

<p>HUTCHINS STREET SQUARE CHARLENE POWERS LANGE THEATRE 125 S. HUTCHINS ST. LODI, CALIFORNIA</p>	<p>AGENDA LODI PLANNING COMMISSION</p>	<p>SPECIAL SESSION WEDNESDAY, APRIL 8, 2009 @ 6:00 PM</p>
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For information regarding this agenda please contact:

**Kari Chadwick @ (209) 333-6711
Community Development Secretary**

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

1. ROLL CALL

2. PUBLIC HEARINGS

- a. Request of Browman Development Company and Wal-Mart Real Estate Business Trust to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and approve Vesting Tentative Map 03-P-001 to create 12 parcels for the project; and site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive. In addition, the Planning Commission will consider adopting the findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

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

3. COMMENTS BY THE PUBLIC

4. COMMENTS BY THE PLANNING COMMISSIONERS & STAFF

5. ADJOURNMENT

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

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

Right of Appeal:

If you disagree with the decision of the commission, you have a right of appeal. Only persons who participated in the review process by submitting written or oral testimony, or by attending the public hearing, may appeal.

Pursuant to Lodi Municipal Code Section 17.72.110, actions of the Planning Commission may be appealed to the City Council by filing, within ten (10) business days, a written appeal with the City Clerk and payment of \$300.00 appeal fee. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code. Contact: City Clerk, City Hall 2nd Floor, 221 West Pine Street, Lodi, California 95240 – Phone: (209) 333-6702.

**LODI
PLANNING COMMISSION
Staff Report**

MEETING DATE: April 8, 2009

APPLICATION NO: Use Permit U-02-12,
Vesting Tentative Map 03-P-001
Site Plan and Architectural Review 08-SP-08

REQUEST: The request of Browman Development Company to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center. Specifically, to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Vesting Tentative Map 03-P-001 to create 12 parcels for the project. Finally, to approve the SPARC application concerning the Wal-Mart building.

LOCATION: 2640 West Kettleman Lane. Approximately 40 acres located at the southwest corner of west Kettleman Lane/State Route 12 and Lower Sacramento Road in west Lodi.

APPLICANT: Browman Development Company
100 Swan Way, Suite 206
Oakland, CA 94621

PROPERTY OWNER: Browman Development Company & Wal-Mart Real Estate
100 Swan Way, Suite 206 Business Trust
Oakland, CA 94621 Mail Stop 0555
Bentonville, AR 72716-0555

RECOMMENDATION: Staff recommends that the Planning Commission approve the Use Permit, Vesting Tentative Map, and SPARC requests subject to the conditions listed in the Draft Resolution as attached.

PROJECT/AREA DESCRIPTION

General Plan Designation: NCC, Neighborhood / Community Commercial.

Zoning Designation: C-S, Commercial Shopping District.

Property Size: Approximately 40 acres, 36 acres for the shopping center development and 4 acres adjacent and southwest of the shopping center site for construction of a stormwater detention drain.

Adjacent General Plan, Zoning and Land Use:

North (across W. Kettleman Ln): General Plan; NCC, Neighborhood Community Commercial
Zoning; C-S, Commercial Shopping Center
Land Use; The Vintner's Square Shopping Center anchored by
the Lowe's Home Improvement store

- South:** General Plan; LDR, Low Density Residential
Zoning; PD, Planned Development
Land Use; Currently Agricultural planted as a vineyard, but planned as the Southwest Gateway planned residential community
- West:** General Plan; PQP, Public/Quasi Public & HDR, High Density Residential
Zoning; PUB, Public & PD, Planned Development
Land Use; Currently agricultural, but planned for a utility substation and higher density residential as part of the Southwest Gateway planned residential community
- East (across Lower Sacramento Rd.):** General Plan; NCC, Neighborhood Community Commercial
Zoning; C-S, Commercial Shopping Center
Land Use; The Sunwest Plaza Shopping Center currently anchored by the existing Wal-Mart, J.C. Penny and the Food 4 Less Grocery Store.

BACKGROUND:

March 11, 2009, the Lodi City Council certified the Final Revised Environmental Impact Report (FREIR) for the Lodi Shopping Center project. The action took place as a result of two appeals that were filed concerning the Planning Commission’s decision to not certify the document at their October 8, 2008 meeting. At that October meeting, the balance of the requests that have been submitted were tabled in order for final action on the environmental document to take place. With the Council action, those requests are now back before the Commission for consideration.

PROJECT DESCRIPTION:

Use Permit and Tentative Map Analysis:

Approximately 18 years ago, the City’s General Plan designated the southwest corner of West Kettleman Lane/State Route 12 and Lower Sacramento Road for the construction of large-scale retail development. Since that time, the centers on the other three corners have built out as envisioned. Major national retailers such as Wal-Mart, J.C. Penney, Target, and Lowe’s have occupied these corners. The Lodi Shopping Center is proposed on the remaining fourth corner to be anchored by a Wal-Mart Supercenter. This type and scale of development is consistent with the activity that has occurred at the other three corners.

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

The proposed project includes the construction of approximately 339,966 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 12 buildings of varying sizes. The primary use will be a Wal-Mart Supercenter which will occupy approximately 226,868 square feet of floor area, including approximately 70,000 square feet for grocery sales, 19,889 square feet for a garden center (including outdoor fenced area), and 6,437 square feet for an auto service shop. The Wal-Mart

Supercenter will not include the use of outdoor metal storage containers, and will not include a seasonal sales area in the parking lot.

A moderate sized retailer will occupy approximately 35,000 square feet on pad 12 in the southeast corner of the site. The remaining 11 buildings will range in size from 3,200 square feet to 14,788 square feet. Three of the 11 buildings will be occupied by fast food franchises, with another two buildings consisting of sit-down restaurants, and the remaining buildings occupied by such retail uses such as financial services/bank, professional/business services, and other retail sales and services.

The uses, layout and design of the shopping center has remained the same as that presented to and approved by the Planning Commission in December, 2004. The Wal-Mart building is located at the southwestern corner of the site, with 11 freestanding buildings located along Kettleman Lane and Lower Sacramento Road to the north and east. In the center of the shopping center is the main parking lot. The proposed vesting tentative map includes the Wal-Mart store and all corresponding parking in the largest lot (lot 12, 18.3 acres), with each of the remaining 11 buildings on their own lot with associated parking. These other lots are generally one+/- acre in size, with the smallest (lot 8) being 0.53 AC and the largest (lot 11) being 2.6 AC. Internal travel lanes, parking medians and planters are located through-out the interior. Access to the Center is mainly from Westgate Drive and Lower Sacramento Road, with right turn in and out only from Kettleman Lane. As shown on the site plan, significant public improvements are required in order to build this project, as detailed in the draft conditions in the accompanying resolution of approval. The applicant will be responsible for the construction of Westgate Drive from Kettleman Lane to the southerly project boundary as well as the frontage improvements on Kettleman Lane and Lower Sacramento Road. The applicant is also responsible for the approximately four acre site across Westgate Drive to be used for storm water detention, all associated project right-of-way dedications, utility easements, engineering reports and studies, and fees. An encroachment permit from CalTrans for Kettleman Lane / State Route 12 will be needed.

Conditions in the draft Resolution cover fire safety, outdoor storage or display of merchandise, shopping cart storage, security and exterior lighting. Consistent with the prior approval by the City Council, conditions relative to re-use of the existing Wal-Mart building are also included. Further, even though a CEQA environmental impact as to urban decay or physical deterioration from the Lodi Shopping Center cannot be made, the Planning Commission can make a decision that the economic effects of the Center on the Downtown should be addressed. To this end, staff is proposing a condition to require the Lodi Shopping Center to invest in the Downtown area. The aggregate value of the capital improvement must exceed \$700,000. Finally, a condition is included to incorporate all mitigation measures as specified in the certified FREIR.

The Use Permit will allow the sale of alcoholic beverages, for the Supercenter's use. No Use Permit for alcohol for any of the freestanding buildings has been applied for or is under consideration. The tenants of these freestanding buildings are not known to staff and have not been included in this request. Any such request in the future would require a Planning Commission Hearing at that time when the specific details of the requesting business are known. The Planning Commission has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart Supercenter. As such, staff is recommending that the Planning Commission approve the request to sell alcohol.

The second Use Permit request emanates from the C-S zoning designation which specifically states that a "detailed plot plan of the proposed construction" be submitted to the Planning Commission. The design standards identified in the code are as follows:

- A. The site shall be designed and used as a unit, regardless of ownership of the land and buildings.
- B. All streets bordering the site shall be fully dedicated and improved by the developer.
- C. The design of the development shall include the landscaping of buildings and parking areas, the screening of nearby residential areas, and the enclosure or shielding of trash and disposal areas. Lights and signs shall be located to avoid disturbance to residential areas.
- D. Driveways, parking areas and loading areas shall be located so as to minimize traffic interference.

It is staff's opinion that the Planning Commission has little discretion regarding this Use Permit. Effectively, Section 17.58 of the Municipal Code adds additional design requirements to the project. These standards were adopted in 2004 specifically to deal with the design of large scale retail establishments like Wal-Mart. The applicant has met or exceeded each of these standards as presented and conditioned. Therefore, staff is recommending that the Planning Commission approve this request.

As previously discussed in the analysis, a vesting tentative map approval is requested to divide the site into 12 lots. The applicant has met the requirements of the City's subdivision ordinance and the State Subdivision Map Act. Staff recommends approval of this action and has included vesting tentative map conditions in the draft resolution.

SPARC Review:

Along with the plot plan and tentative map for the Lodi Shopping Center, preliminary elevations and colors for the Wal-Mart Supercenter have been submitted. No elevations or colors, landscaping plan, signage plan, materials, or other final plans for the rest of the Center or buildings have been submitted. As mentioned, this shopping center is subject to the City's Design Standards for Large Retail Establishments. The overall site layout, building footprints, parking areas, and access driveways provide the overall direction of the Center and were used by staff and the Planning Commission in the December 8, 2004 review to determine that this project complies with the Design Standards for Large Retail Establishments. As such, no further design, layout, or changes have been proposed.

The proposed project includes the construction of a new Wal-Mart Supercenter store with a building size of approximately 226,868 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road. The Wal-Mart Supercenter building is a single story structure. The architectural theme of the building is a contemporary style and uses construction materials commonly used in commercial shopping center construction. Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building. The major materials used for architectural treatment include fawn (brown) colored stucco, fawn (brown) cultured stone veneer, split face (light brown) block, sea-green colored smooth finish metal panels, charcoal roofing material, hallow (gunmetal gray) metal doors and cornices, and black fencing. The body of the building will be in shades of brown. The ground level will have fawn (brown) colored stucco walls with fawn colored stone veneer accent walls near key entrances and along the lower eight feet of the exterior wall. The architectural treatment features are mostly used on the north and east elevation. Also on the main entrance, a canopy type architectural feature is proposed. The proposed main entry canopy will be clad with a brown cultured stone finish.

The west and south elevations do not feature the same detailed architectural treatment. The west (rear) elevation is a continuous wall with little architectural treatment to breakup the elevation of the building. The entire west elevation will have fawn (brown) colored stucco walls with metal doors painted to match the stucco. Cornices and accent trims are provided to break up the wall elevation. The ground level will also have cultured veneer stone elements. The midsection of the western elevation should receive further architectural treatment to add architectural interest to the wall. It is important to note that this elevation will be visible from across Westgate Drive.

The southern elevation will feature nearly identical architectural treatment as the west elevation. However, the proposed southern elevation is less of an issue. First, there will be an 8-foot tall masonry wall on the southern property line to block any view of this elevation from the project to the south. Second, unlike the western elevation, the southern elevation is not a continuous large mass elevation. Because the main axis of the building faces west (the longest elevation), the south elevation is the side of the building and is relatively small in size in comparison. A condition of approval is included in the SPARC Resolution regarding additional architectural treatment for the west elevation.

Circulation and Parking

The site plan indicates six access points to three public streets. There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (HWY 12), and two from Westgate Drive. All three streets will have a raised center median that will restrict turning movements in some degree. The main entrance to the project parking lot is from Lower Sacramento Road and will be located near the middle of the project site. This entrance will have a traffic signal to control traffic flow and will allow both entering and exiting traffic to turn in both directions. The other access points from Lower Sacramento Road will be restricted to right turn in and right turn out movements. The direct driveway entrance from Kettleman Lane (Hwy. 12) will only permit a right-turn in and right-turn out traffic movement. Traffic can also access the shopping center from Kettleman Lane by way of Westgate Drive. This intersection is controlled by an existing traffic signal that will allow both right and left turning movements. The main (northern) access point from Westgate Drive will allow both right and left hand tuning movements. The southern access point will only allow right in, right out movements. Circulation to and from the site is very similar to the Vintners Square Center (Lowe's) to the north.

The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed (4.45/1000). A total of 434 parking spaces are required, per City code (General Retail 1/500). The proposed number of parking stalls exceeds the minimum parking requirements.

There are 12 cart corrals proposed to be distributed throughout the parking lot. These cart corrals will be screened in brown CMU wall with wooden frames to provide additional ornamentation.

Landscaping and Signage

The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping of the building. Signage applications and approvals would be done separately, should the project be approved.

PUBLIC HEARING NOTICE:

Legal Notice for the Use Permit and Vesting Tentative Map was published on March 28, 2009 in the Lodi New Sentinel. The item was posted at City Hall and at the City of Lodi Library on March 26, 2009. 62 public hearing notices were sent out through the combination of the U.S. Postal Service and electronic mail which included all property owners of record within a 300-foot radius of the subject property as required by Government Code section 65091(a)3.

CONCLUSION:

Based on the fact that the applicant has met all of the City's requirements for these requests, staff recommends that the Planning Commission approve Use Permit U-02-12, Vesting Tentative Map 03-P-

001and that the Planning Commission approve Site Plan and Architectural Review for the Wal-Mart building 08-SP-08, P.C. 09-____

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Approve with additional/different conditions
- Deny the Use Permit/Tentative Map
- Continue the requests

Respectfully Submitted,

Konradt Bartlam
Community Development Director

ATTACHMENTS:

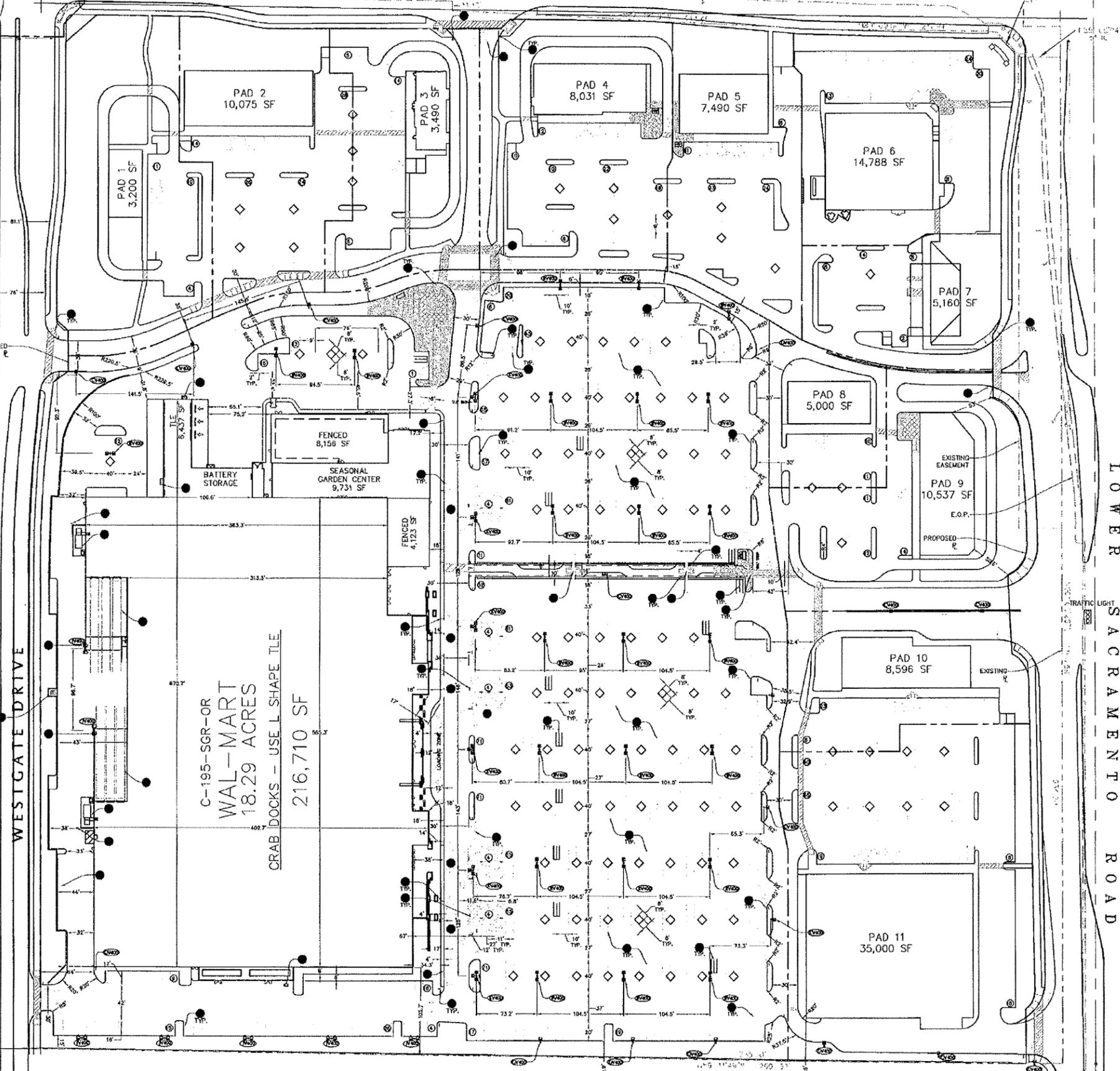
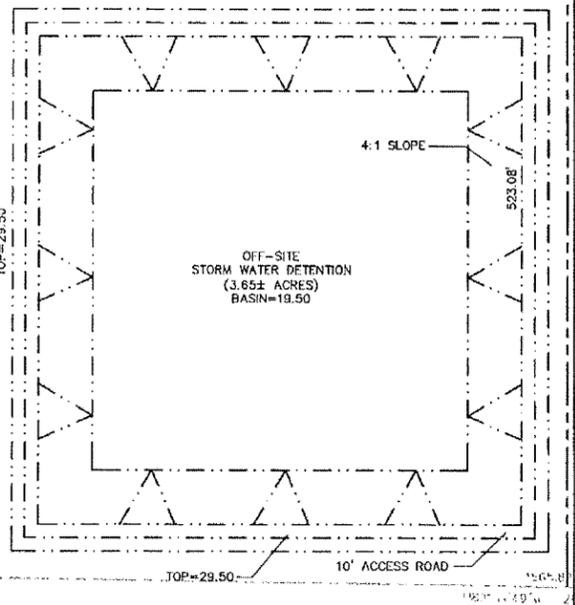
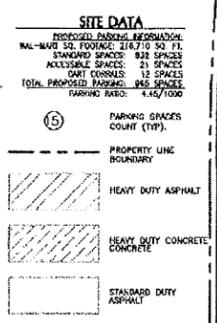
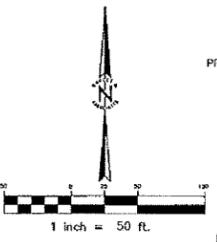
1. Vicinity Map
2. Site Plan
3. Vesting Tentative Map
4. Wal-Mart Elevation and Hardscape Plan
5. Draft P.C. Resolutions; PC 09-____
6. City Council Resolution 2009-27
7. Comment Letters

Vicinity Map



SITE NOTES

- AREA STRIPED WITH 4" SYSL AT 45° @ 2'-0" O.C.
 - ACCESSIBLE RAMP. SEE DETAIL 9 ON SHEET C-8.3.
 - PEDESTRIAN CROSSING SIGN W10-2 AND W10-2p TYPICAL AT PEDESTRIAN CROSSWALKS AS NOTED ON PLANS. SEE DETAIL 2 ON SHEET C-8.3.
 - "YIELD" PAINTED YELLOW ON PAVEMENT TYPICAL. SEE DETAIL 5 ON SHEET C-8.1.
 - ENHANCED PAVEMENT AREA. SEE ARCHITECTURAL PLANS FOR DETAILS.
 - ENT FORDN. SEE ARCHITECTURAL PLANS FOR EXACT SIZE, LOCATION FOR STAIRS, STAIRS AND/OR RAMPS THAT MAY BE REQUIRED. RAMP PAVEMENT FLUSH WITH THE TOP OF STAIR.
 - 6" PIPE BOLLARD TYPICAL UNLESS NOTED OTHERWISE. SEE DETAIL 2 ON SHEET C-8.7.
 - CART CROSSING SIGN. SEE DETAIL 1 ON SHEET C-8.7 AND DETAIL 10 ON SHEET C-8.2.
 - 4" WIDE x 112" LONG YELLOW PAINTED TRUCK ALIGNMENT STRIPES.
 - CONCRETE COMPACTOR PAD. REFER TO ARCHITECTURAL PLAN FOR EXACT LOCATION AND SLOPE.
 - ACCESSIBLE PARKING SPACE TYPICAL. SEE DETAIL SHEET FOR ACCESSIBLE PARKING SPACE SIZE, SIGN AND SYMBOL. (PAV-B INDICATES VAN ACCESSIBLE SPACE). SEE DETAIL 3 ON SHEET C-8.1 & DETAIL 9 ON SHEET C-8.2.
 - CONCRETE TRANSFORMER PAD. CONTRACTOR TO COORDINATE WITH LOCAL POWER COMPANY FOR DETAILS.
 - PLACE STOP SIGN & PAINT STOP BAR & "STOP" PER DETAIL 6 ON SHEET C-8.1 AND DETAIL 1 ON SHEET C-8.2.
 - PEDESTRIAN CROSSWALK. EDGE LINES PAINTED 5/8" WITH INSIDE STRIPING PAINTED 3/4" AT 2'-0" O.C. PERPENDICULAR TO EDGE LINES. SEE DETAIL 7 ON SHEET C-8.1.
 - CART CORRAL. SEE DETAIL 5 ON SHEET C-8.7.
 - A.D.A. SITE ENTRANCE SIGN. SEE DETAIL 5 ON SHEET C-8.2.
 - 4" PAINTED YELLOW STRIPING AT 2'-0" O.C. (TYP). PERPENDICULAR TO PARKING SPACE. SEE DETAIL 8 ON SHEET C-8.2 (TYP).
 - 24" CONCRETE CURB AND OUTER. SEE DETAIL 8 ON SHEET C-8.3.
 - TRAFFIC FLOW ARROW. SEE DETAIL 1 SHEET C-8.1.
 - CONCRETE (TYP). SEE DETAIL 7 ON SHEET C-8.3.
 - MONUMENT SIGN (SEE ARCHITECTURAL PLANS).
 - ASKE INDICATOR SIGNS (TYP). SEE DETAILS 9 & 11 ON SHEET C-8.2.
 - CART CROSSING WITH WALK. SEE DETAIL 1 ON SHEET C-8.7.
 - "NO TRUCKS" SIGN. SEE DETAIL 4 ON SHEET C-8.2.
 - "TRUCK DRIVE" SIGN. SEE DETAIL 3 ON SHEET C-8.2.
 - "RIGHT TURN ONLY" SIGN. SEE DETAIL 12 ON SHEET C-8.2.
 - 10'x45' PALLET/BALE STORAGE AREA.
 - TRUNCATED DORIES. SEE DETAIL 4 ON SHEET C-8.7.
 - SAWCUT EXISTING EDGE OF PAVEMENT TO FORM A SMOOTH UNIFORM LINE. PLACE PROPOSED PAVEMENT AGAINST SAWCUT LINE & MATCH EXISTING GRADE.
 - AT GRADE OVERHEAD DOOR LOCATION. SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION FOR COORDINATION WITH CIVIL PLANS.
 - PLACE GREASE/OIL INTERCEPTORS. SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION.
 - REFER TO SHEET C-8.1 FOR THE LOCATION OF THE PROPOSED 10'x45' PALLET/BALE STORAGE AREA.
 - REFER TO SHEET C-8.1 FOR THE LOCATION OF THE PROPOSED 10'x45' PALLET/BALE STORAGE AREA.
 - MOUNT SECURITY CAMERA TO LIGHT POLE. SEE DETAIL 6, SHEET C-8.7.
 - GRIND DOWN EXISTING STRIPING & REPLACE WITH NEW PROPOSED STRIPING.
 - SEE DETAIL 5 ON SHEET C-8.1 FOR TYPICAL PARKING STALL STRIPING DETAIL.
 - TRANSFORMER PAD. SEE ARCHITECTURAL PLANS FOR EXACT LOCATION.
- * ALL PARKING LANDSCAPE ISLANDS RADIUS ARE 10' & 3', UNLESS OTHERWISE STATED ON SITE PLAN.



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WAL-MART

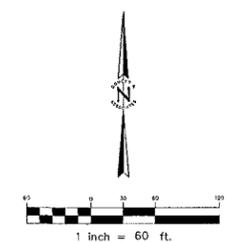
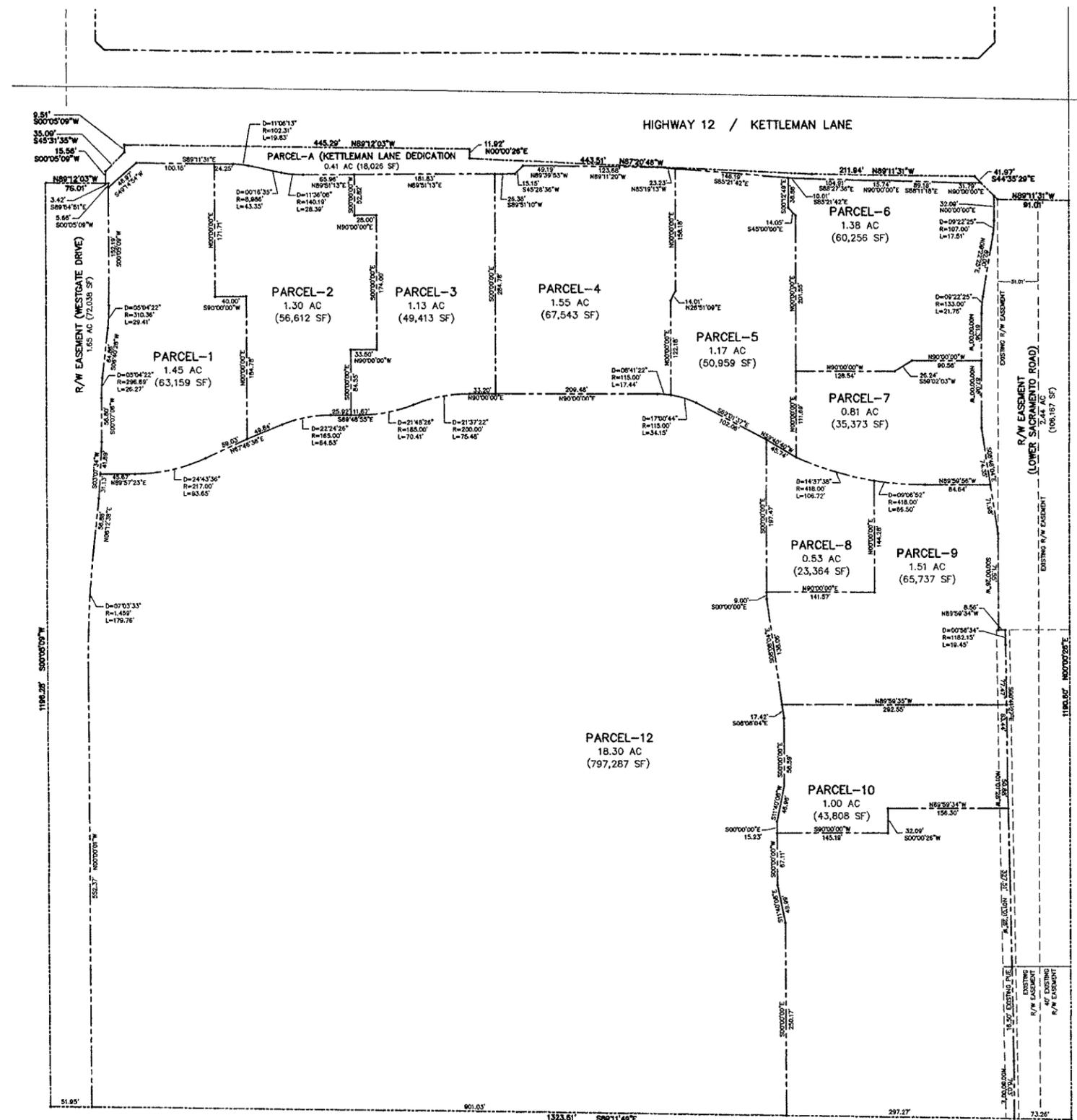
SUPERCENTER #1789-03
 KETTLEMAN LANE, HWY. 12
 LODI, CA
 SITE/HORIZONTAL PLAN

NO.	REVISION	DATE	DRAWN	APPROV.

Scale: 1" = 50'
 Design: JF/AV
 Drawn: JF/AV
 Reviewed: SW
 Date: Dec. 13, 2004

SHEET
C-2.1
 OF 34

Project No: 001-272



Vesting Tentative Map
 Lot Layout
 for
 Lodi - III
 APNs: 058-030-01 & 058-030-02
 County of San Joaquin, California
 August 15, 2008
 Sheet 2 of 2



DA Doucet & Associates, Inc.
 1025 Creekside Ridge Drive, Suite 175
 Roseville, CA 95678-1936, Phone: (916) 780-2005 Fax: (916) 780-2015
 www.doucetandassociates.com



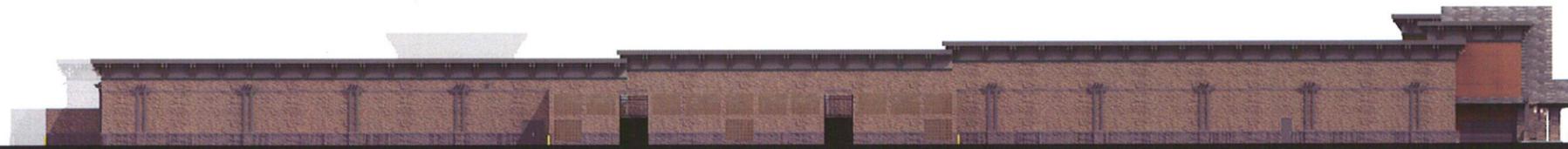
EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

Elevations

Project No:	NCA WME: 02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucetus Design	
Checked By:	PLR	
DC:	WAP	

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WAL*MART

Lodi, California
Store No. 1789-03





Perspective 1
View Looking Northwest

Project No:	NCAWME-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucius Design	
Checked By:	PTB	
ADC:	WAP	

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WAL★MART

Lodi, California
Store No. 1789-03



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design development
consultants, inc.

1000 lakes drive, suite 405
west covina, ca 91790
p. 626.917.6888
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w. www.wp2dc.com



Perspective 2

View Looking Northwest

Project No:	NCA WMT-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucrinas Design	
Checked By:	PLR	
SDC:	WAP	

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WALMART

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Store No. 1789-03



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Perspective 3

View Looking Southwest

Project No:	NCA WME-02-0206	REVISIONS
Client:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucius Design	
Checked By:	PLR	
DC:	WAP	

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Perspective 4

View Looking Southwest

Project No:	NCAWMT-02-0206	REVISIONS
Client:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucatus Design	
Checked By:	PLR	
DC:	WAP	

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WALMART

Lodi, California
Store No. 1789-03



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Perspective 5
View Looking Southwest

Project No:	NCA WMT-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucitus Design	
Checked By:	PLR	
SDC:	WAP	

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WALMART

Lodi, California
Store No. 1789-03



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Perspective 6
View Looking Southeast

Project No:	NCA WME-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucitus-Design	
Checked By:	PLR	
ADC:	WAP	

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WAL★MART

Lodi, California
Store No. 1789-03



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KETTLEMAN ROAD HIGHWAY 12



SUGGESTED PLANT LIST

TREES:	COUNT
SEQUOIA SEMPERVIRENS SAGEWELL COAST REDWOOD	87
LIRIODENDRON TULIPIFERA TULIP TREE	26
PYRUS CALLERYANA ARISTOCRAT FLOWERING PEAR TREE	73
CELTIS OCCIDENTALIS HACKBERRY	68
LASERSTROEMIA TUBERCOSA AND MUXBARRIE CRAPE MYRTLE	97
FRAXINUS RAYWOOD RAYWOOD ASH	40
PLATANUS RACEMOSA BLOODGOOD BYCAMORE	-
MALUS PRARIFERE CRABAPPLE	63
PODOCARPUS GRACILIOR FERN PINE	25
ALL 1/2 GALLON SIZE TOTAL COUNT:	475

SHRUBS AND ACCENTS:

- PITTOSPORUM TOBRA VARSATA VARSATED TOBRA
- LIGUSTRUM JAPONICUM TEXANUM JAPANESE PRIVET
- RHAPHOLEPS JACK EVANS PINK INDIA HAWTHORNE
- RHAPHOLEPS CLARA WHITE INDIA HAWTHORNE
- PLUMBAGO AURICULATA CAPE PLUMBAGO
- PRUNUS CAROLINIANA COMPACTA DWARF CAROLINA LAUREL CHERRY
- ESCALONIA TERRE DWARF ESCALLONIA
- BUXUS JAPONICA GREEN BEAUTY JAPANESE BOXWOOD
- PHOTNIA FRASER RED PHOTNIA
- PHORUM TENAX RUBRUM RED FLAX
- DISTIS BICOLOR YELLOW BUTTERFLY RB
- PHORUM TENAX PINK STRIPE PINK STRIPE FLAX FLAX
- AGAPANTHUS AFRICANUS WHITE LILY OF THE NILE
- HEMEROCALLIS YELLOW EVERGREEN DAYLILY

GROUND COVERS:

- COPROSMIA KRKI PROSTRATE COPROSMIA
- TRACHELOSPERMUM JASMINODES STAR JASMINE
- GAZANIA MTSUWA YELLOW YELLOW GAZANIA
- LANTANA PURPLE YELLOW LANTANA
- SOD LAWN

NOTE THAT THIS PLAN IS CONCEPTUAL IN NATURE, NOT ALL SHRUBS OR PLANTING MAY BE SHOWN, TREES SPECIES AND COUNT IS REPRESENTATIVE OF WHAT WILL BE SHOWN ON THE CONSTRUCTION DOCUMENTS.
 ALL PLANTERS SHALL BE PLANTED WITH GROUND COVERS OR SHRUBBERY GROUPINGS.
 ALL PLANTERS ARE TO BE MULCHED WITH A 2" LAYER OF BARK MULCH.
 THE IRRIGATION SYSTEM SHALL BE AN AUTOMATIC UNDERGROUND TYPE USING LOW VOLUME, MULTI-OUTLET DRIP BUBBLERS WITH 1/4" TUBING TO EACH INDIVIDUAL PLANT, OR IN-LINE DRIP TUBING AND POPUP, LOW VOLUME SPRAY HEADS.
 ALL LANDSCAPING SHALL BE IN COMPLIANCE WITH THE CITY OF LODI'S WATER USE LANDSCAPING GUIDELINES.

JAMES FERGUSON CLABAUGH
 LANDSCAPE ARCHITECT
 4536 SHAWN LANE
 VACAVILLE, CA 95688
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LODI SHOPPING CENTER
 LOWER SACRAMENTO ROAD AND KETTLEMAN ROAD, LODI, CALIFORNIA

Scale	1" = 60'	REVISIONS
Date	7/15/05	No. Date
Job No.		
Designed by	J.C.	
Drawn by	J.C.	

PRELIMINARY LANDSCAPE PLAN

Sheet No. **PL-1**
 of 1

SITE PLAN
 SCALE: 1" = 60' - 0"

RESOLUTION NO. P.C. 09-____

A RESOLUTION OF THE LODI PLANNING COMMISSION APPROVING USE PERMIT FILE NO. U-02-12 TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER; APPROVING THE TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER; PROVIDING THE ARCHITECTURAL APPROVAL FOR A NEW COMMERCIAL BUILDING TO BE CONSTRUCTED AT 2640 W. KETTLEMAN LANE (WAL-MART); AND MAKING FINDINGS AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

WHEREAS, the application is for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages, a Vesting Tentative Map to create 12 parcels for the project, and architectural approval of a new commercial building including elevations and colors to be used for the construction of a Wal-Mart store located at 2640 W. Kettleman Lane (the “Project”); and

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice, held a public hearing before said Commission on April 8, 2009; and

WHEREAS, the Project is consistent with all elements of the General Plan, and in particular, the following General Plan Goals and Policies:

- A. Land Use and Growth Management Element, Goal E, “To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi’s market share.”
- B. Land Use and Growth Management Element, Goal E, Policy 7, “In approving new commercial projects, the City shall seek to ensure that such projects reflect the City’s concern for achieving and maintaining high quality.”
- C. Land Use and Growth Management Element, Goal E, Policy 3, “The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways.”
- D. Housing Element, Goal C, “To ensure the provision of adequate public facilities and services to support existing and future residential development”.
- E. Circulation Element, Goal G, “To encourage a reduction in regional vehicle miles traveled.”
- F. Circulation Element, Goal A, Policy 1, “The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility.”

- G. Noise Element, Goal A, “To ensure that City residents are protected from excessive noise.”
- H. Conservation Element, Goal C, Policy 1, “The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices.”
- I. Health and Safety Element, Goals A, B, C, and D, “To prevent loss of lives, injury and property damage due to flooding.” To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake. To prevent loss of lives, injury, and property damage due to urban fires. To prevent crime and promote the personal security of Lodi residents.
- J. Urban Design and Cultural resources, Goal C, “To maintain and enhance the aesthetic quality of major streets and public/civic areas.”

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

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

WHEREAS, these findings, as well as the findings made within City Council Resolution No. 2009-027 certifying Final Revised Environmental Impact Report EIR-03-01, are supported by substantial evidence in the record of this proceeding and before this body; and

WHEREAS, approval of the requested architectural drawings will allow the construction of a commercial building that will comply with the City’s Zoning Ordinance and Building Code regulations; and

WHEREAS, the City of Lodi has invested over sixteen million dollars in its Downtown area to revitalize and create a specialty retail and commercial destination within the City; and

WHEREAS, the Lodi Shopping Center will create retail and commercial shopping opportunities outside of the Downtown area; and

WHEREAS, the City of Lodi is committed to revitalizing its Downtown area and is requiring that all new retail and commercial developments contribute to that effort; and

WHEREAS, the City of Lodi recognizes that the applicant will make an in kind contribution to the redevelopment of the Downtown area

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the Planning Commission hereby approves the Project subject to the following findings, conclusions, and conditions of approval:

California Environmental Quality Act (“CEQA”)

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The Planning Commission incorporates herein by reference City Council Resolution No. 2009-27, dated March 11, 2009 certifying the Final Revised Environmental Impact Report (“EIR”) for the Project and finds that the EIR, as revised, adequately identifies all significant environmental effects of the project pursuant to CEQA.
3. As provided by Public Resources Code section 21081, CEQA Guidelines sections 15091, 15092, and 15093, and other relevant provisions of CEQA, the Planning Commission hereby makes and adopts those Findings of Fact and Statement of Overriding Considerations (“Findings”) set forth in Exhibit A, attached hereto and incorporated herein by reference. The Planning Commission, exercising its own independent judgment, determines that such Findings are supported by substantial evidence in the record including, but not limited to, the information and materials contained in the EIR, as revised, all notices and other documents related thereto, those documents and materials described in California Public Resources Code section 21167.6(e), and those documents and materials referenced in the Findings.
4. The Planning Commission hereby approves and adopts each and every mitigation measure proposed in the EIR, as revised, (and as set forth in Exhibit A, attached hereto) and makes such mitigation measures a required component of and incorporated into approval of the Project. The Planning Commission further finds that, except as to impacts found by the EIR to be significant and unavoidable, implementation of the mitigation measures identified and discussed in the EIR will avoid or lessen to a level of less than significant those environmental effects identified in the EIR for which a mitigation measure is identified.
5. Pursuant to Public Resources Code section 21081.6, the Planning Commission hereby approves and adopts the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit B and incorporated herein by reference, which was prepared in conjunction with the EIR. The Mitigation Monitoring and Reporting Program is made a required component and condition of approval of the Project.
6. Because the adoption of all feasible mitigation measures will not substantially lessen or avoid all significant adverse environmental effects caused by the project, the Planning Commission adopts a Statement of Overriding Considerations concerning the Project's unavoidable significant impacts to explain why the Project's benefits override and outweigh its unavoidable impacts on the environment as set forth in Exhibit A.
7. The Planning Commission does hereby make its findings with respect to the significant effects on the environment resulting from the Project, as identified herein and in the hereinbefore mentioned EIR, with the stipulation that all information in the findings is intended as a summary of the full administrative record supporting the EIR, which full administrative record is available for review through the Director of Community Development at his office in Lodi City Hall at 221 West Pine Street, Lodi, 95241.
8. Having reviewed and considered the Draft and Final EIR for the Project, as revised, and other relevant materials and information in the record, the Planning Commission hereby approves the Project and makes the following specific findings relative thereto.

Tentative Map and Use Permit

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Said Tentative Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.
3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.
 - A. The approval of the Use Permit expires within 24 months from the date of this Resolution. Should any litigation be filed regarding this project, the time limit shown shall be tolled during the pendency of the litigation. Final Parcel Map(s) conforming to this conditionally approved Tentative Parcel Map shall be filed with the Public Works Department in time so that the Public Works Department may approve said map before its expiration pursuant to City Council Resolution 2008-125, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the Final Parcel Map(s), as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. The Public Works Department shall notify the City Council of any such approvals. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refiling of the Tentative Map and new review processing of the map.
 - B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant shall sign a notarized affidavit stating that "I (we), _____, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the Planning Commission approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.
 - C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.
 - D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:
 1. All buildings shall comply with the requirements of C-S zoning district and meet setback requirements from the right of way shown on the site plan. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
 2. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.

3. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
 4. All drive-through eating facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
 5. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited. Developer shall install landscaping, curbing and other features to discourage removal of carts from the site. However, if such features prove ineffective, the Planning Director may require the installation of a cart wheel locking system.
 6. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
 7. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center
 8. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
 9. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
 10. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards or concrete filled steel pipe bollards shall not be permitted.
- E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced within 30 days following written notice from the Community Development Director.
- F. The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:
1. Project must receive and comply with all terms of the Cal Trans encroachment Permit necessary for access to Highway 12 directly from the Project and from Westgate Drive. Any conditions imposed by Cal Trans for the encroachment permit that result in site plan modifications shall be reviewed by City staff for consistency with Project approvals.
 2. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
 - a) Street right-of-way dedications on Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations

resulting from Item #1 above. The dedications shall be to the approval of the Public Works Department.

- b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the lane geometries resulting from Item #1 above and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
 - c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements.
 - d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
 - e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.
3. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
- a) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank which may be outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.
 - b) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
 - c) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.

4. Provide a private access easement providing a clear path of travel for pedestrian traffic from the public right-of-way to all parcels within the boundaries of the map in conformance with ADA requirements.
 5. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.
 6. Submit final map per City requirements including the following:
 - a) Preliminary title report.
 - b) Standard note regarding requirements to be met at subsequent date.
 7. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
- G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:
1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
 - a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide a detailed drainage master plan, including engineering calculations, for the entire area as well as all phases of the proposed project. The developer's engineer shall prepare and submit a work plan/scope for master plan preparation for approval by the City Engineer prior to start of master plan work. Master plans need to be coordinated with the Southwest Gateway development. City staff will assist in the master planning process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.
 - b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
 - c) Grading, drainage and erosion control plan.

- d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
- e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
- f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
- g) Undergrounding of existing overhead utilities, excluding transmission lines.
- h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.
- i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the approval of the Public Works Department.
- j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
- k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package, including all the items listed above plus the Map/Improvement Plan Submittal cover letter, Improvement Plan Checklist and engineering plan check fees, is required to initiate the Public Works Department plan review process for the engineered improvement plans.

- 2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using approved flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, wastewater collection facilities shall be constructed to serve the project to the satisfaction of the Public Works Director.
- 3. Installation of all public utilities and street improvements in conformance with City of Lodi master plans and design standards and specifications, including, but not limited to, the following:
 - a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems in Westgate Drive, Kettleman Lane and Lower Sacramento Road.
 - b) All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require a Caltrans encroachment permit. The Caltrans encroachment permit submittal package shall include a terminal access route application for STAA trucks. Additional right-of-way acquisition outside the limits of the map may be required. The City of Lodi will assist the developer in obtaining the additional right-of-way that may be required.

Design and construction staking for the Kettleman Lane improvements will be performed by the City at the Developer's expense.

- c) Street improvements in Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations resulting from Paragraph F.1 above and landscaped median, parkway and sidewalk improvements required by the City. Developer shall have no obligation to do any work on Westgate Drive west of the westernmost curb.
- d) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to construct a driveway to the approval of the Public Works Director. Acquisition of additional right-of-way and construction easements from the adjacent property to the south (APN # 058-140-04) may be necessary to accomplish this work and shall be the responsibility of the developer.
- e) The extension/installation of all public utilities, including, but not limited to, the extension/installation of master plan water, wastewater, storm drainage and recycled water mains to the south end of Westgate Drive, the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive and the installation of recycled water main in Lower Sacramento Road and Westgate Drive from Kettleman Lane to the south project boundary. The cost of extending or installing recycled water mains shall be eligible for reimbursement. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
- f) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
- g) Project design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP.
 - i) The City's adopted Stormwater Development Standards for new projects in conformance with the conditions of the City's Stormwater Discharge Permit. *The design of projects containing more than 5,000 square feet of impervious area, retail gasoline outlets and trash enclosures is significantly affected by these Standards.* The project shall be required to comply with the requirements of the Standards.
 - ii) State-mandated construction site inspections to assure compliance with the City of Lodi Storm Discharge Permit are required. The fee for the inspections is the responsibility of the developer and must be paid prior to commencement of site grading and/or construction operations.
 - iii) If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.

The City and Applicant shall enter into an improvement agreement for the installation of public improvements required as part of the Project prior to the development of the first parcel.

- 4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved

by the City's Public Works Department. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. In the event the Utility Master Plan referenced in paragraph G.1.a) locates the permanent storm drainage basin in the same location as the temporary storm drainage basin, Project shall be entitled to reimbursement for its construction costs minus any cost to retrofit the temporary basin to serve as a permanent basin and meet public works permanent basin standards and specifications. Project's Stormwater Impact Fee shall be deferred pursuant to a Deferred Fee Payment Agreement as provided in Lodi Municipal Code Section 15.64.040 until such time as the reimbursement contingency set forth in this paragraph is resolved.

5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will not allow landscape and irrigation improvements within their right-of-way unless the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways.
6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

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

7. All project design and construction shall be in compliance with the Americans with Disabilities Act (ADA). Project compliance with ADA standards is the developer's responsibility.
8. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
 - a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
 - b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the south as shown on the site plan and construct a driveway to the satisfaction of the City's Public Works Department.
 - c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
 - d) Temporary storm drainage detention basin to serve the project.

9. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.
10. All property dedicated to the City of Lodi shall be free and clear of all liens and encumbrances and without cost to the City of Lodi and free and clear of environmental hazards, hazardous materials or hazardous waste. Developer shall prepare and submit a hazardous materials report and all property owners shall indemnify the City against any and all hazardous materials and/or ground water contamination existing on their individual property at the time of dedication for all property/easements dedicated to the City.
11. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.
12. The project shall provide for a prorated share of the on-going maintenance costs of median landscape improvements in Kettleman Lane, Lower Sacramento Road and Westgate Drive by annexation to the Lodi Consolidated Landscape and Maintenance District 2003-1 prior to acceptance of the public improvements. All costs associated with annexation to the District shall be the Developer's responsibility.
13. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
 - b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of building permit issuance.
 - c) Wastewater capacity impact fee at the time of building permit issuance.
 - d) County Facilities Fees at the time of building permit issuance.
 - e) Regional Transportation Impact Fee (RTIF) at the time of building permit issuance.
 - f) The City is currently developing a Water Capacity Impact Fee to pay for the costs to construct a water treatment plant necessary to provide water to the Project. In lieu of paying the fee as ultimately adopted, Project has agreed to pay a current fee estimate of \$765,050 (1.43 times project Sewer Service Units (SSU's) times \$5,000) prior to the development of the first parcel. The purpose of paying a fee now is to obtain certainty of costs and the Project shall not be subject to future assessment or refund in the event the fee is ultimately higher or lower than the amount set forth above.
 - g) Stormwater compliance inspection fee prior to commencement of site grading and/or construction operations.
 - h) Reimbursement fees per existing agreements:
 - i. Reimbursement Agreement RA-02-02. The reimbursement fee for 2008 is \$40,469.03. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - ii. Resolution No. 2007-52 establishing an area of benefit and reimbursable costs for Lower Sacramento Road (Kettleman Lane to Harney Lane)

improvements. The reimbursement fee for 2008 is \$90,042.73. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.

iii. Reimbursement Agreement RA 08-01. The reimbursement fee for 2009 is \$222,498.63. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.

i) City Resolution 2006-234, adopted on December 20, 2006 amended the Electric Utility Department's Rules & Regulations 13, 15 and 16 and requires new development and this Project to pay the full cost of extending electric facilities to serve the Project.

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

14. Obtain the following permits:

- a) San Joaquin County well/septic abandonment permit.
- b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

15. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:

- a) Master plan storm drain facilities and lines.
- b) Master plan water mains.
- c) Master plan reclaimed water mains.
- d) Industrial waste lines.

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

- H. Install fire hydrants at locations approved by the Fire Marshal.
- I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.
- J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.
- K. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones, drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.
- L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.

- M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with “NO PARKING – LOADING ONLY” signs to the satisfaction of the Community Development Director.
- N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:
 - 1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
 - 2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
- O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.
- P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.
- Q. All construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.
- R. Prior to the issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall ensure one of the following with respect to the existing Wal-Mart building located at 2350 West Kettleman Lane (“Building”):
 - a) The owner of the Building shall have entered into signed lease(s) with bona-fide tenant(s) for at least 50% of the Building square footage (not including the fenced, outdoor garden center). The signed lease(s) required hereunder shall include a lease(s) with a bona-fide retailer(s) or restaurant for a minimum of two-thirds of the Building frontage (not including the fenced, outdoor garden center); or
 - b) The owner of the Building shall have entered into a fully executed purchase agreement for the Building with a bona-fide retailer; or
 - c) The Applicant shall present to the City a cash escrow account, subject to the approval of the City Attorney, which account shall be for the purpose of securing applicant’s obligation to demolish the Building not later than 90 days after the opening to the general public of the new Wal-Mart Supercenter (the “Opening Date”). The amount of the deposit shall be equal to the City estimated reasonable costs to demolish the Building (based on a licensed contractor estimate) plus \$100,000. The escrow account shall be paid to City in the event that Option (a), (b) or (c) is not satisfied within 90 days of the Opening Date. If Option (a), (b) or (c) is satisfied within 90 days after the Opening Date, the cash in the escrow account shall be refunded in full to the Applicant.

If the Applicant does not satisfy this condition under Option (a), (b) or (c) within 90 days after the Opening Date, the City shall use the funds to demolish the Building with any balance reverting to the City as compensation for its expense and inconvenience incurred to demolish the Building. The owner of the Building shall present evidence that any lender on the Building consents to the demolition

in a form subject to the approval of the City Attorney. This condition shall be recorded against the property as a deed restriction, which runs with the land. Applicant and Wal-Mart agree to enter into any agreements that are necessary in order to implement this condition.

- S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.
- T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.
- U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.
- V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.
- W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.
- X. The project shall incorporate all mitigation measures as specified in the adopted Final Revised Environmental Impact Report EIR-03-01 for the project.
- Y. The submitted Use Permit, Tentative Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.
- Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.
- AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knock box system at each gate for Fire Department access.
- BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.
- CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.
- DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.
- EE. Developer shall pay for the linkage study that the City is required to do based on Program 11 of the recently adopted Housing Element of the General Plan. The developer shall receive a credit for the amount paid against the final fee as adopted by the City Council.

- FF. Wal-Mart shall provide proof of sale, to a non Wal-Mart related entity, of the existing Wal-Mart property located at 2350 W. Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of purchaser to lease or sell the existing Wal-Mart building.
- GG. Wal- Mart shall not allow overnight camping of any type (i. e. campers, recreational vehicles, tents) within the parking lot or site.
- HH. The developer shall invest in a building and/or capital improvements within the Downtown area, as defined by the Community Development Director, but no smaller than the area described in the June 1997 Downtown Development Standards and Guidelines plus the Pine Street Corridor extending to Washington. Investment shall be defined as supporting construction, rehabilitation, acquisition, tenant improvements and other improvements. The developer may make or support improvements to commercial buildings or property it owns or rents independently or in partnership with others, or to commercial property owned by others in partnership with owners and/or tenants. The downtown investment must be made no later than seven and a half (7.5) years from the issuance of final certificate of occupancy for the largest retail tenant. The total aggregate value of the capital improvements resulting from developer's investment must exceed \$700,000.

ARCHITECTURAL APPROVAL

- 1. The foregoing recitals are true and correct and incorporated herein by reference.
- 2. The submitted Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
- 3. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions:
 - a. All conditions set forth above shall apply to this approval.
 - b. The proposed building shall comply with all zoning and building code regulations.
 - c. The finished building shall be consistent with the plans approved by the Planning Commission.
 - d. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit. The final plans shall include the architectural features such as the approved colors, the building elevations including the cornice, trim caps, and curbed canopy, and other elements approved by the Planning Commission. Any significant alteration to the building elevations as approved by the Planning Commission shall require approval by the Planning Commission. Signage shall be individual letters.
 - e. Further architectural treatment shall occur on the west elevation. Such treatment shall result in a visual break in the elevation.
 - f. The proposed building must comply with all Planning Commission requirements; as well as the requirements of the Community Development, the Public Works, the Electric Utility and the Fire Departments; and all other utility agencies.
 - g. No variance from any City of Lodi adopted code, policy or specification is granted or implied by the approval of this resolution.
 - h. The Developer shall pay for Electric Utility Department charges in accordance with the Electric Department's Rules and Regulations.

- i. The applicant shall submit load calculations and Electric drawings to Electric Utility as part of a building permit process. Load calculations and Electric drawings are needed for service equipment location, PUE requirements, and service sizing. Should the load calculations and Electric drawings require a change of site plan, the Planning Department shall forward the site plan to the Planning Commission for review and approval.
- j. This resolution does not constitute a complete plan check. Complete plan check shall be completed during building permit process.
- k. Wal-Mart shall employ the energy efficient measures proven effective, at the time of Plan Check submittal, by its High Efficiency (HE) program in the building design and construction. However, the measures used shall, at a minimum, be as energy efficient as those proven energy efficiency measures, or comparable measures, outlined more fully in the letter addressed to the City of Lodi from J. Kelly Collier, Senior Design Manager for Wal-Mart Real Estate and Design dated October 6, 2008 and presented to the Planning Commission at its October 8, 2008 meeting.

Dated: April 8, 2009

I hereby certify that Resolution No. 09-__ was passed and adopted by the Planning Commission of the City of Lodi at a special meeting held on April 8, 2009, by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

ATTEST: _____
Secretary, Planning Commission

**Exhibit A
(CEQA Findings)**

**CITY OF LODI FINDINGS OF FACT AND STATEMENT OF
OVERRIDING CONSIDERATIONS PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
FOR THE LODI SHOPPING CENTER**



Under the California Environmental Quality Act, California Public Resources Code, sections 21000 et seq. (“CEQA”), for each significant environmental effect identified in an environmental impact report (“EIR”) for a proposed project, the approving agency must issue a finding reaching one or more of three allowable conclusions in conjunction with approval of the project. The first allowable finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment. The second allowable finding is that those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by the other agency. The third allowable finding is that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or alternatives identified in the environmental impact report. (Cal. Pub. Res. Code § 21081; CEQA Guideline § 15091). CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or substantially reduce significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with some other agency (CEQA Guidelines, § 15091). Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 565 (1990)).

In situations in which significant impacts are not at least “substantially mitigated,” the agency, after adopting the findings, may approve the project if it adopts a statement of overriding considerations setting forth the reasons why the agency found that the project’s benefits render acceptable its unavoidable adverse environmental effects (CEQA Guidelines §§ 15093, 15043). The California Supreme Court has stated that, “[t]he wisdom of approving...any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (Citizens of Goleta Valley, *supra*, 52 Cal. 3d at 576).

The Findings and Statement of Overriding Considerations set forth below (“Findings”) provide the written analysis and conclusions of the City regarding the Project’s environmental impacts, mitigation measures, alternatives to the Project, and the overriding considerations and presents an explanation to supply the logical step between the Finding and the facts in the record. (CEQA Guidelines § 15091.) To the extent that these Findings conclude that various proposed mitigation measures outlined in the EIR are feasible and have not been modified, superseded or withdrawn, the City hereby commits to implementing these measures. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect as part of the Project approval. The mitigation measures are referenced in the Mitigation Monitoring Program, adopted concurrently with these Findings, and will be effective through the process of constructing and implementing the project.

I. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. **Impact:** The project would convert approximately 40 acres of prime agricultural land to urban uses. While the severity of this impact can be reduced somewhat, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.
3. **Finding:** The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the loss of prime farmland resulting from the project, but it would not reduce the impact to a less-than-significant level. There are no feasible mitigation measures available that would avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact, therefore, remains significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

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

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

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

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

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

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

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

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact:** Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)
2. **Mitigation:** Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact:** There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)
2. **Mitigation:** If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

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

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

C. STORMWATER BASIN BANK INSTABILITY

1. **Impact:** There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)
2. **Mitigation:** Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

D. SOIL CONSOLIDATION AND COLLAPSE

1. **Impact:** Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)
2. **Mitigation:** The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in

conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

E. EXPANSIVE SOILS

1. **Impact:** There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)
2. **Mitigation:** The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

F. SOIL CORROSIVITY

1. **Impact:** The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)
2. **Mitigation:** The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

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

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

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact:** The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)
2. **Mitigation:** The project shall include stormwater controls to reduce nonpoint source pollutant loads.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

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

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact:** The project would result in the loss of approximately 40 acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)
2. **Mitigation:** In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact:** The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that may establish nests in trees along the project boundaries prior to construction. (Significant Impact)
2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:
 - If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
 - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

1. **Impact:** It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)
2. **Mitigation:** Implementation of the following measures will mitigate any potential impacts to cultural resources:
 - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
 - In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
 - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact:** The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road / Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)
2. **Mitigation:** The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

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

1. **Impact:** During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95th Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)
2. **Mitigation:** Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

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

1. **Impact:** The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)
2. **Mitigation:** The following mitigations shall be implemented:
 - a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
 - b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
 - c. Extend the southbound left-turn pocket by 100 feet;
 - d. Extend the taper from 60 feet to a City standard 120-foot taper;
 - e. Eliminate the northbound left-turn lane into the northern driveway.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact:** On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

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

1. **Impact:** On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper is proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

F. PUBLIC TRANSIT SERVICE

1. **Impact:** Development of the project would create a demand for increased public transit service above that which is currently provided or planned. (Significant Impact)
2. **Mitigation:** The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.

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

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

G. PUBLIC TRANSIT STOP

1. **Impact:** Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)
2. **Mitigation:** Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

H. PEDESTRIAN FACILITIES

1. **Impact:** Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)
2. **Mitigation:** Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

1. **Impact:** Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)
2. **Mitigation:** The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

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

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

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact:** Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)
2. **Mitigation:** The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:
 - 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that

noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.

- 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than significant level.

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

C. CONSTRUCTION NOISE

1. **Impact:** Noise levels would be temporarily elevated during grading and construction. (Significant Impact)
2. **Mitigation:** Short-term construction noise impacts shall be reduced through implementation of the following measures:

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

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

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

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

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

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

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

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

1. **Impact:** Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)
2. **Mitigation:** Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District). (See Original Draft EIR, p.120).

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

B. REGIONAL AIR QUALITY

1. **Impact:** Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)
2. **Mitigation:** Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

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

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

C. RESTAURANT ODORS

1. **Impact:** The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)
2. **Mitigation:** All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

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

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

1. **Impact:** The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural

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

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

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

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, agricultural preservation and

protection are primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

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

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

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

B. REGIONAL AIR QUALITY IMPACTS

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

2. **Mitigation:** For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

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

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

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

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

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

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

A. POTENTIAL FOR URBAN DECAY DUE TO SOCIOECONOMIC IMPACTS

1. Impact: The Project would include new retailers who would compete with existing retailers in the City of Lodi; however, there is insufficient evidence to suggest that this increased competition would result in business closures, and consequently would not indirectly result in substantial physical deterioration of properties, or urban decay (Less-than-Significant Impact).
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the economic effects of the project on local supermarkets general merchandise outlets, and businesses in Downtown Lodi. As explained further in the REIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. While there may be some decline in sales of competing supermarkets, supermarket store closures are not reasonably foreseeable. Sales are expected to decline for general merchandise stores such as Target and Kmart. The Kmart store is at risk of closure. However, the owners

of the Kmart site indicate that they feel they could find new tenants should Kmart close and cease operation, thus minimizing the prospect of long term vacancies or total neglect leading to urban decay. Furthermore, the City Council has directed diligent code enforcement, which will assist in the prevention of urban decay. The City is entitled to rely on the effectiveness of its Code Enforcement program to prevent code violations. (See City Municipal Code Section 1.10.010 et seq.; Cal. Health and Safety Code Sections 17980-17992). Downtown Lodi has shifted its retail mix to specialty stores, entertainment, and restaurants which are less directly competitive with the proposed project and therefore not anticipated to realize urban decay because of the Project. With respect to the closure of the existing Wal-Mart store in conjunction with the project, conditions would be imposed on the project requiring, prior to the issuance of a building permit, either re-tenanting by a retailer, sale to a retailer, or demolition of the structure to minimize the possibility of urban decay resulting from its closure.

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

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

1. Impact: When the effects of the project are combined with those of the other approved, pending, or probable future retail project in the project trade area (e.g., Reynolds Ranch), there is a likelihood existing retail centers in Lodi would be subject to reduction in sales. Consequently, it is possible, but not reasonably foreseeable, that one or more business closures could result, and that the affected properties could be subject to long-term vacancies under cumulative conditions, but not total neglect or abandonment. Moreover, aggressive enforcement action by the City of Lodi under existing municipal code and state law provisions relating to nuisance abatement is expected to prevent conditions which would result in substantial physical deterioration of potentially affected properties. Therefore, no urban decay is expected to occur under cumulative conditions. (Less-than-Significant Cumulative Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental

Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the proposed Reynolds Ranch development and other existing retail within the City, including, the Target Center (which includes a Target and a Safeway), the Cherokee Retail Center (which includes a Kmart and OSH store), the Sunwest Plaza (which includes the existing Wal-Mart and a Food 4 Less Supermarket), Vineyard Shopping Center (which includes a Mervyns and Ace Hardware), Vintner's Square Center (which includes a Lowe's), retail at Lodi and Hutchins (which includes the former Albertsons, which is now an S-Mart, and a Rite Aid), Westgate Shopping Center (which includes a Raley's), Lakewood Mall (which includes local-serving tenants) the Lockeford Payless IGA/True Value Hardware, the Downtown Lodi retail, as well as retail outside the Lodi Shopping Center Trade Area. The REIR also considered the then planned Wal-Mart supercenters in Stockton (as well as the existing store in Stockton on Hammer Lane) and Galt. The Stockton and Galt stores are not expected to have a cumulative economic impact within the Trade Area defined for the proposed project because the Trade Areas are not expected to overlap to any great degree. This is especially true considering Stockton's Ordinance No. 018-07 C.S. (August 14, 2007) and a similar ordinance in Galt which limits the size of discount superstores. According to BAE's Supplemental Report dated March 11, 2009, the market will adjust to the current economic downturn by slowing down the pace of overall retail real estate development, including other pipeline retail projects, thus lessening the likelihood of urban decay. (BAE Supplement Report, p. 7.).

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

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

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

II. ENERGY

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

A. ENERGY CONSUMPTION

1. Impact: The project would increase energy consumption in the construction and operational phases of the project. However, energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The operation of the project would result in the consumption of about 162 billion BTU of electricity, natural gas, and transportation fuel per year. This is over 500 times more energy than the estimated 0.3 billion BTU in annual energy inputs that would be applied in an agricultural operation on the site. The energy consumed by the project operation would represent 1.9 percent of the total annual energy consumption in the City of Lodi of about 8,634 billion BTU, and about 0.002 percent of statewide energy consumption. However, there are a number of energy conservation measures beyond those required by Title 24 of the California Code of Regulations, which will be incorporated into the design, construction, and operational aspects of the project, as discussed in the REIR, which would result in a considerable reduction in project energy consumption, particularly electricity. These measures include the use of skylights, energy-efficient HVAC units, solar-reflective roofing materials, energy-efficient lighting systems, and the reclamation of the "heat of rejection" from refrigeration equipment to generate hot water.

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

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

feet per year during the operational phase; however, compared with the total natural gas year demand for the City of approximately 3,892 million cubic feet during 2005, the project would represent about 0.3 percent of total gas demand.

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

B. IMPACT ON ENERGY SUPPLIES AND INFRASTRUCTURE

1. Impact: The increased demand for energy resulting from the project would not be substantial enough to require new or expanded sources of supply or the construction of new or expanded energy delivery systems or infrastructure capacity. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The energy requirements associated with the project would not exceed the energy supplies available to the project or exceed the ability of the various energy infrastructures to provide adequate supplies of energy to the project, during normal and peak demand periods, for the foreseeable future. As such, no new energy supplies would need to be developed to serve the project, and no system improvements would be needed to the energy delivery infrastructure to serve the project. Therefore, the impact of the project upon energy supplies and energy delivery infrastructure would be less than significant.

ADDITIONAL CONSIDERATIONS

A. GLOBAL WARMING

The issue of global warming has been raised in the processing of the REIR. At the time the initial EIR was prepared and certified in 2005, no commenter raised the issue of climate change despite there being general awareness of the issue within the scientific and environmental communities. At that time, CEQA also did not require an analysis of global warming impacts. Assembly Bill 32 ("AB 32"), known as the California Global Warming Solutions Act, Cal. Health & Safety Code §§ 38500 et seq., was passed in September 2006 and became effective on January 1, 2007. AB 32 sets a statewide goal to decrease greenhouse gas emissions to 1990 levels by the year 2020, and it directs the California Air Resources Board to develop regulations on greenhouse gas emissions verification and monitoring. Senate Bill 97 ("SB 97"), enacting Public Resources Code section 21083.05, was passed in August of 2007, and became effective January 1, 2008. SB 97 directs the Governor's Office of Planning and Research to prepare, develop, and transmit to the Resources Agency guidelines for feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions, by July 1, 2009.

It further directs that the Resources Agency certify or adopt those guidelines by January 1, 2010.

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

The City finds that it is not required to conduct an analysis of global warming in the FREIR, in part, because it is outside the scope of the FREIR prepared on remand and in response to the Superior Court's decision. Nonetheless, the City notes that evidence and materials submitted by the applicant indicate that global warming impacts would be less than significant in any event and speculative on a cumulative level of analysis. This conclusion was reached in a Climate Change Analysis Report commissioned by the applicant and prepared by Michael Brandman Associates in November, 2008, in a good faith effort to provide additional information to the Planning Commission and City Councilmembers, despite the lack of any CEQA requirement to provide such information in response to the Superior Court's decision.

B. WATER SUPPLY ASSESSMENT

By letter dated December 10, 2008, the Herum Crabtree law firm suggests that a water supply assessment is required for the Project pursuant to California Water Code sections 10910, 10911, 10912 and Public Resources Code section 21159.9. Because this issue could have been raised at the time the initial EIR was prepared and certified in 2005, but was not raised, the commenter is precluded from raising the issue now under the legal doctrine of *res judicata*, and the City is not required to analyze this issue at this time. Nonetheless, the City notes that this Project does not satisfy the criteria for requiring a water supply study under the applicable statutes. Water supply assessments are required for projects meeting the following criteria:

- (1) A proposed residential development of more than 500 dwelling units.
- (2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
- (3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
- (4) A proposed hotel or motel, or both, having more than 500 rooms.
- (5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
- (6) A mixed-use project that includes one or more of the projects specified in this subdivision.

- (7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(Cal. Water Code §§ 10910, 10912)

Based on evidence in the record, including evidence and testimony from the applicant concerning the size and nature of the Project, the City concludes that the proposed Project does not meet the square footage or water demand requirements set forth above. The project is an approximately 326,000 shopping center anticipated to employ less than 1,000 person. (See Sheppard Mullin letter of March 10, 2009). The City, therefore, concludes that it is not required to conduct a water supply assessment for the Project for the reasons that: (1) the issue was not raised during consideration of the EIR in 2005 and is now barred under the legal doctrine of *res judicata*; and (2) the Project does not meet the statutory criteria for requiring a water supply assessment.

FINDINGS CONCERNING ALTERNATIVES

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

I. NO PROJECT ALTERNATIVE

- A. **Description of the Alternative:** The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.
- B. **Comparison to the Project:** The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the development impact fees paid by the applicant which would help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development

plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries, or the objective of meeting unmet retail demand from existing and future residents of Lodi. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City. For the reasons mentioned above, because the No Project alternative would not meet the project objectives, and because the No Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

II. REDUCED PROJECT SIZE ALTERNATIVE

- A. **Description of the Alternative:** This alternative would consist of a substantially reduced project site of approximately 24 acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of 40 acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.
- B. **Comparison to the Project:** The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the development impact fees paid by the applicant to help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City and for these reasons is not a feasible alternative. For the reasons mentioned above, because the Reduced Project alternative would not meet the project objectives, and because the Reduced Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

III. ALTERNATIVE PROJECT LOCATION

- A. **Description of the Alternative:** An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton

Road, just east of I-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.

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

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

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

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

CEQA Guidelines Section 15126.6(e)(2) requires that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the

proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected because it would not entirely fulfill the project objective of developing the proposed project site with a regional shopping center in conformance with the City of Lodi General Plan and zoning regulations, and because it would be substantially less effective than the proposed project in fulfilling the project objective of meeting unmet retail demand from existing and future residents of Lodi. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, and providing a pro-rata share of vital municipal infrastructure.

Additional alternatives recently suggested in a letter dated December 10, 2008 from the law firm of Herum Crabtree include: (1) a "Reynolds Ranch" alternative; (2) an "East Lodi/Redevelopment Area" alternative; (3) a "Proportionately Reduced Size" alternative; and (4) a "High Efficiency" alternative. As noted above, the EIR must identify a reasonable range of alternatives which would feasibly attain most of the Project's objectives and would avoid or substantially lessen any of the significant effects of the project. The lead agency need not consider every conceivable alternative, and it has discretion to determine how many alternatives constitute a reasonable range. The EIR's discussion and analysis of alternatives satisfies the requirement of analyzing a reasonable range of alternatives. The additionally proposed alternatives need not be considered at this time. Furthermore, it has not been demonstrated that these additionally proposed alternatives would meet most of the project objectives and also avoid or substantially lessen the environmental effects of the Project.

Based on materials in the record, including a letter dated March 10, 2009 from the law firm of Sheppard Mullin, the Reynolds Ranch, East Lodi/Redevelopment Area and Proportionately Reduced Size alternatives are infeasible. The Reynolds Ranch alternative is infeasible because the Reynolds Ranch Final EIR excluded a Wal-Mart Supercenter from the project description. Therefore an amendment to the prior Reynolds Ranch project approval would be required to site the project at that location. Additionally, relocating the proposed project to the Reynolds Ranch site may result in potentially new significant adverse environmental impacts, which have not been analyzed. (Sheppard Mullin letter, pp. 5-6.) Finally, the Project applicant does not own property at Reynolds Ranch. (Sheppard Mullin letter, p. 5.) The East Lodi/Redevelopment Area alternative is infeasible because there are insufficient single sites of adequate size to reasonably accommodate the project in that area. Additionally, the Project applicant does not own any land in the area to make construction feasible. (Sheppard Mullin letter, pp. 6-7.) The Proportionately Reduced Size alternative is infeasible because the EIR already contemplated a reduced size alternative, and a reduced size would not substantially lessen significant and unavoidable impacts. Components of the High Efficiency alternative are included as part of the Project conditions, and thus, it has not been shown that the High Efficiency alternative would meet most of the project objectives and also avoid or substantially lessen the environmental effects of the Project.

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

MITIGATION MONITORING PROGRAM

Attached hereto and incorporated and adopted herewith, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center project. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for

the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

STATEMENT OF OVERRIDING CONSIDERATIONS

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

A. Significant Unavoidable Impacts

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

B. Overriding Considerations

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

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

1. Project Will Generate City Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.
2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center project.

3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward its pro-rata share of municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.
4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.
5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.
6. Project Features Numerous Energy Conserving Measures. The project proposes to include energy efficient and sustainable features as part of the project designs, including, for example, automated control system for heating/air conditioning, lighting controls, energy efficient lighting, and light colored roof materials to reflect heat.

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

Exhibit B
(Mitigation Monitoring and Reporting Program)

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

LODI SHOPPING CENTER

CITY OF LODI

APRIL 2009

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	B. AGRICULTURAL RESOURCES				
B1. <u>Agricultural Land Conversion</u>	B1. The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS				
C1. <u>Seismic Ground Shaking</u>	C1. Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C2. <u>Seismic Settlement</u>	C2. If subsequent geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C3. <u>Stormwater Bank Stability</u>	C3. Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
C4. <u>Soil Consolidation and Collapse</u>	C4. The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		
C5. <u>Expansive Soils</u>	C5. The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.	Project Applicant with approval of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS (Cont'd)				
C6. <u>Soil Corrosivity</u>	C6. The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
	D. HYDROLOGY AND WATER QUALITY				
D3. <u>Erosion and Sedimentation</u>	D3. A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. (See EIR text for details.)	Project Applicant with approval by City of Lodi Public Works Director.	Throughout grading and construction of the project.		
D4. <u>Urban Non-Point Pollution</u>	D4. The project shall include stormwater controls to reduce nonpoint pollutant loads. (See EIR text for details.)	Project Applicant with final approval by City of Lodi Public Works Director.	Throughout construction and operation of project.		
	E. BIOLOGICAL RESOURCES				
E3. <u>Loss of Habitat for Special Status Animals</u>	E3. In accordance with the SJMSCP and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.	Project Applicant, in accordance with SJMSCP, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. <u>Disturbance to Burrowing Owls and Raptors</u>	<p>E4. The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:</p> <ul style="list-style-type: none"> • If ground disturbance is to occur during the breeding season (Feb. 1 to Aug. 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer. • If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) • If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. (Continued on next page.) 	Project Applicant, in consultation with CDFG, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. (Cont'd)	Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.				
	F. CULTURAL RESOURCES				
F1. <u>Disturbance to Buried Cultural Resources</u>	<p>F1. Implementation of the following measures will mitigate any potential impacts to cultural resources.</p> <ul style="list-style-type: none"> • In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report. • In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report. (Cont'd next page.) 	Project Applicant in consultation with a qualified archaeologist and/or qualified paleontologist, as applicable, with verification of mitigation by City of Lodi Community Development Director.	Throughout grading and construction of project.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	F. CULTURAL RESOURCES (Cont'd)				
F1. (Cont'd)	<ul style="list-style-type: none"> If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98. 				
	H. TRAFFIC AND CIRCULATION				
<u>H2. Future Plus Project Unsignalized Intersection Operations</u>	H2. The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.	Project Applicant with approval by City of Lodi Public Works Director	Prior to issuance of occupancy permits.		
<u>H4. Cumulative Plus Project Access Conditions at the Signalized Access Drive Proposed Along the Lower Sacramento Road frontage</u>	H4. Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches except the westbound to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
<u>H5. Cumulative Plus Project Access Conditions at Northern Unsignalized Access Drive Along Lower Sacramento Road</u>	H5. The following mitigation measures shall be implemented: A) Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site; B) Construct a 100-foot southbound right-turn lane at the signalized project driveway; C) Extend the southbound left-turn pocket by 100 feet; D) Extend the taper from 60 feet to a City standard 120-foot taper; E) Eliminate the northbound left-turn lane into the northern project driveway (under Alternative B).	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
<u>H6. Inadequate Left-turn Lane Taper on Westgate Drive</u>	H6. The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
<u>H7. Inadequate Left-turn Lane Taper on Lower Sacramento Road</u>	H7. The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and extend the taper from 70 to a City standard 120-foot taper.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
<u>H8. Public Transit Service</u>	H8. The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H9. <u>Public Transit Stop</u>	H9. Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop in the eastern portion of the project near Lower Sacramento Road.	Project Applicant, in consultation with City of Lodi Grapeline Service, and with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
H11. <u>Pedestrian Facilities</u>	H11. Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
	I. NOISE				
I3. <u>Noise from Project Activity</u>	<p>I3. The following noise mitigation measures are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:</p> <p><u>Rooftop Mechanical Equipment.</u> To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (Leq-hour) for any residential yards.</p> <p><u>Parking Lot Cleaning.</u> To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of building permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	I. NOISE (Cont'd)				
<u>I4. Noise from Stormwater Basin Pump</u>	<p>I4. The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:</p> <ol style="list-style-type: none"> 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the noise levels generated by pump shall be specified to produce noise levels no greater than 45 dBA L_{eq} at the nearest residential property lines. The pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion. 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from another imminent storm). 	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
<u>I5. Construction Noise</u>	H5. Short-term noise impacts shall be reduced through implementation of the following measures: limiting the hours of construction; proper muffling and maintenance of equipment; prohibition of unnecessary idling; noise shielding of stationary equipment and location of such equipment away from sensitive receptors; selection of quiet equipment; notification to neighbors of construction schedule, and designation of a 'noise disturbance coordinator' to respond to noise complaints. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Throughout grading and construction.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	J. AIR QUALITY				
J1. <u>Construction Emissions</u>	J1. Dust control measures shall be implemented to reduce PM ₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Unified Air Pollution Control District. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Public Works Director and City of Lodi Community Development Director.	Throughout grading and construction.		
J3. <u>Regional Air Quality</u>	J3 Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions; however, these measures would not reduce the impact to a less-than-significant level.	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		
J6. <u>Restaurant Odors</u>	J5. All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.	Project Applicant with approval of City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		

RESOLUTION NO. 2009-27

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

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

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

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

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

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

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

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

WHEREAS, the Planning Commission of the City of Lodi reviewed and certified the FEIR prepared for the project; and

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

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

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

WHEREAS, in response to the Court Order, the City prepared a NOP for the Revisions to the EIR (REIR) and distributed it to reviewing agencies on September 25, 2006; and

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

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

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

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

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

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

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

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. THAT THE CITY COUNCIL hereby finds that full and fair public hearings have been held on the FREIR and the City Council having considered all comments received thereon said FREIR is hereby determined to be adequate and complete; and said FREIR is hereby incorporated herein by reference.
3. THAT THE CITY COUNCIL hereby determines, in connection with the proposed project identified in the FREIR, which includes a Use Permit and Tentative Map for the Lodi Shopping Center, that the FREIR has been prepared in compliance with CEQA and the state and local environmental guidelines and regulations, that it has independently reviewed and analyzed the information contained therein, including the written comments received during the DREIR review period and the oral comments received at the public hearings, and that the FREIR represents the independent judgment of the City of Lodi as Lead Agency for the project.
4. THAT THE CITY COUNCIL does hereby find and recognize that the FREIR contains additions, clarifications, modifications, and other information in its responses to comments on the DREIR and also incorporates text changes to the DREIR based on information obtained from the City since the DREIR was issued. The City Council does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of CEQA because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the DREIR have been proposed that would either lessen a significant environmental impact of the project or result in a new, substantial environmental impact; no feasible alternatives considerably different from those analyzed in

the DREIR have been proposed that would lessen the significant environmental impacts of the project; and the DREIR was adequate. Accordingly, the City Council hereby finds and determines that recirculation of the FREIR for further public review and comment is not warranted. (CEQA Guidelines Section 15088.5).

CONCLUSION

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

The Final Environmental Impact Report for the Lodi Shopping Center project, as amended by the Final Revisions to the Environmental Impact Report, is hereby certified pursuant to the California Environmental Quality Act.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the City Council of the City of Lodi that the Final Revised Environmental Impact Report (EIR-03-01) relating to the Lodi Shopping Center project, State Clearinghouse No. 2003042113, is hereby certified.

Dated: March 11, 2009

=====

I hereby certify that Resolution No. 2009-27 was passed and adopted by the City Council of the City of Lodi in a special meeting held March 11, 2009 by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

Comment Letters

LAW OFFICES OF DONALD B. MOONEY

RECEIVED

DONALD B. MOONEY

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dbmooney@dcn.org

2009 JAN -6 PM 1:06

CITY CLERK
CITY OF LODI

January 6, 2008

**VIA FACSIMILE (209-333-6807)
AND FEDERAL EXPRESS**

Randi Johl, City Clerk
Lodi City Council
221 W. Pine Street
Lodi, California 95240

<input checked="" type="checkbox"/>	CC	<input type="checkbox"/>	HR
<input checked="" type="checkbox"/>	CM	<input type="checkbox"/>	IS
<input checked="" type="checkbox"/>	CA	<input type="checkbox"/>	LIB
<input checked="" type="checkbox"/>	CD	<input type="checkbox"/>	PR
<input type="checkbox"/>	EUD	<input type="checkbox"/>	PD
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Re: **NOTICE TO CURE AND CORRECT VIOLATION OF THE RALPH
M. BROWN ACT PURSUANT TO GOVERNMENT CODE SECTION
54960.1**

Dear Ms. Johl and Members of the City Council:

This office represents the Citizens for Open Government. This letter is to call your attention to violations of the Ralph M. Brown Act, which occurred during the Lodi City Council ("Council") meeting on December 10, 2008.

The violation occurred with respect to the Council's action on the following agenda item:

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

The action of the Council to grant the appeal and certify the Final Environmental Impact Report ("EIR") for the Lodi Shopping Center was not in compliance with the Brown Act for the following reasons:

1. The meeting was not open as required by Government Code section 54953. An open meeting is not one where the only choice to attend is to sit in near freezing temperatures for 2 and half hours, particularly when the City could have easily postponed the meeting in order meet in a facility capable of providing seating for all concerned. These facts also establish a violation of section 54954.3(a) by unreasonably interfering with the public's right to comment on the agenda item.

2. In order to ensure attendance, members of the public had to fill out speaker cards in violation of Government Code section 54953.3, which prohibits the placement of conditions of identification on meeting attendance.

Ms. Randi Johl
January 6, 2009
Page 2

3. By providing the new and unprecedented comment and meeting procedures in advance to only some entities, the rules for public comment were not fair in violation of Government Code section 54954.3(b). In addition, the selection of the 4 p.m. time to submit speaker/attendance cards appears calculated to favor the paid Wal-Mart employees who packed the room to the exclusion of other interests - i.e., those opponents of the project would have had to leave work without pay in order to ensure admittance to the meeting.

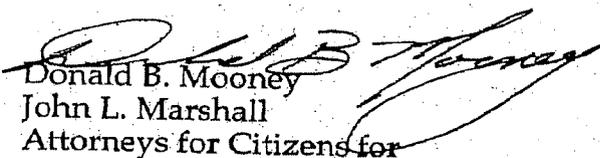
4. In violation of Government Code section 54956, the agenda for the December 10 special meeting lists the starting time of the meeting incorrectly as 6:30 p.m. The meeting effectively started at 4:00 p.m. for members of the public when they were required to submit speaker/attendance cards in order to ensure their attendance.

Pursuant to the Government Code section 54960.1, we demand that the Lodi City Council cure and correct the illegally taken action as follows:

1. The formal and explicit withdrawal and nullification of the action taken on Agenda Item B.1 at the December 10, 2008 meeting.

As provided by section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform this office of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave our client with no recourse but to seek a judicial invalidation of the challenged action pursuant to section 54960.1, in which case we would seek the award of court costs and reasonable attorney fees pursuant to section 54960.5.

Very truly yours,


Donald B. Mooney
John L. Marshall
Attorneys for Citizens for
Open Government

cc: Ann Cerney

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DEC 22 2008

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

Page 1

Concerned resident
Carolyn Williams
408 Cherry St.
Lodi, Calif 95240

Lodi

Super cuts in street of low income place to shop then are places on Cherokee Ave to rent for medium places like that. Or go to smaller stores for better business that you can profit at.

No houses turned into businesses or garages

no car repairs in residential area.

Bars off any business of any kind. Windows cleaned so you can see through and it improves your business.

Parking areas must not be dirt, they have to be covered with gravel, or asphalt

New paper stands are set out during opened hours of your business.

Page II

City to clean streets at least once a month & report work on each block (trees, trim) Report to go out to each residents in American & Mexican language (Spain)

City to recommend that in each block in residential zone to report to city if they see any damage or theft on the block. Letter to go out to each resident in Lodi.

People to report to City if they have no family and need help in or around their home for Community Service for and to pay off fines.

Churches in area w/ no parks have donated, and find a company to donate basket ball, to let the older play in summer, and winter time. To put hoop-scotch on the driving areas for the younger people.

Kari Chadwick

From: Mark Anaforian [mjanaforian@sbcglobal.net]
Sent: Friday, December 12, 2008 1:28 PM
To: Kari Chadwick
Subject: Wal Mart project

Miss Chadwick,

I'm e-mailing this to you in the hopes you can forward this to the members of the planning commission. I could not find the needed information on the cities website (but than again it is Friday, so who knows).

Dear Lodi City Planning Commission,

I am writing this to urge you to vote "no" on the proposed Wal Mart project. I know this may be a little premature but there is no time like the present. After attending the city council meeting on the 10th, and standing outside in the cold for 4 hours, I was very disappointed with some of the council members. This has less to do with there votes than in their condescending attitude. Thirty minutes into the meeting I knew the vote would be 3-2 and some members seemed annoyed to be there.

But enough of that. My main argument against the proposed Wal Mart is the effect on other businesses in town. A Super Wal Mart not only offers groceries, but tire service, pharmacy, garden, fast food and other items and services. Do not get me wrong I am all for free enterprise when it makes sense.

From my economics classes at USC I know these facts. To increase your tax base without driving others out of business you need one of these truths to be true.

1. An influx of new residents into our city - With the housing market in the shape it's in and banks not giving out construction loan to home buyers as often as they use to, I do not see this being a viable reason.
2. Attracting customers from outside the area - With a Super Wal Mart on Hammer Lane, a now okay ed Wal Mart store in the Spanos development on Eight Mile Road, an approved Wal Mart in Weston Ranch and a Wal Mart coming soon to Galt, I do not see where these outside shoppers are going to come from.
3. People increasing their spending - Personally my family has a budget for groceries for the month that is based on my wife and my income. Unless money falls from the sky we have only so much we can spend on groceries. With unemployment at an all time high, uncertainty in the state and countries economic situation and people worrying about their investments in their retirement accounts, I do not see people spending more money just because a Super Wal Mart opens their doors.

Lodi's tax revenue income is like a pie. It's not getting bigger. Instead Wal Mart is just trying to take a bigger piece of the pie. And if they do, and you think this will not affect other stores you are sadly mistaken. Responsible growth not only means for home building but for business building.

Many towns across the U.S. have fallen for the pitch from Wal Mart and have regretted their decision later. In Nowata, Oklahoma a Wal Mart was opened in 1982 which caused half of the businesses in downtown to close. Then in 1984, they closed that store and one in a nearby town and opened a Super Center 30 miles away. Effectively killing not only the downtown of Nowata, but also the town's tax revenues.

Do not be fooled by the grandiose promises from Wal Mart. They are always over inflated and at times not truthful. I strongly urge you to vote no on the proposed Wal Mart projects when it comes up for the next vote.

Thank you for your time,
Mark Anaforian

Kari Chadwick

Subject: Wal-Mart Wolves

Member(s)
Bill Cummins
Randall Heinitz
Steven Hennecke
Dave Kirsten
Wendel Kiser
Tim Mattheis
Debbie Olson

~~~~~

To our esteemed Planning Commission members:

Do you folks really want to continue being a party to this outside "ambulance chasing" legal and financial support that is being used to hassle Lodi, Tracy, and other communities which run up city costs and become a consuming distraction? I dearly hope not. Enough is enough. Please see below.

Thank you,  
Jim Locke  
511 Willow Glen Drive  
Lodi, CA 95240  
368-9009

~~~~~

To Our Honorable City Council and the Lodi News-Sentinel:

I just read in the Lodi News-Sentinel that Tracy, which approved a Wal-Mart Supercenter last month, has been sued over claims that its impact studies are incomplete and inaccurate. The City was sued by the same law firm that sued Lodi over this project three years ago as well as on other Wal-Mart projects in several different California cities over the past few years.

Interestingly enough, this law firm represented Reynolds Ranch in their dealings with the City, helped them get their approvals quickly and no litigation has been filed. Something is not right here.

I would feel differently if litigation like this was motivated by local residents but that is clearly not the case in Tracy, Lodi or any of the other cities where this law firm has been active. If our Lodi elected officials feel that the studies and work done by City Staff and the consultants they have chosen is sufficient then I am personally offended that an outside law firm would file a suit like this. From what I have heard, this firm appears to go from city to city filing lawsuits like this against Wal-Mart projects as though they know what's best. But they don't know what's best for Lodi.

It should be up to our elected officials and residents to decide and not for outside groups to turn to the courts to stop Council approved projects because they don't like Wal-Mart. They don't live here. We do and I want to have a Supercenter in Lodi.

Jim Locke
511 Willow Glen Drive
Lodi, CA 95240
368-9009

P.S. Note the name of the organization created to play the "front" (representation) like they are local Tracy people. e.g. Tracy First, quite similar to: Lodi First
My, what a coincidence.

Kari Chadwick

From: James Keller [jim.keller@sbcglobal.net]
Sent: Wednesday, January 07, 2009 1:25 PM
To: Kari Chadwick
Subject: Lodi Supercenter

I might not be able to attend the upcoming meeting on Jan 14th, however, I want you to know that I would like you to vote NO on the final plans for the Supercenter. I was disappointed in the way the City Council failed to reschedule the hearing on WalMart, as it appeared that the WalMart people were advised of the city managers decision, on the day of the meeting to have seat numbers handed out at 4pm. When I arrived at 5:30 for the meeting - thinking I was early - I found out about the seating decision and I was left out in the cold.

Jim Keller
2429 Summerset CT
Lodi, CA 95242

Kari Chadwick

From: Cinclarke57@aol.com
Sent: Monday, January 12, 2009 8:05 AM
To: Kari Chadwick
Subject: (no subject)

Please consider my vote a NO on the Walmart Supercenter.
I am not able to attend the meeting.
Glenn Clarke
209-339-8177

New year...new news. Be the first to know what is making headlines.

Kari Chadwick

From: Cinclarke57@aol.com
Sent: Monday, January 12, 2009 8:04 AM
To: Kari Chadwick
Subject: (no subject)

I am unable to attend the meeting on January 14 but would like to voice my vote "NO" on the Walmart Supercenter.
Thank you,
Cindy Clarke
209-339-8177

New year...new news. Be the first to know what is making headlines.

Kari Chadwick

From: russell young [young5084@sbcglobal.net]
Sent: Saturday, January 10, 2009 10:24 PM
To: Kari Chadwick
Subject: Walmart Supercenter

To Planning Commission members.

My wife and I wish to let you know that we are in favor of having the Walmart Supercenter built in the proposed Shopping Center as the council voted for. We have been going to the Walmart in Stockton, but we would like our tax dollars keep in Lodi. Thank you for taking the time to read our vote.

Mr & Mrs Russell Young
303 Cork Oak Way

01/12/2009

Kari Chadwick

From: Harry Stafford [teebagx2@hotmail.com]
Sent: Monday, January 12, 2009 1:34 PM
To: Kari Chadwick
Subject: Anti WalMart flyer

Planning Commission,

Herewith is rebuttal to a flyer delivered to my door:

Wal Mart should NOT be required to fund a full time Lodi PD officer to the Supercenter parking lot unless every holder of a Lodi business license is required to do so.

Wal Mart has the right to determine its store hours and delivery truck hours without oversight by any entity, governmental or otherwise.

Wal Mart should NOT be required to fund a Lodi Code Enforcement Officer when local businesses close after the Supercenter opens. Operating any business is a risk that owners willingly take in order to provide a service and hopefully make a profit. Competition is the essence of our Capitalistic system and must remain so.

I am not necessarily pro Wal Mart but the anti WM who delivered the flyers are biased against the company to the extreme.

Harry I. Stafford
2405 Saint Moritz Drive
Lodi, CA 95242

Windows Live™ Hotmail®: Chat. Store. Share. Do more with mail. [Check it out.](#)

Planning Commission
City of Lodi
P.O. Box

1-13-09

I am writing to have my vote
heard regarding final plans for
Lodi Supercenter. My vote
is NO!

Please notify the City Council
of my vote as mentioned above.

Thank you

James D Libert
821 Dianna Dr
Lodi, Cal
368-6026

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JAN 13 2009

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

Jan. 13, 2009

RECEIVED

JAN 13 2009

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

To the Planning Commission of Lodi.

My name is Betty Libert, and I am 75 years old; & been a voter a long time. I do not want a Super Walmart built here in Lodi. So please vote no for me. It'll be terrible for us people here to have a Super Walmart like that as the traffic is already bad, and that will only make it worse. There will be so much congestion & probably many accidents also. You'll have to build a bigger Hiway also. That will cost us residents, who are trying to survive the ever increasing electric bills going up - our last month bill was \$88.80 for electric - water was \$40.28, waste water was 27.74 & solid waste was 21.94 to total \$178.76 for 2 people. What are you all trying to do, to us - run us out of Lodi? Plus the electric bill in the paper said there'll be another increase of 4.64 added to Jan. Bill. What can you do about that? It's high time that the big spenders get off the City Council if that's what they are going to keep doing to us in the future. Now, I've said my piece.

No I am writing them to disregard. P.S Please make a Copy of this for the City Council too. Sincerely with Honesty,
Betty Libert

Could you make a Copy of this for the City Council too. P.S. I've lived here most of my life. Betty Libert

Kari Chadwick

From: Betty Peters [cutekitties@att.net]
Sent: Friday, March 27, 2009 6:11 PM
To: Kari Chadwick
Subject: Super Walmart

K. Chadwick:

Please consider this as my vote in favor of the new Super Walmart. I am so tired of going in circles over this matter, can't we just approve this and get it done. The current Walmart is too small, the aisles are too small especially for disabled people in carts. They put the clothes racks close together because there isn't enough room. Plus, with the economy, we need a cheaper grocery store and Lodi needs the tax dollars.

Thank You,

Betty Peters

Kari Chadwick

From: Mark Watkins [watkins.mark@yahoo.com]

Sent: Friday, March 27, 2009 6:58 PM

To: Kari Chadwick

Subject: Enough is enough

Vote yes on the Super Walmart and end that ugly corner.

Later, Mark

Kari Chadwick

From: Ted McBrayer [tedmcbrayer@yahoo.com]
Sent: Saturday, March 28, 2009 6:27 AM
To: Kari Chadwick
Subject: WALMART SUPERCENTER IN LODI!!!!

We will be unable to attend the meeting on April 8th, but do want our voices to be heard!!
WE WANT A SUPERWALMART IN LODI!!!!!! We never shop at the small business because they are too expensive and we are on a fixed income. In these hard times the senior citizen needs a WALMART SUPERCENTER more than ever. The small shops have been out for a long time. Just look at Lodi now...2 car dealerships are gone not to mention all the other businesses gone. To keep money not being spend in Stockton you need to approve this SUPERWALMART OR DON'T COMPLAIN ABOUT LOST REVENUES TO ME!!!!

Sincerely,

Ted and Lynda McBrayer
6 Robin Court
Lodi, CA 95242

Kari Chadwick

From: Bob & Jackie [bjhealy@att.net]
Sent: Saturday, March 28, 2009 1:48 PM
To: Kari Chadwick
Subject: Walmart Super Center

I am a concerned Lodi citizen who is in favor of putting in a Walmart Super Center at the corner of Kettleman and Lower Sac. I do not believe this will hurt the Mom & Pop stores in Lodi as folks who shop there will continue to shop there. They are loyal clientele who shop there for reasons other than price. I do not believe it will hurt Safeway or Raley's for the same reason. However, I do believe it will benefit the citizens of Lodi who are cost/value conscious. As you know, many, many, many items are more expensive at other stores when compared to Walmart. I could give you many examples, but I think it would better if you did some comparison shopping for yourself. Although a Super Walmart may not generate a lot more sales tax dollars than the current Walmart, as a community, we need all the additional revenue we can get. A Super Walmart will also create some additional jobs here in Lodi. In a nut shell, I support a Super Walmart at the corner of Kettleman and Lower Sac. Jackie Healy, Concerned Lodi Citizen

Kari Chadwick

From: shirleymikeburns@comcast.net
Sent: Sunday, March 29, 2009 10:45 AM
To: Kari Chadwick
Subject: Super Walmart

March 29,

2009

Dear Planning commissioner,

I support the Super Walmart Center. We have waited long enough. Please vote "Yes" on it now.

Thank you.

Shirley J. Burns
111 Applewood Dr.
Lodi, CA 95242
(209)369-4643

03/30/2009

27 March 2009

RECEIVED

MAR 30 2009

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

Community Development Director
P.O. Box 3006
Lodi, CA 95241-1910

RE: Walmart Super Center

Gentlemen:

This is regarding an email I received today from Kari Chadwick, regarding the above topic,

Since my husband and I will not be able to attend the meeting on April 8, 2009, we would like to express our thoughts and opinions on this subject by means of this letter.

It appears to us that this delay has been going on way too long. What is the problem with Walmart building a Super Center on the outskirts of Lodi? We feel it will not only be a big convenience for many people, but will also provide employment, which is greatly needed in this economic downturn. The traffic issue has already been taken care of and there is plenty of land on which to build and provide parking for the store.

Of course the large stores – namely Safeway's, Food 4 Less, and even Lowes - are going to take issue with Walmart; but if Walmart can provide a quality product for less cost, then we see that as competition, not unfair business tactics. The construction of this establishment will enable many unemployed construction workers to earn a living, plus older people to have shot at a job when it is completed. Walmart is also a place that a person who has limited education can find gainful employment with benefits. Perhaps we can get some of the locals off of Welfare and unemployment benefits by allowing Walmart to build their store and get on with business.

We do not feel this is going to jeopardize the "downtown" businesses, as most of the people who shop at Walmart can't afford to shop at the shops downtown. Beside someone has messed up the parking so badly downtown, I personally can't shop there as I have a hip problem which doesn't allow me to walk any distance. The trees have a much better parking spot than most customers (just my personal opinion, sorry).

Please make it possible for Walmart to continue with their Super Center and get this issue put to rest. I am sure you all have better and more important issues that need dealing with than this one.

Thank you for allowing me to express my thoughts and opinions.

Sincerely,



James and Alice Adkins
19261 Perryman Rd.
Lodi, CA 95242

Kari Chadwick

From: craig diederich [craig.diederich05@gmail.com]
Sent: Monday, March 30, 2009 10:39 AM
To: Kari Chadwick
Subject: lodi shopping center, walmart supercenter

To whom it may concern:

My name is Craig, my wife Kris. I would like to encourage you to support the supercenter. Kris is handicapped and we like to shop the supercenter in stockton. The problem is there is never any handicapped parking available unless we want to wait 20 minutes or more for someone to come out. There is also never a drivey cart. I feel that if the Current Walmart moves to a new Supercenter, We will have the parking, the everyday low prices, and the convience.

Thanks
Craig A Diederich
Kris L. Diederich

Kari Chadwick

From: Jerry & Shirley Schmierer [evencouple@sbcglobal.net]
Sent: Monday, March 30, 2009 1:02 PM
To: Kari Chadwick
Subject: super walmart

I am mailing our support for our new super walmart. IT IS TIME!!!!!!! Please, please, please support this on April 8th at the meeting. Joanne Mounce is RIGHT!!! Listen to the people of Lodi...We voted this in once and some small influential group (ha) who knows, sold us out with their big attorney. What's that about???? Save us the gas driving to Stockton to shop superwalmart. Please be our voice. You know who needs to hear the support from the people of Lodi....Thanking you in advance...

Shirley Schmierer
646 N. Loma Dr.
Lodi, CA 95242
209 339 8603

Lodi residents since 1977. We are seniors and need the savings

Kari Chadwick

From: Robert Davis [bobbetty1271@sbcglobal.net]

Sent: Monday, March 30, 2009 9:21 PM

To: Kari Chadwick

Subject: We want the Wal-Mart Super Center in Lodi

We want the Wal-Mart Super Center in Lodi
Bob & Betty Davis

Kari Chadwick

From: Mark Washburn [markswashburn@gmail.com]
Sent: Tuesday, March 31, 2009 10:23 AM
To: Kari Chadwick
Subject: Wal-Mart Super Center

Dear Ms. Chadwick,

Thank you for all you and your colleagues in the City of Lodi do to keep the city functioning.

Please let the members of the Commission know that as much as we appreciate their role and function looking out for us as a city, it is time to approve the Wal-Mart Super Center. As Mr. Johnson said at the last City Council Meeting, "If this were Costco or anyone else it would already be approved."

Wal-Mart will employ hundreds of additional people at a time when our area needs jobs. Also, their prices are excellent and a Super Center has many items we can't get anywhere else in Lodi for a comparable price.

Again, thanks to you and the other members of the Commission for your dedication and thank you for listening.

Blessings!!

Mark and Beth Washburn

Kari Chadwick

Subject: Wall Mart Super Store

From: louisereiswig@sbcglobal.net [mailto:louisereiswig@sbcglobal.net]
Sent: Saturday, March 21, 2009 11:07 AM
To: City Council
Cc: louisereiswig@sbcglobal.net
Subject: Wall Mart Super Store

I am firmly against building a Super Walmart Store. There are plenty of grocery stores, pharmacies, fast food restaurants, meat markets, and the list goes on and on. We do need dining and dancing places, there is absolutely no decent places for singles of all ages to attend. For those of us older singles, as a widow, I would never go into a bar. But it would be nice to have a place to have a nice meal or just go dancing. We have all kinds of stores in which I feel would be hurt by building a huge store such as this. Personally, I buy most of my groceries at Safeway or Apple market. Lakewood Sausage on Ham Lane and Salisbury Meats are the best as far as a good quality of meat is concerned. Our Lodi is and always has been known as a small town community. We have already lost two nice dress shops and are forced to go to Lincoln Center, Macy's and Dillard's to buy clothing and better cosmetics. Why do we need a huge market that has everything, I very seldom shop at Wall Mart on Kettleman. Please don't make it harder on other stores that would be hurt from this! Thank you. Louise Reiswig

Kari Chadwick

From: Ken/Gail Gruszie [kengo123@softcom.net]

Sent: Wednesday, April 01, 2009 11:25 AM

To: Kari Chadwick

Subject: Wal-Mart

Get us a super WalMart

Public Affairs & Government Relations

Aaron J. Rios

Senior Manager Public Affairs &
Government Relations

P.O. Box 750
Bryn Mawr, CA 92318
Phone 909.799.1853
Cell 559.274.8461
Fax 909.799.1876
www.walmartstores.com
www.walmartfacts.com

March 10, 2009

Via Email

Honorable Larry Hansen
Mayor
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Walmart Supercenter Tax Impacts

Dear Mayor Hansen and Honorable City Council members,

On behalf of Walmart Stores, Inc., I am pleased to provide you with the attached economic study recently completed by CB Richard Ellis. This study was conducted to determine the impact of the proposed Lodi Shopping Center, including the proposed Walmart Supercenter, on the City of Lodi's General Fund revenues. Walmart decided to undertake this study to respond to specific questions raised by some Planning Commissioners and City Council members, among others, about what the net gain is projected to be upon tax revenues specifically in the City of Lodi.

All data used in the CBRE study was based on figures¹ in the Urban Decay Analysis prepared by Bay Area Economics (BAE) as part of the Environmental Impact Report (EIR) for the Lodi Shopping Center and not internal projected sales figures. The study's key conclusions include:

- The new Walmart is estimated to generate \$1.08 million in sales tax revenue per year in 2005 dollars (see footnote 1)
- The other stores in the Lodi Shopping Center are estimated to generate \$308,000 in sales tax revenue per year in 2005 dollars
- Including business and property taxes, the new tax revenue per year for the Lodi Shopping center is estimated to be \$1.491 million in 2007 dollars
- The existing Walmart store generates \$548,000 in sales tax revenue to the City, and retenanting of the old Walmart is anticipated to generate \$421,000 in sales tax revenue

¹. The BAE report used 2005 dollars. As a result, many figures in the report are in 2005 dollars except where scaled using the Consumer Price Index to 2007 dollars.

- The Lodi Shopping Center should result in an increase of \$1.364 million ($\$1.491 - (\$.548) + \$.421 = \1.364) in 2007 dollars
- The reduction in sales tax revenue from other stores in Lodi as a result of the Lodi Shopping Center is \$550,000 (Note: This figure is based on the BAE economic report and is extremely conservative and therefore potentially very high because the BAE market area was defined to include stores outside of the City of Lodi.)
- Using this conservative figure, the total net increase in sales tax revenue alone to the City is \$814,000.
- **Once gains in property taxes and business license taxes are accounted for, and tax losses due to diverted sales are included, the net incremental tax gain for the City of Lodi is \$1,000,169.**

Our team looks forward to answering any questions you may have about this report or any other issue at the March 11, 2009, hearing. I also want to take this opportunity to reiterate Walmart's previous statements concerning the procedures used at the December 10, 2008, hearing. I wanted to make abundantly clear that Walmart did not have any prior knowledge of the ticket distribution system for the December 10, 2008, hearing. City staff did not tell any member of our team that tickets would be distributed for seats inside the chamber, nor did they tell us what time city personnel would begin that distribution. These facts can be easily confirmed with city staff. Also, while we understand the Council's decision to re-hear the certification of the Draft EIR out of an abundance of caution, we do not believe that the procedures used by the city at the December 10, 2008, hearing, caused a Brown Act violation.

Despite the many delays that the Lodi Shopping Center has encountered along the way, Walmart and Browman Development remain committed to building this important project. Both Walmart and Browman Development have been part of the successful fabric of Lodi for many years, and we hope that our mutual commitment to Lodi is self-evident. We believe, and we hope you will agree, that the Lodi Shopping Center will be an asset for the citizens of Lodi for many years to come.

Respectfully,



Aaron J. Rios
Senior Manager Public Affairs & Government Relations
Wal-Mart Stores, Inc.

Attachments

cc: Lodi City Council
Blair King, City Manager
Steve Schwabauer, City Attorney
Radlam Bartlam, Interim Community Development Director

MEMORANDUM

Date: January 12, 2009

To: City of Lodi

From: Elliot R. Stein
Senior Managing Director
CBRE Consulting, Inc.

Re: Proposed Lodi Shopping Center
Sales Tax, Property Tax and Business License Tax Impacts

CBRE Consulting, Inc. was asked to determine the impact of the development of the proposed Lodi Shopping Center ("the Center") on the City of Lodi's General Fund revenues. The Center will be anchored by a 226,868 square foot Wal-Mart Supercenter and an additional 113,098 square feet of other retail space (see Exhibit 1). CBRE Consulting relied upon certain information contained in the Economic Impact Analysis prepared by Bay Area Economics (BAE) in order to conduct this analysis.¹ Specifically, the BAE report was the source of the project description, square footages, and sales per square foot figures used to estimate sales and property tax revenues. In addition, CBRE Consulting obtained from the California Board of Equalization and the City of Lodi's Finance Department information on property tax, sales tax, and business license tax relevant to the City of Lodi. Findings are summarized below and presented in greater detail in the attached exhibits.

Sales Tax Generated by the Center

According to the California Board of Equalization, the City of Lodi receives 1.0 percent of taxable retail sales generated by businesses within the city. Since not all of the sales at the proposed Wal-Mart Supercenter or at the other retail businesses in the Center will be taxable sales (e.g. certain food items, prescription drugs, etc.), CBRE Consulting adjusted total projected sales by removing the non-taxable sales. The adjustments are explained in detail in Exhibit 2. Based on Bay Area Economics' sales estimates which were presented in 2005 dollars, sales tax revenue to the City of Lodi is estimated at \$1,080,700 from the Wal-Mart Supercenter plus an additional \$308,900 from the other stores in the Center, for a total of \$1,389,600/year (in 2005 dollars), assuming stabilized sales. It would be reasonable to escalate these figures to reflect sales in current dollars. However, for the sake of consistency with the BAE analysis, we did not escalate the numbers for this calculation.

¹ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

Business License Tax

Relying on the schedule of business license taxes provided by the City of Lodi Finance Department, CBRE Consulting estimated the annual taxes that would be payable by Wal-Mart and by the other tenants in the Center. Detailed assumptions are shown in Exhibit 3. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the Center, for a total of \$145,225/year.

Property Tax

Property taxes generated by the Wal-Mart Supercenter will be a function of its assessed value. For the purpose of this analysis, it was assumed that the value will be determined based on the cost approach to value. That is, the sum of direct construction costs plus indirect costs (i.e. fees for architecture, engineering, other consultants, financing, interest, entitlements, permits, insurance, etc.) was used as the basis for calculating real property taxes. Cost estimates from Wal-Mart were used to estimate the potential assessed value of the property (see Exhibit 4). Development costs for the remainder of the Center were not provided to CBRE Consulting; therefore, this estimate of property tax revenue to the City of Lodi is limited to the Wal-Mart store only.

It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused on the net property tax revenue that would result from the development of the Wal-Mart Supercenter. As shown in Exhibit 4, the net property tax generated by the Supercenter is estimated at \$358,630, of which an estimated \$40,920 represents the City of Lodi's share.

Net Increase in Sales Tax

CBRE Consulting was also asked to factor into the analysis of sales tax impact two additional considerations: the loss of sales tax resulting from the closure of the existing Lodi Wal-Mart store; and the new sales tax that could be expected from replacement tenants in the space Wal-Mart will be vacating. That analysis is presented in detail in Exhibit 5. It begins with the estimate of sales tax from the proposed Wal-Mart Supercenter (\$1,389,568 in 2005 dollars). That figure was escalated to 2007 dollars (to \$1,491,241) before adjusting for the closing of the existing Wal-Mart store and the addition of replacement tenants in order to have comparable numbers. The actual change in the Consumer Price Index from 2005 to 2007 was used to adjust to 2007 dollars (see Exhibit 5, footnote 5 for further detail). In summary, the closure of the existing Wal-Mart store would represent a loss of approximately \$548,000 per year in sales tax revenue to the City of Lodi, while replacement tenants generating industry average annual sales of \$350 per square foot would represent an estimated \$421,000 of new sales tax revenue to the City. Overall, the net increase in sales tax is estimated at \$1,364,000 in 2007 dollars, as shown below:

Sales Tax Revenue from Lodi Shopping Center	\$1,491,241
Less: Sales Tax from Existing Lodi Wal-Mart Store	(548,217)
Plus: Sales Tax from Replacement Tenants	<u>421,000</u>
Net Increase in Sales Tax Revenue to the City of Lodi	\$1,364,024

Among its conclusions, Bay Area Economics indicated that: "The net capture of sales from existing retail outlets in 2008 is estimated at approximately \$55 million."² In other words, there may be a diversion of sales from existing retail outlets in the trade area to the new Center, which would result in a decrease in sales tax to the City from those outlets. Because the trade area defined by Bay Area Economics is larger than the City of Lodi (it includes surrounding areas outside the city limits), not all of the \$55 million in diverted sales will impact the City. However, for the purpose of this analysis, it is reasonable to note that since most of the existing trade area retailers are located within the City, one can conservatively estimate that if all of these diverted sales were at the expense of City of Lodi retailers, then the loss of \$55 million in sales would equate to a loss of \$55 million x 1% = \$550,000 in sales tax revenue to the City of Lodi.

Conclusion

The estimated net gain to the City of Lodi from property, sales, and business license taxes is summarized below.

Type of Tax	Total Taxes Generated	Taxes Lost	Incremental Tax Gain
<i>Sales Tax</i>			
Lodi Shopping Center	\$1,491,241		
Existing Lodi Wal-Mart		(\$548,217)	
Replacement Tenants	\$421,000		
Diverted Sales		(\$550,000)	
<i>Property Tax (Wal-Mart only)</i>	\$40,920		
<i>Business License Tax</i>	\$145,225		
Total	\$2,098,386	(\$1,098,217)	\$1,000,169

Sources: CBRE Consulting.

² Ibid, p. 68.

ASSUMPTIONS AND GENERAL LIMITING CONDITIONS

CBRE Consulting, Inc. has made extensive efforts to confirm the accuracy and timeliness of the information contained in this study. Such information was compiled from a variety of sources, including interviews with government officials, review of government documents, and other third parties deemed to be reliable. Although CBRE Consulting, Inc. believes all information in this study is correct, it does not warrant the accuracy of such information and assumes no responsibility for inaccuracies in the information by third parties. We have no responsibility to update this report for events and circumstances occurring after the date of this report. Further, no guarantee is made as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions developed in connection with the study. In turn, these assumptions, and their relation to the projections, were developed using currently available economic data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, actual results achieved during the projection period will likely vary from the projections, and some of the variations may be material to the conclusions of the analysis.

Contractual obligations do not include access to or ownership transfer of any electronic data processing files, programs or models completed directly for or as by-products of this research effort, unless explicitly so agreed as part of the contract.

This report may not be used for any purpose other than that for which it is prepared. Neither all nor any part of the contents of this study shall be disseminated to the public through publication advertising media, public relations, news media, sales media, or any other public means of communication without prior written consent and approval of CBRE Consulting, Inc.

Exhibit 1
Sales Estimate and Distribution
Proposed Lodi Shopping Center
2005 Dollars

Store Characteristic/BOE Retail Category (1)	Square Feet (2)	Sales Per Square Foot (2)	Projected Sales (3)
<u>Proposed Wal-Mart Supercenter</u>			
Square Footage			
General Merchandise	176,313	\$564	\$99,510,918
Grocery	50,555	\$564	\$28,533,202
Total	226,868		\$128,044,120
<u>Other Stores</u>			
Square Footage (1)			
Apparel	8,131	\$300	\$2,439,411
Drug Store	14,788	\$478	\$7,068,664
Eating and Drinking Places	17,190	\$475	\$8,165,250
Other Retail	59,829	\$300	\$17,948,589
Non-Retail Uses	13,160	N/A	N/A
Total	113,098		\$35,621,913
Center Total	339,966		\$163,666,033

Sources: California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) BOE is the State of California Board of Equalization, which collects sales taxes from retailers and provides public tabulations of the occurrence and level of taxable sales in the categories provided.

(2) Square footages and sales for the proposed shopping center provided by Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

(3) Totals may not add due to rounding.

Exhibit 2
 City of Lodi General Fund Impacts
 Proposed Lodi Shopping Center Sales Tax Revenue
 2005 Dollars

Sales Tax Assumptions	Amount
Sales Tax Revenue from Proposed Wal-Mart Supercenter	
Non-Grocery Sales (1)	\$99,510,918
Taxable Grocery Sales (2)	\$8,559,961
Total Taxable Sales	\$108,070,879
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from Wal-Mart	\$1,080,709
Sales Tax Revenue from Other Stores in the Center	
Taxable Drug Store Sales (4)	\$2,332,659
Other Taxable Sales (1)	\$28,553,249
Total Taxable Sales	\$30,885,908
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from the Remaining Center	\$308,859
Total Sales Tax Revenue to the City of Lodi	\$1,389,568

Sources: California State Board of Equalization; and CBRE Consulting.

(1) Refer to Exhibit 1.

(2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.

(3) Information obtained from the California Board of Equalization.

(4) It is estimated that only 33.0 percent of drug store sales are taxable.

Exhibit 3
Proposed Lodi Shopping Center Business License Tax Revenue
2008 Dollars

Business License Tax Assumptions (1)	Amount
Business License Tax Revenue from Proposed Wal-Mart	
Total Gross Receipts	\$128,044,120
Tax Rate (1)	\$1.00/\$1,000
Estimated Total Business License Tax for Wal-Mart	\$128,044
Business License Tax Revenue from Other Stores	
Apparel (2)	
Total Gross Receipts Per Store	\$609,900
Tax Per Store	\$210
Estimated Total Business License Tax for 4 Stores	\$840
Drug Store	
Total Gross Receipts	\$7,068,664
Tax Rate	\$.60/\$1,000
Estimated Total Business License Tax	\$4,241
Eating and Drinking Places (3)	
Total Gross Receipts Per Stores, 4 Fast Food	\$1,150,688
Total Gross Receipts Per Store, 2 Sit-Downs	\$1,781,250
Tax Per Store	\$450
Estimated Total Business License Tax	\$2,700
Other Retail (4)	
Total Gross Receipts Per Store	\$900,000
Tax Per Store	\$450
Estimated Total Business License Tax for 20 Stores	\$9,000
Non-Retail Uses (5)	
Total Gross Receipts, 8 Spaces	N/A
Tax Per Business	\$50
Estimated Total Business License Tax	\$400
Total for Other Stores	\$17,181
Total Estimated Business License Tax Revenue from the Center	\$145,225

Sources: City of Lodi Finance Department; and CBRE Consulting.

(1) The City of Lodi Finance Department the Business License Tax Rate for the Retail and Services Group is as follows:

Gross Receipts	Tax or Tax Rate
\$0 to \$200,000	\$50
\$200,001 to \$500,000	\$98
\$500,001 to \$900,000	\$210
\$900,001 to \$3,000,000	\$450
\$3,000,001 to \$10,000,000	\$.60/\$1,000
\$10,000,001 and greater	\$1.00/\$1,000 (no limit)

(2) Gross receipts for Apparel estimated based on 4 stores at 2,033 square feet each.

(3) Gross receipts for Eating and Drinking Places estimated based on 4 Fast Food and 2 Sit-Down restaurants at 2,423 and 3,750 square feet each, respectively.

(4) Gross receipts for Other Retail stores estimated based on 20 stores at 3,000 square feet each.

(5) Gross receipts for Non-Retail spaces conservatively estimated using 8 spaces at the minimum tax rate.

Exhibit 4
 City of Lodi General Fund Revenue Impacts
 Wal-Mart Supercenter Property Tax Revenue
 2008 Dollars

	Amount
Wal-Mart Supercenter	
Total Direct Construction Costs (1)	\$26,800,000
Indirect Cost Estimate (2)	\$7,300,000
Land Cost (3)	<u>N/A</u>
Total Project Costs Excluding Land	\$34,100,000
Total Tax Basis (excluding Land)	\$34,100,000
County Tax Rate (4)	1.0517%
Total Tax to County	\$358,630
City Share of the County Tax Rate (4)	11.41%
Net Property Tax Revenue from Wal-Mart Supercenter (4)	\$40,920

Sources: San Joaquin County Treasurer-Tax Collector; Wal-Mart Stores Inc.; California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) Construction cost estimates provided by Wal-Mart Stores, Inc.

(2) Indirect construction costs estimates provided by Wal-Mart Stores, Inc.

(3) Net property tax revenue reflects tax on only the hard and soft costs of the project, excluding land cost. It is assumed that property tax is already being assessed on the land value; therefore, it is not incremental to this analysis.

(4) Information provided by San Joaquin County Treasurer-Tax Collector.

Exhibit 5
 City of Lodi General Fund Impacts
 Net Increase in Sales Tax Revenue From Proposed Lodi Shopping Center

Sales Tax Assumptions	Amount
LODI SHOPPING CENTER	
Sales Tax Revenue from Proposed Wal-Mart Supercenter	
Non-Grocery Sales (1)	\$99,510,918
Taxable Grocery Sales (2)	\$8,559,961
Total Taxable Sales	\$108,070,879
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from Wal-Mart	\$1,080,709
Sales Tax Revenue from Other Stores in the Center	
Taxable Drug Store Sales (4)	\$2,332,659
Other Taxable Sales (1)	\$28,553,249
Total Taxable Sales	\$30,885,908
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from the Remaining Center	\$308,859
Total Sales Tax Revenue to the City of Lodi	
2005 Dollars	\$1,389,568
2007 Dollars (5)	\$1,491,241 [A]
LESS: EXISTING LODI WAL-MART STORE	
Sales Tax Paid to City of Lodi (2007) (6)	\$548,217 [B]
PLUS: REPLACEMENT TENANTS AT EXISTING LODI WAL-MART STORE	
Taxable Sales (7)	\$42,100,000
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from Replacement Tenants	\$421,000 [C]
NET INCREASE IN SALES TAX REVENUE TO CITY OF LODI [A - B + C]	\$1,364,024

Sources: California State Board of Equalization; State of California Department of Industrial Relations, Division of Labor Statistics and Research; Wal-Mart Stores, Inc.; and CBRE Consulting.

- (1) Refer to Exhibit 1.
- (2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.
- (3) Information obtained from the California Board of Equalization.
- (4) It is estimated that only 33.0 percent of drug store sales are taxable.
- (5) Escalation based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research; annual CPI changes 3.9 percent from 2005-2006 and 3.29 percent from 2006-2007.
- (6) Information provided by Wal-Mart Stores, Inc.
- (7) This estimate is based on an industry sales per square foot standard of \$350 multiplied by 120,352 square feet.