2015 (and that the flow will increase to 9,266 afy in 2020 and subsequent years). T28 AR 2310. As to the first 2,333 afy of the 8,771 afy, it is a close question as to whether the analysis is good enough. Respondents represent that Phase I of the East Branch Extension is nearly on line; that SGPWA's entitlement from that phase is 8,650 afy; that the pattern of utilizing assessed valuation for pro-rata distribution is likely to be followed in the future; and that 38% of 71% of the entitlement is a reliable estimate based upon past experience. Is this a "reasoned analysis of the circumstances affecting the likelihood of the water's availability," under the third *Vineyard* principle? It might have been, if more substance had been offered, as to the method of negotiating the 38% allocation in the past, the reasons why the same negotiation pattern would prevail in the future, and the current and projected demands of other constituent users of SGPWA water. We do not see that information in the EIR, however, and indeed, this EIR ignores the requirement that more certainty is required once we get to the stage of a tentative tract map. Thus, even for the "most likely" 2,333 afy of the 8,771 afy anticipated by the EIR, the analysis is not adequate under the principles established by the Supreme Court in the *Vineyard* case. With regard to the next 2,333 afy, anticipated from the unbuilt Phase II, this conclusion follows *a fortiori*, and needless to say, the hope of buying yet another 4,104 afy on the basis of pipeline capacity falls far short of the analysis required by *Vineyard*.

Moreover, the EIR offers nothing to fulfill the fourth principle of *Vineyard*, which requires analysis of alternate sources, and the environmental effects of utilizing them, if uncertain anticipated sources fail to materialize. The EIR does mention a "worst-case scenario," in which it is assumed that the aforementioned 4,104 afy in SWP water will not be available, and states that groundwater supplies would be sufficient to make up the difference. There is no discussion, however, of what the City will do if the first 4,667 afy does not materialize, or even what it will do if half of the first 4,667 afy (the half dependent on Phase II) never comes about. Moreover, in reviewing the supply and demand figures for the "worst case scenario," in Table 4.11-12 of the EIR, one can see the anticipated surplus go as low as 383 afy by 2020, based upon the projected population increase—but then the margin grows in 2025 because the draw from the adjudicated Beaumont Basin is assumed to increase from 400 afy to 4,000 afy. T28 AR 2310, 2314. Again, that tenfold increase does appear in Table 2-1 of the UWMP, and is perpetuated in the WSA and the EIR, but it is not explained. Absent that assumption, Table 4.11-12 would show large shortfalls in 2025 and 2030.

If we delete SWP water, then, from the supply figures in Table 4.11-7 of the EIR (Table 2-1 of the UWMP), and also assume that the City's draw from the Beaumont Basin will not increase in 2025, we have supply figures from that table as follows: in year 2010, 11,663 afy; in year 2015, 12,246 afy; in year 2020, 12,832 afy; in year 2025, 13,415 afy; and in year 2030, 13,996 afy. T28 AR 2310.

Comparing those figures to projected demand, we have: in year 2010, demand of 12,651 afy (shortfall of 988 afy); in year 2015, demand of 15,002 afy (shortfall of 2,756 afy); in year 2020, demand of 17,380 afy (shortfall of 4,548 afy); in year 2025, demand of

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19,726 afy (shortfall of 6,311 afy); and in year 2030, demand of 22,051 afy (shortfall of 8,055 afy). T28 AR 2312. Even if we were to adjust these figures to assume that 2,333 afy in SWP water will really be forthcoming (from Phase I of the East Branch Extension), the figures would reflect a significant shortfall.

Of course this court is not purporting to *predict* a shortfall. It is not for the court to practice water science or determine water policy. From a legal standpoint, however, the analysis in the EIR is neither sufficient as to the likelihood of SWP water becoming available, nor as to the likelihood of increasing the city's draw from the Beaumont Basin in 2025. Therefore, it is worthwhile to compare the amount expected from the other supply sources to the projected demand as set forth in the EIR, and if we do that, as just seen, the figures reveal a substantial shortfall.

These concerns are significant, not just from a cumulative-impacts perspective, but in absolute terms. The proposed project will generate demand of 1,149 acre-feet per year. T28 AR 2311. When we see overall city supply figures in the range of only 11,000-14,000 afy, a decision to increase demand by 1,149 afy has substantial significance.

One could go further and question the demand assumptions that the EIR incorporates from the UWMP. Specifically, the UWMP states: "In 1990 the demand on the City's water supply was 4,096 acre-feet. In the [*sic*] 2000, the demand almost doubled at 8,032 acre-feet. During this period, the population grew from an estimated 20,570 to 23,662. This large increase in water demand in relation to population growth is due, in part, to increased commercial consumption and irrigation." T2 AR 56. The text of the UWMP goes on to mention certain specific commercial and irrigation water users. Table 3-1 on the next page, however, shows that residential use increased from 2,319 afy in 1990 to 4,715 afy in 2000, so residential demand more than doubled with a 13% increase in population. T2 AR 57. One could jump to various conclusions from this apparent anomaly, but petitioners did not raise the issue in their opening brief. Since respondents have had no chance to argue this point, the court did not list it above as one of the reasons for granting mandate.

Petitioners make other meritorious arguments with regard to water supply. They point out that the Engineers Annual Report for SGPWA for 2002-2003 discussed SWP water principally as a source for replenishing groundwater basins in overdraft. T3 AR 222, *et seq.* The same report notes the "State of Overdraft" in the basin. T3 AR 235. As noted above, the judgment in RIC 389197 stated that the basin was consistently in overdraft, and that tapping the "temporary surplus" would be done, in deliberate excess of "safe yield," to allow more room for water storage and avoid wasting water. T2 AR 122, 144, 153. The WSA acknowledges that "initial deliveries of SWP water will be used to recharge the Beaumont Basin...." T171 AR 10138. It also states that "imported water... will be used to mitigate the overdrafting of groundwater...." T171 at 10134; and see T171 AR 10142. Taking all of this data together, it appears that the EIR and WSA may be counting the SWP water twice, once to recharge the basin and again as an independent source. The opposition brief at page 30 cites to an engineer's letter in this regard, at T223 AR 11375, but the text of that letter does nothing to allay the court's concern. Of

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course, the point is not to determine on mandate (after close analysis by court and counsel) whether this fallacy in fact undermines the EIR—the problem is that a crucial informational document, “the heart of CEQA,” does not provide sufficient information to the public or the city when it slights an issue of this importance. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d. 553, 564. A proper EIR “protects not only the environment but also informed self-government.” *Laurel Heights Improvement Assn. v. Regents of University of Calif.* (1988) 47 Cal. 3d 376, 390.

Thus, the analysis of SWP water not only leaves its availability in doubt, as noted previously, but that possible source may have been counted twice in the EIR.

(Thus, it might not be a coincidence that the adjudicated safe yield from the Beaumont Basin is 8,650 afy, the same figure as the SWP entitlement from Phase I of the East Branch Extension—perhaps the numbers are the same because the one source is intended to replenish the other. It would be interesting to learn the history of the relevant negotiations, to see if this is so, but it does not matter for the legal analysis of the case at bar.)

Petitioners also note that the WSA assumes the City can take 100% of the safe yield of certain specific groundwater units, without analyzing the quantities drawn from those same storage units by other users. [Pet. Brief at 24, lines 18-24.] The opposition brief then dismisses this concern by citing tables “that illustrate the historically low pumping by these pumps.” [Opp. Brief at 29, 13-22.] After reviewing respondent’s math in that portion of the brief, the court is uncertain as to whether the effect actually has been *de minimus*. Moreover, even if the amounts pumped are “historically low,” the WSA, and the EIR that relied upon it, should tell us about the present and try to anticipate the future, rather than assume that historical numbers are still reliable. (Perhaps increased development in nearby areas will increase the competition for this same water.) Again, as noted hereinabove, it is not for the court to figure out these numbers and their effect by a close study of the record. The EIR should have analyzed the likely demand by other users of the storage units in question, so that the public and the Banning City Council could have had more complete and reliable data.

Finally, petitioners are correct to point out the uncertainty as to recycled water. The WSA and the EIR assume that 1,504 afy will be available from this source in 2010, and that the amount will gradually increase to 2,816 afy in 2030—yet the City used no recycled water at all in 2005. Both documents simply talk about “developing a program” and say that “The City has recently updated its Irrigation Feasibility Study to determine the current cost of implementing Phase I and Phase II of the proposed recycled water system.” T28 AR 2309-2310; T171 AR 10143-10144. This analysis fails under all four principles articulated in *Vineyard, supra*. Moreover, the WSA states that the recycled water will be used to recharge the groundbasins in overdraft, so it seems to be counting this speculative source twice. T171 AR 10134.

Thus, the City did not proceed in a manner required by law, because it relied on an EIR that did not analyze water supply issues according to the legal principles imposed by

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statute and caselaw; and that EIR did not provide sufficiently reliable information regarding water supply for the benefit of the decision-makers and the public. The court is required to grant mandate on these grounds.

#### B. Access Roads

Both sides acknowledge that the law requires two access roads for the project, one for primary access, and another for secondary access. The "Executive Summary" portion of the EIR states that primary access would be provided by building a four-lane road that would extend Highland Home Road northerly, thus bisecting the Highland Springs resort; and that secondary access would be provided by constructing a roadway easterly to connect to Bluff Street. T28 AR 1951; and see the maps at T28 AR 2003 [exhibit 3-3 to the EIR, and enlarged as exhibit 1 at the hearing] and T28 AR 2060 [erroneously labeled as exhibit 4.1-4 to the EIR but enlarged as exhibit 2 at the hearing, and there correctly labeled as 4.1-3]. The body of the EIR again sets forth this scenario at T28 AR 2038, and environmental analysis is presented accordingly. See, e.g., T28 AR 2178-2223.

The Executive Summary of the EIR also mentions two alternative locations for the primary access road. One alternative is to extend Highland Springs Road northeasterly to the project site, and another is to construct a road from the southern property boundary in a southeasterly direction to connect with Sunset Avenue at the intersection with Mesa Street. T28 AR 1955. The Sunset Avenue alternative is similar to the Highland Home Road alternative, in that it also involves building a four-lane road through the Highland Springs resort, but it would be situated farther to the east. The body of the EIR then sets forth an abbreviated environmental analysis of the Highland Springs Road alternative and a more extensive analysis of the Sunset Avenue alternative. T28 AR 2380-2431.

At some point the City imposed a condition of approval with regard to access that was interlined into the EIR. T28 AR 2224-2226. That condition of approval implies that the Highland Springs Road alternative was no longer under consideration and states that the primary access road will either involve extending Highland Home Road or building a connector to Sunset Avenue as mentioned above. T28 AR 2224.

The condition of approval, in its original form (and as set forth in the EIR) would have allowed grading to commence before a legal right to primary access was obtained. *Id.* The City then revised the condition of approval to delete this portion. In relevant part the final version reads as follows: "City and Applicant acknowledge that a portion of the property needed to secure each of these road access alignments is on private property outside of City boundaries and not owned or controlled by Applicant. The Applicant shall bear the full burden of securing necessary property rights for the road alignments which are not currently owned or controlled by Applicant in order to achieve either the Highland Home Road Alignment or the Sunset Avenue Alignment. City shall not issue grading or building permits until such time as applicant has provided proof satisfactory to the City that Applicant has secured necessary property rights for either the Highland Home Road Alignment or Sunset Avenue Alignment. In the event Applicant is unable to secure such alignment through private acquisition, Applicant may request that the City or

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other governmental agency exercise its power of eminent domain to secure the property for one of the road access alignments. However, Applicant acknowledges that the City shall be under no obligation in any way to exercise its power of eminent domain and shall only exercise such power, if at all, in its sole and absolute discretion in accordance with California eminent domain laws and regulations." T289 AR 12768-12769.

The condition of approval then goes on to say: "If either the Highland Home Road Alignment or the Sunset Avenue Alignment are not secured by the Applicant and City or any other governmental agency to whom such a request is made decline to exercise rights of eminent domain, then Applicant shall secure access to the Black Bench project through another road access area alternative (Third Access Alternative). The Third Access Alternative shall require City review and the City shall have the ability to require that the Applicant submit to the City a request for (1) an amendment to the circulation element of the General Plan, (2) an amendment to the Black Bench Specific Plan, and (3) an amendment to Lot Split #04-4509 (TTM 34001) to the extent that the Third Access Alternative is inconsistent with such plans and maps. The Third Access Alternative shall also require further environmental review under the California Environmental Quality Act (CEQA)." T289 AR 12770.

This approach constitutes impermissible piecemealing of the project. "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change...." 14 CCR 15378. Numerous case precedents preclude piecemealing, and the Supreme Court has set forth a legal test in this regard. In the case of *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 396 the Court stated that "an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Id.* Under this test it is obvious that the access roads to a project of this size must be analyzed in the EIR, yet there is no environmental analysis whatsoever of the unspecified "Third Access Alternative."

This is not a hypothetical problem. The condition of approval puts upon SunCal the obligation of persuading petitioner Highland Springs to sell some of their land so that the primary access road can be constructed. One can easily discern that said petitioner is unlikely to sell. Eminent domain is the only other possibility, if Highland Home Road is to be extended, or if a connector road is to be built from the project to the Sunset/Mesa intersection. As noted in the condition of approval, no promise has been made or can be made as to the chance of obtaining access by that means. It would seem difficult for respondents to predict whether the County of Riverside will agree to take the land of petitioner Highland Springs for this purpose. (Also, as an incidental point, the condition of approval recites that the City can exercise its power of eminent domain only "in accordance with California eminent domain laws and regulations," but does not mention that constitutional law is also involved.) Thus, there is a very real possibility that if this project is to be built, the unknown "Third Access Alternative" will serve as the primary

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access road. Again, since that alternative is not analyzed in the EIR, the environmental analysis herein fails the Supreme Court's test as set forth in *Laurel Heights, supra*. Moreover, SunCal proposes to run utility lines "within existing and future roadways," yet no environmental analysis is presented as to whether the site of the "Third Access Alternative" is environmentally appropriate for those utility lines. T28 AR 2299, 2314-2315, 2320-2321, 2323. Obviously there cannot be such analysis, since we don't know where that road will be.

Respondents point out in their brief and in oral argument that, under the revised conditions of approval, the project cannot commence until and unless the primary access road is secured and subjected to CEQA review (such review to be required if the "Third Access Alternative" is chosen). Petitioners meet this argument in their reply brief by citing *Concerned Citizens of Costa Mesa, Inc. v. 32<sup>nd</sup> District Agricultural Association* (1986) 42 Cal. 3d 929, at 935 and 938, in which the Supreme Court holds that the project as described in the EIR must be "stable and finite," to the end of "precluding stubborn problems...from being swept under the rug." The court has carefully reviewed that case precedent, and agrees that it requires the City to make the hard decisions now, as to access, so that the environmental effects of the entire project can be analyzed up front. The court also notes that, if some of the project is to be approved now, and CEQA analysis of the "Third Access Alternative" is to be done later, it will skew that later environmental analysis. Specifically, SunCal will at that point be armed with a potent overriding consideration—the prior approval of 1,453 houses, and the reliance interest (or momentum) implicit in that approval.

The City ultimately agreed that the secondary access road connecting to Bluff Street will be designed for emergency traffic only. T28 AR 2457-2458. Thus, the primary access road will bear almost 100% of the traffic to and from this housing project. Under these circumstances the importance of identifying that road and its likely environmental effects is heightened.

The Supreme Court decisions cited hereinabove set forth clear principles construing CEQA, and the Court's analysis is entirely applicable to our present case. The Banning City Council, in approving this project without choosing an access road, thus deferred a controversial and environmentally important issue. That decision constituted piecemealing of the project, and it was contrary to the law as explained by the Supreme Court in such cases as *Laurel Heights* and *Concerned Citizens of Costa Mesa, supra*. The court is required to grant mandate on this ground.

### C. Air Quality

The City's "Final Findings of Fact and Statement of Overriding Considerations" with respect to the EIR acknowledges that the short-term and long-term effects of the project would generate emissions that exceed thresholds of significance adopted by the South Coast Air Quality Management District ("SCAQMD"). That same document finds that there are no feasible mitigation measures to reduce the air-quality impact to a level that is less than significant. T227 AR 11521-11530. Therefore the air quality aspect of this

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case must be considered in connection with the City's statement of overriding considerations (see below).

Petitioners do, however, identify an aspect of the EIR that deserves discussion. The EIR appropriately quotes the *CEQA Handbook* from SCAQMD: "New or amended GP Elements (including land use, zoning and density amendments), Specific Plans, and significant projects must be analyzed for consistency with the AQMP." T28 AR 2238. (The "AQMP" is SCAQMD's Air Quality Management Plan.) The EIR then sets forth a paragraph concluding that the Black Bench project is "consistent with the goals and objectives of the AQMP." T28 AR 2239. A few pages later we see some text stating that "the proposed project is consistent with the AQMP assumptions." T28 AR 2247.

The court has looked carefully in the record, and believes that the parties did not include the 1997 AQMP, the 2003 AQMP, or the draft 2007 AQMP. The record in this case is lengthy, however, and it is possible that the court simply cannot find those documents. Often petitioners bear the burden of making sure something is included in the administrative record, but here we have an EIR that acknowledges an environmental effect that cannot be mitigated, yet concludes that the project is still consistent with a regional environmental document. Under those circumstances it would seem to be respondents' responsibility to proffer that document. Moreover, even if an AQMP does appear somewhere in the record, the EIR does not explain how this project can generate emissions substantially over threshold for numerous pollutants, yet still be consistent. At respondents' request the court has taken judicial notice of the *CEQA Handbook*, and reviewed the paragraph (cited in the opposition brief at p. 51) that discusses consistency findings. Perhaps one can agree, based upon that paragraph, that the focus should be on "assumptions and objectives of the regional air quality plans, and thus if [the project] would interfere with the region's ability to comply with federal and state air quality standards." The EIR does set forth a few lines indicating that the proposed development is consistent with growth forecasts utilized in the AQMP, but does not discuss any other assumptions of the AQMP, and certainly does not tell us how the project is consistent with its goals or objectives. Nor does it tell us why the project would not interfere with the region's ability to comply with air quality standards.

The EIR and respondents also assert that the air quality effects of this project will be insignificant when considered in conjunction with all the air pollution that already exists, saying: "...the emissions from this project are projected to be a fraction of a percentage of the basin-wide emissions." T28 AR 2247; Opp. brief p. 51. In response petitioners appropriately cite *Communities for a Better Environment v. California Resource Agency* (2002) 103 C.A. 4<sup>th</sup> 98, which clarifies the law of cumulative impacts in this context. That case makes clear that we do not have a "one additional molecule" rule, but at the same time warns that we should not "turn cumulative impact analysis on its head by diminishing the need to do a cumulative impact analysis as the cumulative impact problem worsens." *Communities for a Better Environment, supra*, at 103 C.A.4<sup>th</sup> at 117.

At page 49 of the opposition brief respondents cite from the *CEQA Handbook* as follows:  
"...projects consistent with local general plans are considered consistent with the air

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quality related regional plans.” This quote is from page 12-2 of the handbook but follows two other sentences that do require consistency review for general plan amendments, specific plans, and significant projects. In the case at bar that is exactly what we have: an amendment to the general plan, an approval of a specific plan, and a tract map for a significant project.

Of course projects still get approved and many withstand environmental analysis on mandate, but this project exceeds emissions standards, so the air quality aspect must be considered in the context of overriding considerations. We therefore have a ground for mandate, because the finding in the EIR of consistency with the AQMP is not supported by substantial evidence. In this regard the EIR did not provide reliable information for the public or for the city council, and the court is required to grant mandate on this ground.

The court finds petitioners’ other arguments with regard to air quality to be unpersuasive, generally for the reasons set forth in the opposition brief. (See the discussion in the briefing of non-criteria pollutants, sensitive receptors, and PM<sub>2.5</sub> methodology.)

#### D. *Growth-Inducing Impacts*

Petitioners correctly contend that the EIR insufficiently analyzes the possible growth-inducing effect of this project. They note that any north-south roadway, with utility lines underneath, would make it easier to develop various parcels that lie between the proposed project and the historical boundaries of the City.

The discussion in the EIR is limited to four paragraphs. The first paragraph introduces the issue, and the second paragraph offers an abbreviated definition of “growth-inducing impacts.” The third paragraph points out that City approved the initial development agreement with SunCal’s predecessor in interest back in 1994, so the *project itself* does not represent unforeseen growth. The fourth and final paragraph is the only one to confront the issue, and says only the following: “In addition, areas within the San Bernardino National Forest or conservation areas identified in the Western Riverside MSHCP surround the project site. As described in Section 4.12, Recreation, the National Forest is public land set aside for the conservation of natural resources such as trees, water, minerals, livestock range, recreation, and wildlife. Therefore, these areas surrounding the project site would not allow future development, thereby limiting the developable land in the vicinity of the project site.” T28 AR 2434-2435.

Petitioners point out that only a portion of the project is abutted by National Forest land. Some of the other nearby land is situated in an MSHCP conservation area, but some is not, and MSHCP land can still be developed by way of environmental trades and other changes in land use designations. Pet. brief at 68-70; T28 AR 2060 [exhibit 2 at the hearing]. They cite *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1955) 33 C.A. 4<sup>th</sup> 144, 156-57, which held that an environmental impact report for a proposed golf course and country club was necessary in order to consider growth-inducing impacts, even though the surrounding land was zoned agricultural, because “Zoning is subject to

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change and amendment of a General Plan is not a rare occurrence.” They also cite *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 C.A. 3d 1325, which required an EIR for construction of a road and sewer, because that infrastructure would promote housing growth.

Respondents acknowledge that a north-south roadway will facilitate additional growth, but state that the General Plan anticipates such growth, and that some of the projects to be served by such a road have already been approved and passed environmental review. Opp. brief at 83-85. They point out that the cases cited by petitioner are distinguishable on their facts and, more importantly, with regard to the applicable standard of review, since both involved a negative declaration whereas in our case we have an EIR. They cite *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 C.A.4<sup>th</sup> 342, which upheld an EIR despite its less-than-perfect discussion of growth inducement.

In their reply brief at page 34 petitioners argue: “Respondents ...distinguish between anticipated and unanticipated growth no fewer than ten times. ... This fixation is both illogical and irrelevant. Even if a General Plan anticipates growth, it does not follow that such growth would not have environmental impacts.”

There are not many applicable case precedents in this area. Also, CEQA cases tend to be unique on their facts, so it is frequently easy for each side to distinguish the citations offered by the other. Under these circumstances it is helpful to refer to the administrative law that the state has adopted to guide public agencies in determining whether to certify an EIR.

Specifically, the CEQA Guidelines require the following: “Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.” 14 CCR 15126.2 subd. (d).

If we then compare that paragraph of the guidelines to the final paragraph on page 2435 of the record, it can be seen that the analysis falls far short of that required by law. Again, it does not matter if the parties can set forth reasoning that might persuade this court that the project does or does not have an impermissible growth-inducing effect. The point is that an EIR is an informational document that must discuss the issue in accordance with the principles set forth in the Guidelines and it did not do so. Therefore the City did not proceed in a manner required by law because it certified an EIR that did

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not include the required analysis of growth-inducing impacts. The court is required to grant mandate on this ground.

E. *Other Impacts*

The court rejects petitioners' contentions as to wildfire risk, global warming, and biological resources. As for archeology/history, land use and aesthetics, and hydrology, the petitions have merit because the issue of the primary access road remains unresolved. The petitions have merit with regard to traffic and with regard to noise impacts for that same reason and for additional reasons as well.

One should not minimize the risk of fire in developments adjacent to forested land, but it is not for the court to set public policy in this regard. The EIR thoroughly discusses the risks and adopts mitigation measures. T28 AR 2005, 2284-2285, 2297-2299. The City clearly relied upon substantial evidence in this regard. Further, the court rejects the argument that the EIR was deficient for failing to perform CEQA analysis on the fire station proposed as a mitigation measure, and finds that *County of Amador v. City of Plymouth* (2007) 149 C.A. 4<sup>th</sup> 1089, is not on point.

Again, the court understands the importance of greenhouse gas emissions, but as pointed out in the opposition brief and at oral argument, no law required the Banning City Council to consider global warming at the time it approved this project.

With regard to biological resources, the EIR appropriately analyzed the project within the context of the Multiple Species Habitat Conservation Plan ("MSHCP"). It is permissible to rely on the mitigation measures included in that plan, and petitioners' argument as to implicit tiering is without merit. The EIR relied upon a number of independent studies as to plant and animal species, and found that no federally listed species are present on the land in question. Certain special status plants were found, and five special status wildlife species were determined to be potentially present, but the EIR found that the impacts were less than significant. T28 AR 2144-2177; T167 AR 9141-9207. The City relied upon substantial evidence in this regard.

With regard to impacts upon historical and archeological resources, the petitions must be granted, again because we do not know the location of the access road. (Thus, it is not possible to evaluate the adequacy of the proposed mitigation measures.)

With regard to land use issues and aesthetics, the petitions have merit for the same reason—the EIR did not address that subject matter with regard to the "Third Access Alternative." With regard to the on-site portion of the development, the City's decision was supported by substantial evidence as to land use consistency and aesthetics. T28 AR 2055-2099; and see Table 4.1-1 at 2071-2075. General plan consistency is determined by asking whether a project is in overall conformity; it is not required that every goal set forth in the general plan be advanced by the project. *San Franciscans Upholding the*

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*Downtown Plan v. City and County of San Francisco* (2002) 102 C.A. 4<sup>th</sup> 656, 677-678. Respondent City has broad discretion in setting its policies in this regard, and is entitled to deference. *Id.*

Similarly, the court has carefully reviewed the discussion of hydrology and water quality in the EIR, and finds that the uncertainty as to the access road undermines the analysis. T28 AR 2122-2143. The Highland Home Road alignment involves construction of a bridge over Smith Creek, on the land of Highland Springs Conference Center (T28 AR 2132), and as noted previously, that petitioner does not appear to be a willing seller. It is uncertain if a bridge would be necessary if the Sunset alignment is utilized, and of course we don't know what the hydrology analysis would be under the "Third Access Alternative." On the other hand, the court questions petitioners' claim that the EIR neglects to address channel stability and neglects to analyze adequately the potential for hydromodification. T217 AR 11261-11265. In fact the EIR does address the risks set forth by petitioners' expert, although it does not always use the same terminology.

With regard to traffic and circulation, again the petitions have merit because the EIR did not address that subject matter with regard to the unknown "Third Access Alternative." The EIR sets forth an extremely detailed analysis of traffic flow at various City intersections, and discusses mitigation, yet we still don't know where the access road will be. T28 AR 2178-2230. In addition the EIR acknowledges that the project will have a "significant and unavoidable" effect on various intersections that are outside of the City's jurisdiction. T28 AR 2230. Thus, even apart from the problem of the unknown access road, we have an unmitigated environmental effect from this project, that can be overcome only by proper analysis of project alternatives and overriding considerations.

Petitioners are correct that the EIR failed adequately to address noise impacts, both as to short-term effects from construction and long-term effects from traffic. The EIR states: "The City of Banning Noise Ordinance limits the exterior noise levels from non-transportation sources at residential units to 45 dBA from the hours of 10:00 p.m. to 7:00 a.m. and 55 dBA from the hours of 7:00 a.m. to 10:00 p.m. Construction noise is exempt from this requirement." T28 AR 2262. It goes on to say: "Additionally, the Noise Ordinance excludes control of construction activities during the hours of 7:00a.m. to 6:00 p.m. Therefore, any noise generated by construction activities during those hours is not considered to have a significant noise impact." T28 AR 2263-2265. This reasoning is contrary to law, since nothing in the *Public Resources Code* or the Guidelines permits a public agency to rely upon a local ordinance in order to avoid CEQA analysis of an admitted environmental impact. With respect to long-term noise impacts from traffic, the EIR is not based on substantial evidence because it does not analyze the noise to be generated, and the effects on those nearby, from the "Third Access Alternative." Therefore the court must grant mandate on this ground.

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*F. Rejection of Alternatives, and Statement of Overriding Considerations*

Petitioners are correct that the EIR inadequately analyzes alternatives to the project, and that the Statement of Overriding Considerations is deficient. These are related topics, so the court will discuss them together.

Section 21002 of the *Public Resources Code* states that public agencies should not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen the significant environmental effects of the project. The same section says that "in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof." Section 21081 of the code then describes the situation that might justify proceeding with a project in spite of significant environmental effects: "...[(a)](3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report." That latter code section goes on to say that the project may proceed despite "significant effects which were subject to a finding under paragraph (3) of subdivision (a), [when] the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment."

In our case, as noted hereinabove, the EIR acknowledges that the project will generate emissions that exceed the applicable thresholds for several pollutants, and that no mitigation measure will be sufficient to change that fact. Therefore, the EIR is required to discuss, and does discuss, project alternatives that might obviate that significant environmental effect on air quality. T28 AR 2358-2433. Similarly, the EIR acknowledges "significant and unavoidable" effects on certain intersections outside of City jurisdiction, so again, discussion of alternatives is required.

Petitioners first contend that the EIR improperly rejected the alternative of situating the project at a different site. The analysis of this point in the EIR (T28 AR 2359) is less than satisfactory, but on the other hand nothing appears in the record to show that SunCal owned or could acquire any other site. Respondents correctly point out that the City is required to take this point into account. 14 CCR 15126.6 subd. (f)(1). The City therefore acted within its discretion in rejecting the possibility of an alternative site.

Petitioners next argue that the City should have considered their suggestion of a large lot alternative, involving 100-acre parcels. Specifically, petitioner Banning Bench had suggested this alternative to the City, and asserted that the County of Santa Barbara had successfully taken such an approach to its Hollister Ranch development. T249 AR 11677. Respondents dismiss this idea in one sentence (Opp. Brief at p. 97, lines 9-12), by quoting the guidelines to the effect that only a reasonable range of alternatives needs to be considered.

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This raises an interesting point. As mentioned above, one of the petitioners did present this alternative to the City, but it was simply mentioned in the last paragraph of a four-page letter setting forth various objections to the project. T249 AR 11677. Petitioners' brief does not cite any part of the record that further explains this idea. Is the EIR then defective for not fully analyzing an alternative that was so obliquely proposed? This court cannot accept that proposition, and will find that a general reference in a lengthy letter to an approach taken in another county, without further explanation or advocacy at the administrative level, is not enough to find that the City failed to consider a reasonable range of alternatives. Accordingly the court will not grant mandate on this ground.

The conclusion is different, however, for petitioners' next point. They note that a 330 home development, with access from Bluff Street, was identified in the EIR as an environmentally superior alternative. Specifically, the EIR states: "Because this alternative involves construction of only 330 dwelling units, the number of vehicle trips would be substantially reduced in comparison to the proposed project, as discussed above. With the reduced vehicle trips, long-term operational emissions from vehicles would be reduced to a level considered less than significant. Therefore, this alternative would avoid the long-term air quality impact resulting from implementation of the project." T28 AR 2378. It also states: "This alternative would reduce the extent of significant environmental impacts resulting from development on- and off-site compared to the proposed project. Under this alternative the potentially significant, unavoidable long-term air quality and traffic impacts would be avoided. As with the proposed project, potentially significant unavoidable short-term construction-related air quality impacts would be reduced with the implementation of the identified mitigation program, but not to a level considered less than significant." T28 AR 2380.

The EIR then rejects this alternative, saying that it "would not implement most of the primary objectives identified for the proposed project..." T28 AR 2380. Specifically, the EIR states that a development of only 330 homes would: (1) frustrate the implementation of the 1994 development agreement with SunCal's predecessor; (2) deny to the City a new north-south access road; (3) deny to the City the dedicated open space that is contemplated as part of the project as proposed; and (4) not contribute as effectively to fulfill regional housing needs.

These reasons for rejecting the 330 home alternative are not legally sufficient. The first reason involves circular logic, and in any event, nothing in the 1994 development agreement mandates 1,453 homes. The second reason is startling, because the rest of the EIR assumes that we need a new road if we are to have a big project, but the passage just cited suggests that we need a big project in order to justify a new road. (Also, since the EIR does not tell us where the new road will be, it is hard to accept the idea that the project should go forward so that the City can receive the benefit of that unknown road.) The third reason seems illogical, since the land now is all open space, and presumably there would be even more open space left over if the project is to be limited to 330 homes. The fourth reason lacks evidence in the record, as to what unfulfilled housing needs the City is attempting to satisfy (see petitioners' opening brief at p. 92, lines 16-24).

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In their brief respondents provide a reason for rejecting this alternative that might have constituted substantial evidence, if it had been included in the EIR. They point out that any alternative that uses Bluff Street for primary access, even for a 330 homes, might have adverse environmental effects on the Banning Bench community. Opp. brief at p. 97, lines 26-28. Once again, however, the EIR is an informational document, and it did not discuss that possible shortcoming in discussing this alternative.

Similarly, the EIR discusses an alternative involving 1,193 homes, acknowledges that it will have a reduced environmental impact, but rejects that option. T28 AR 2370-2373. The reasons for rejecting it are: (1) "it would not be consistent with the approved Development Agreement for the project site which provides for the development of 1,500 units"; and (2) it would "not contribute to regional housing needs to the same extent as the proposed project due to the reduction in the number of units...." T28 AR 2373. Thus, these reasons overlap those given for rejecting the alternative of 330 homes, and they are not valid for the reasons set forth above.

We are left, then, with an EIR that identifies two alternatives as environmentally superior, and offers no good reason for rejecting them.

The Statement of Overriding Considerations may be found at T227 AR 11560-11561. Seven items are set forth therein. Item #1 states that the project will provide housing opportunities, but there is no evidence in the record of demand for such housing, or that the City or region is facing a shortage of housing. Again, the court finds persuasive the argument presented in petitioners' brief on this issue. On the other hand, respondents' arguments on this point, as set forth on page 99 of the opposition brief, essentially state that the population of the City is expected to grow, that the General Plan anticipates growth, and that population cannot grow without new houses. The court again finds this reasoning circular, and reminds the parties of the legal requirement that we not assume that growth is beneficial or detrimental. Cf. 14 CCR 15126.2 subd. (d).

Items #2, #3, #4, and # 6 are simply characteristics of the project. By example, item #2 states that the project will include recreational facilities for the residents, and item #6 says that some trails will be created for bicycle-riding and hiking in the project area. These are not overriding considerations at all—presumably the people who will move into the 1,453 new houses already have some means of recreation in their present places of residence, and we do not know if they will have more recreation or less if the Black Bench becomes their new locale. Similarly, item #3 reminds us that 869 acres of the project site would be preserved as open space, but as noted above, all 1,488 acres are open space now. It is not an overriding consideration to point out that the project design may be attractive, or that it does not consume all of the open space on the site. Item #4 just reminds us that some of the open space contemplated by this project would fall into a "Criteria Cell" area under the MSHCP. Again, it is not an overriding consideration that some natural habitat is preserved on the project site. More generally, simply restating a characteristic of the project falls short of the standard for overriding considerations as set forth in section 21081 as cited above.

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Item #5 states that construction of a north-south highway is an overriding consideration, but it is not, for the reasons set forth in the discussion of project alternatives, hereinabove. In addition, respondents again assume that "full build-out of the City" according to population growth projections, will require such a road "as the City continues to grow." Opp. brief at 99. Again, these arguments are tautological.

Finally, item #7 states that the project will bring revenue into the city, but there is no discussion of what ongoing costs it will impose, and we see no economic analysis that would permit the court to evaluate this possible overriding consideration. Respondents cite *Uphold Our Heritage v. Town of Woodside* (2007) 147 C.A. 4<sup>th</sup> 587 for the proposition that such economic analysis is required only in the context of evaluating the feasibility of project alternatives, but the case does not say that. In that case the court simply affirmed a trial court finding that an economic evaluation was necessary for a proposed alternative. In our case respondents are relying upon an economic reason as an overriding consideration, and certainly a party that relies upon an economic reason should offer an economic analysis.

Returning to the statute, none of the listed overriding considerations herein meet the standard of "specific economic, legal, social, technological, or other considerations..." PRC §21081 subd. (a)(3). Thus, since the EIR acknowledges that the project will have an unmitigated negative effect on air quality and traffic, and since no legally sufficient overriding considerations are set forth, mandate must be granted on this basis as well.

#### G. Non-CEQA Contentions

Petitioner Banning Bench attempts to set forth a non-CEQA basis for mandate in its second cause of action. The court finds that the contentions set forth therein lack merit. In the administrative proceedings respondents may indeed have assumed that implementation of the 1994 Development Agreement had importance, but it does not necessarily follow that the public hearings were a sham or that the applicable provisions of the *Government Code* were violated. Moreover, the Development Agreement specifically provided that future processing of a specific plan and subdivision map were subject to further requirements, including CEQA review.

#### CONCLUSION

As explained herein, the actions taken by the City of Banning with regard to the Black Bench project were in many respects contrary to the requirements of CEQA. Mandate must be granted for the reasons set forth above.

DATED: Jan. 29, 2008

T. Cahraman  
THOMAS H. CAHRAMAN  
JUDGE OF SUPERIOR COURT

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## **APPENDIX G**

**CITY OF STOCKTON, ORDINANCE NO. 018-07 C.S.,  
AN ORDINANCE AMENDING CHAPTER 16 OF THE STOCKTON MUNICIPAL  
CODE BY AMENDING TABLE 2-2 AND SECTIONS 16-230.090.C, 16-230.100, 16-  
230.110.E, AND 16-230.020 REGULATING AND LIMITING WAREHOUSE  
RETAIL STORES WITH REGARD TO DISCOUNT SUPERSTORES, ADOPTED  
AUGUST 14, 2007**

ORDINANCE NO. 018-07 C.S.

AN ORDINANCE AMENDING CHAPTER 16 OF THE STOCKTON MUNICIPAL CODE BY AMENDING TABLE 2-2 AND SECTIONS 16-230.090.C, 16-230.100, 16-230.110.E, AND 16-800.020 REGULATING AND LIMITING WAREHOUSE RETAIL STORES WITH REGARD TO DISCOUNT SUPERSTORES.

WHEREAS, the City Planning Commission, at its meeting of May <sup>10th</sup>~~24~~, 2007, denied a City-Initiated Code Amendment limiting warehouse retail stores in the City of Stockton; and

WHEREAS, pursuant to the provisions of Section 16-450.040 of the Stockton Municipal Code, Brad Venable, member of the Protect Weston Ranch Coalition, appealed the Planning Commission's decision to deny a Code Amendment to limit warehouse retail stores in the City of Stockton; and

WHEREAS, the City Council held a public hearing on August 14, 2007, regarding the above-mentioned appeal of the Planning Commission's decision; and

WHEREAS, the City Council voted 6-1 to approve the appeal and overturn the Planning Commission's decision to deny the Code Amendment (CA2-07) to limit warehouse retail stores in the City of Stockton based upon the following findings:

1. The proposed amendment ensures and maintains internal consistency with general land uses, objectives, policies, programs, and actions of all elements of the General Plan on balance and would not create any inconsistencies with this Development Code;
2. The proposed amendment will not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the City;
3. The proposed amendment would be internally consistent with other applicable provisions of this Development Code;
4. The proposed amendment would help to protect the long-term economic viability of neighborhood commercial centers (grocery-based anchor tenants could close down, resulting in increased vacancy rates and general physical deterioration or blight of the center as a whole).
5. The proposed amendment would help to reduce traffic congestion, including cross-town traffic, and its associated air pollution.

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6. The proposed amendment would help to maintain viable transportation patterns and help to prevent increased vehicle trips.
7. The adoption of the Ordinance is exempt from CEQA under various CEQA Guidelines. These Guidelines include Sections 15061(b)(3) (project exempt where there is no possibility that it would have a significant effect on the environment), 15305 (project exempt where it is only a minor alteration in land use limitations), and 15308 (action by a regulatory agency to protect the environment). Also, additional environmental review of the Ordinance is not required under CEQA because the City already prepared a program Environmental Impact Report (EIR4-88) for its General Plan, and the City's adoption of the Ordinance is within the scope of the Program EIR; Guidelines Sections 15183 and 15168 each provide independent authority for relying upon the General Plan EIR for the adoption of the Ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:**

**SECTION I. AMENDMENT OF CODE**

Chapter 16, Division 16-220, section 16-220.20 of the Stockton Municipal Code is hereby amended to add Warehouse Retail Stores to Table 2-2 and shall read as follows:

**Table 2-2 – Allowable Land Uses and Permit Requirements**

Warehouse retail stores – Specific use standards: 16-230.090, 100, 110; 16-365.310

**SECTION II. AMENDMENT OF CODE**

Chapter 16, Section 16-230.090 of the Stockton Municipal Code is hereby amended and shall read as follows:

**16-230.090 – CG (Commercial, General) Zoning District Standards**

The following standards shall apply to land uses and development within the CG (Commercial, General) zoning district.

- A. **Indoor use requirement and exceptions.** Proposed development and new land uses within the CG (Commercial, General) zoning district shall be conducted entirely within an enclosed structure, except that:

1. Storage and sales areas may be located outside if screened from the visible rights-of-way and/or are in compliance with the requirements for Outdoor Display and Sales (16-365.230).
2. Outdoor dining shall be allowed in compliance with 16-365.220 (Outdoor Dining and Seating Areas).

**B. Motion picture theaters – Limitation on use.** Motion picture theaters located in the CG zoning district shall contain no more than five viewing screens or 499 total seats, including new construction, expansion, conversion, or renovation of a theater of more than five viewing screens or 500 or more total seats or any other structure existing on the same or adjoining parcels or within 1000 feet of another theater.

**C. Warehouse Retail Stores – Limitation on use.** Warehouse retail stores located in the CG zoning district that devote ten percent or more of the total sales floor area to the sale of non-taxable merchandise shall contain no more than 100,000 square feet of gross floor area, except for stores charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee.

### **SECTION III. AMENDMENT OF CODE**

Chapter 16, Section 16-230.100 of the Stockton Municipal Code is hereby amended and shall read as follows:

#### **16-230.100 – CD (Commercial, Downtown) Zoning District Standards**

The following standard shall apply to land uses and development within the CD (Commercial, Downtown) zoning district.

**Warehouse Retail Stores – Limitation on use.** Warehouse retail stores located in the CD zoning district that devote ten percent or more of the total sales floor area to the sale of non-taxable merchandise shall contain no more than 100,000 square feet of gross floor area, except for stores charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee. Warehouse retail stores shall not be subject to the requirements for Shopping Centers and Large-Scale Commercial Retail Uses (16-365.310).

### **SECTION IV. AMENDMENT OF CODE**

Chapter 16, Section 16-230.110 of the Stockton Municipal Code is hereby amended and shall read as follows:

**16-230.110 – CL (Commercial, Large-Scale) Zoning District Standards**

The following standards shall apply to land uses and development within the CL (Commercial, Large-Scale) zoning district:

- A. **Minimum site area.** The CL zoning district shall only be applied to a site with a minimum area of 25 acres. If an existing developed site in the CL zoning district is less than 25 acres, the structures may be added to, enlarged, extended, reconstructed, relocated, or structurally altered in compliance with 16-750.040.D.3 (Provisions for Nonconforming Uses, Structures, and Parcels – Substandard Parcels or Zoning District Areas).
- B. **Use Permit requirement.** A Project Plan in compliance with 16-365.310.C (Shopping Centers and Large-Scale Commercial Retail Uses – Shopping Center Project Plan) showing the entire proposed development for the project site shall be submitted for approval as part of a Commission Use Permit in compliance with Division 16-575 (Use Permit) for the original project. All development on the project site shall be in compliance with the Project Plan.
- C. **Indoor use requirements and exceptions.** Proposed development and new land uses within the CL (Commercial, Large-Scale) zoning district shall be conducted within enclosed structures, except for:
  - 1. Automotive service stations (fueling stations), parking lots, and outdoor advertising signs;
  - 2. Storage and sales areas if screened from the visible rights-of-way and/or are in compliance with the requirements for Outdoor Display and Sales (16-365.230);
  - 3. Outdoor dining in compliance with 16-365.220 (Outdoor Dining and Seating Areas);
  - 4. Promotional activities in compliance with the Use Permit and 16-230-110.E, below; and
  - 5. Mobile vendors and kiosks as defined in Article 8 (Definitions).
- D. **Motion picture theaters – Limitation on use.** Motion picture theaters located in the CL zoning district shall contain no more than five viewing screens or 499 total seats, including new construction, expansion, conversion, or renovation of a theater of more than five viewing screens or 500 or more total seats or any other structure existing on the same or adjoining parcels or within 1000 feet of another theater.
- E. **Warehouse Retail Stores – Limitation on use.** Warehouse retail stores located in the CL zoning district that devote ten percent or more of the total sales floor area

to the sale of non-taxable merchandise shall contain no more than 100,000 square feet of gross floor area, except for stores charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee.

- F. **Shopping center promotional activity.** Outdoor promotional activities, including carnivals, fairs, festivals, flea markets, food events, fund-raisers, haunted houses, outdoor entertainment/ sporting events, public relations activities, vehicle/motorcycle/recreational vehicle shows, rummage sales, second hand sales, and other similar events designed to attract large crowds may be held by shopping centers in compliance with the following:
1. The total length of the promotional activity (from setting up to taking down any promotional structures) shall be no more than 96 hours;
  2. The location of the promotional activity is:
    - a. At least 300 feet from any residentially zoned property; and
    - b. Consistent with the Use Permit for the shopping center;
  3. Does not create objectionable dust, noise, odors, smoke, vibrations, or similar actions beyond the level of ordinary neighborhood retail establishments and the requirements of Division 16-305 (General Performance Standards); and
  4. The Chief of Police is notified at least 21 days before the promotional activity.

## **SECTION V. AMENDMENT OF CODE**

Chapter 16, Section 16-800.020 of the Stockton Municipal Code is hereby amended to add the following definitions and shall read as follows:

### **16-800.020 – Definitions of Specialized Terms and Phrases**

**Discount Superstores.** General retail stores that contain a full service grocery department under the same roof that shares entrances and exits with the rest of the store area, exceed 100,000 square feet of gross "sales floor area," and devote at least ten percent of the total sales floor area to the sale of "non-taxable merchandise." See Division 16-230.

**Non-taxable merchandise.** Products, commodities, or items the sale of which is not subject to California State sales tax.

**Sales floor area.** Interior building space devoted to the sale of merchandise; it does not include restrooms, office space, storage space, automobile service area, open-air garden sales space, or outdoor sales areas.

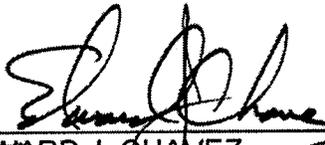
**Warehouse Retail Stores (land use).** General merchandise retail stores that emphasize the packaging and sale of products in large quantities or volumes, some at discounted prices. Sites and buildings are usually large and industrial in character. Patrons may or may not be required to pay membership fees. These stores usually offer a variety of customer services, centralized cashing, and a wide range of products. They usually maintain long store hours seven days a week. Includes big box retail facilities, discount stores, club stores, membership stores, and "discount superstores" (see Division 16-230). Does not include the sale or rental of motor vehicles ("Auto and Vehicle Sales, Leasing, and Rental-New"; "Auto and Vehicle Sales, Leasing, and Rental - Used"); the sale of construction and building materials ("Building materials stores"); Department stores ("Retail, General").

**SECTION VI. EFFECTIVE DATE.**

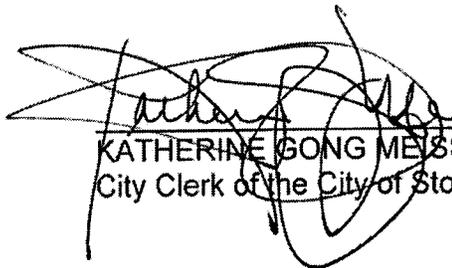
This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED:     AUG 14 2007    

EFFECTIVE:     SEP 13 2007    

  
EDWARD J. CHAVEZ  
Mayor of the City of Stockton

ATTEST:

  
KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton



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