

**LODI PLANNING COMMISSION
REGULAR COMMISSION MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 8, 2008**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of October 8, 2008, was called to order by Chair Kiser at 7:01 p.m.

Present: Planning Commissioners – Cummins, Heinitz, Hennecke, Kirsten, Mattheis, Olson, and Chair Kiser

Absent: Planning Commissioners – None

Also Present: Interim Community Development Director Rad Bartlam, Deputy City Attorney Janice Magdich, Outside Counsel for the City of Lodi Jonathan Hobbs and Administrative Secretary Kari Chadwick

2. MINUTES

“September 10, 2008”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Olson second, approved the Minutes of September 10, 2008 as written. (Commissioner Mattheis abstain because he was not present at the subject meeting)

Chair Kiser stated the rules of conduct for the Public Hearing.

3. PUBLIC HEARINGS

a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of Browman Development Company and Wal-Mart Real Estate Business Trust to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center; and

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

Consider approval of Vesting Tentative Map 03-P-001 to create 12 parcels for the project.

Request of Browman Development Company and Wal-Mart Real Estate Business Trust for site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive.

Commissioner Mattheis recused himself from the hearing because his spouse is an attorney for the applicant.

Commissioner Kirsten disclosed that he met with both the applicant and an attorney for the opponent, Brett Jolley.

Commissioner Heinitz disclosed that he met with the Applicant's attorney.

Commissioner Olson disclosed that she met with a contingent from Wal-Mart and spoke with many concerned citizens.

Commissioner Hennecke disclosed that he met with the applicant, Ms. Davis, and Mr. Pedesto.

Vice Chair Cummins disclosed that he spoke with the applicant and others regarding the project.

Chair Kiser disclosed that he spoke with the applicant.

Interim Director Bartlam gave a brief PowerPoint Presentation (attached) based on the staff report. Mr. Bartlam stated that the Final Revised Environmental Impact Report (FREIR) per the Court Order focused on five specific areas: Cumulative Urban Decay, Energy Impacts, Agricultural Resource Impacts, Project Objectives, and Project Alternatives. Staff is recommending approval of the project. Mr. Bartlam introduced Jonathan Hobbs who is special outside Counsel for the City of Lodi and has been a part of this project since 2005.

Jonathon Hobbs stated that he has been representing and working with the City since the project went into litigation and has been a part of the revision process. The Court found the original EIR to be adequate except in two areas: Cumulative Impacts for Urban Decay and Energy Consumption. Both of those areas have been revised in the revisions to the EIR. The City decided to voluntarily revise three additional areas: Project Objectives, Agricultural Resources, and Project Alternatives. Under Case Law these are the only areas that are subject to review.

Commissioner Heinitz stated that he is the only remaining Commissioner that was on the Commission when this project came around in 2004. He then asked what will happen to the vacant building that is the current Wal-Mart; what the likelihood of other stores closing if this project gets approved; and in the case that other store close will the citizens have to pick-up the tab on maintenance so they don't become blighted. Mr. Bartlam stated that in a worst case scenario the Code Enforcement Division may have to step in when the property owner does not maintain the area. The City does have a variety of tools at their disposal to force the property owner to maintain their property to the City Standards. There have been circumstances in the City over the years that the Code Enforcement function has been in place where the tools to force the property owner to maintain the property have been used. Bartlam also stated that the citizens do inadvertently incur the cost because Code Enforcement falls under the City's General Fund. Heinitz stated that based on what he was told about what has happened in other cities when the stores, not just the old Wal-Mart building, close up the citizens have to kick in for the initial out lay of boarding up, repairs, and cleaning although a lien is taken out against the property for when it is ever sold. Bartlam stated that he does not know of what other cities that has happened in, but what has happen here in the past is that Code Enforcement takes the task on and liens the property. Heinitz asked for clarification regarding if it has already happened here. Mr. Bartlam stated that it had and will probably happen again, but staff can not make the connection between the Environmental Document before you and those events.

Vice Chair Cummins asked if the five areas in the revision to the EIR should be the main focus for the Commission. Mr. Bartlam stated that the five areas are the only areas that should be focused on along with the Use Permit, Tentative Map, and Site Plan & Architectural review approvals.

Hearing Opened to the Public

- Darrell Browman, Browman Development - Applicant, came forward to speak in favor of the project and answer questions. Mr. Browman addressed the concern of Commissioner Heinitz regarding the re-tenanting of the current building. He stated that this isn't a big merchant builder coming in and trying to build a store, but a long time area developer that has other long lasting developments in the City. The other retail developments owned by Browman Development in the City have a 98 to 100% occupancy. The City initiated the annexation of this property eight years ago and Mr. Browman has been working with the City on this project ever since. When Food-4-Less came to town all the other stores said it would put them out of business, but it didn't. The positive thing that happens when competition comes to the area is it spurs the other stores to reinvest and remodel which leads to revitalization. The major benefit of this project is that it solidifies this intersection as a dominate retail area. By placing this kind of quantity and quality of retail in one area it draws the kind of retail that the City has been wanting for some time. The architectural look of the building with the columns and cornices give it a pedestrian feel. Browman added that the current Wal-Mart building has been bought by Browman Development to help alleviate the concern expressed in 2004 regarding the re-tenanting of the building. Two years ago Browman Development entered into negotiations with a new tenant for the space, but the possible tenant backed out because they did not know how long the process was going to take. Browman Development is currently in negotiations with another tenant that will occupy 90% of the building. Mr. Browman stated that he is confident that they will be able to re-tenant the space with a quality tenant. Mr. Browman requested that he be allowed to

come back up at the end of the public hearing and address some of the concerns mentioned.

- Commissioner Heinitz stated that he is not comfortable with the fact that there isn't a tenant in line for the building. Mr. Browman stated that if he could tell a tenant that in 18 months he would have the space available he would have a tenant's signature today, but like the first time around with Home Depot and no guarantee of when the property would be available, he is not comfortable trying to sign someone when he can't give them a solid time frame. Browman stated that he is very comfortable with the turn-around time of 12 months once the project is passed to get a new tenant into that space. He stated that it doesn't do any good to create a project and destroy another, so he would not be going ahead with this if he was not confident that a new tenant would be placed in the space.
- Commissioner Kirsten asked about the cumulative economic impacts of the project and what the projected numbers are in the increased sales tax because he has not seen anything that shows those numbers. Mr. Browman stated that Aaron Rios, representative from Wal-Mart, is here to address those numbers in more detail, but the number that Browman used is the average sales tax revenue generated by a Super Center which is \$790,000, then used \$300/sf which is what they got by doing a quick test across the street and then took off \$11million in annual sales which is what they estimated for the difference in sales from whomever they backfill the tenant space with, provided Wal-Mart is a higher sales volume than the new tenant. Kirsten asked if that included the possible closure or lost revenue for other stores. Mr. Browman stated that he did not do a market analysis. If the fear of store closures is based on Wal-Mart coming in, then look around the current shopping center and the draw that Wal-Mart has had for other stores to want to be in the same area. Kirsten asked where the \$40million expected property tax increase figure came from. Browman stated that it came from a \$100/sf for building (340,000 sf) and \$10million for site work and then backed off 10%. Kirsten asked if the same cost would apply for other buildings of this size. Browman stated that he based his numbers on construction cost, so the same numbers would apply for any building of this size. Kirsten asked about the energy efficiency of the project. Mr. Browman stated that he would like to leave the answer for that question to the representative from Wal-Mart, but the understanding is that the building will exceed the current Title 24 Standards. Kirsten asked about the reduced size alternative. Mr. Browman stated that a smaller size project isn't a viable option. The size creates the synergy for that corner. The viability of bringing in the other specialty retailers such as electronic stores and book stores gets easier with the other retail surrounding the area.
- Chair Kiser asked about the 900 to 1000 jobs that will be created. Mr. Browman stated that the new Super Wal-Mart will employ about 450 and another 350 + will be employed by the other business that will be drawn to the center. Kiser asked how many are full time employees. Mr. Browman stated he did not know, but could get that number for him.
- Aaron Rios, Representative for Wal-Mart and Applicant, came forward to speak in favor of the project and answer questions. Mr. Rios stated that the current Wal-Mart building can not meet the customer demand. He stated that in regards to the Revised EIR the Commission isn't reviewing the entire project that was approved in 2004. The Commission is only responsible for looking at the five revised areas. Specific to energy, this project will not have an energy impact. The project will exceed the current Title 24 Energy Standards. Throughout the United States Wal-Mart has constructed proto-type stores to test new technologies that can then be implemented in other stores. The Agricultural mitigation will consist of over 40 acres of prime farmland which is a 1 for 1 ratio for this project. In 2005 the National Fish and Wildlife Foundation and Wal-Mart launched the "Acres for America Program". The goal is to permanently protect one acre of important wildlife habitat for every acre developed by Wal-Mart. To date that is 350,000 acres of land. The Applicant, Browman Company and Wal-Mart, will be investing \$700,000+ in the downtown area even though it has been shown there will not be an impact from this project on the Downtown. The average Super Center in California contributes \$790,000 to their cities sales tax. The sales tax will increase approximately 23% based on the past examples of Super Stores opening. A lot of the agricultural goods will come from local produce companies.

- Commissioner Heinitz stated his appreciation for the Wal-Mart that the City already has and for their continued work in the community. He then stated his opposition to Mr. Rios, by telling this Commission that they only have to focus on the five issues in the revised EIR. Heinitz stated that he is the only Commissioner left on the Commission that was present at the time of the first hearing and to expect this Commission to accept those findings and just look at the revised issues is wrong. The Commission needs to look at every single element. He asked why not just remodel the current store? Mr. Rios stated that the new store will have wider aisles and offer a better place for the customers to shop. He then compared the experience to his family of 4 people living in a studio apartment versus a three bedroom home; could he do it, yes, but is it the best way to take care of his family/customers, no.
- Commissioner Kirsten stated his appreciation of Wal-Mart's contribution to the World of Wonders Museum. He then asked about the intended energy impacts. Mr. Rios stated that the items outlined in the letter from the real estate division will be included in the new store and if there are any other items that prove to be energy efficient those will be included. What proves to work elsewhere will be included in this building. Kirsten asked if these items should be a part of the conditions of approval. Mr. Rios stated that these items exceed the minimum requirements already. Kirsten asked about the viability of Wal-Mart using the option of acquiring a piece a property in the downtown for \$700,000 and then turning around and selling it providing for the mitigation requirement and giving a zero benefit to the downtown area. Mr. Rios stated that there is no immediate intention by the Wal-Mart real estate group to purchase property downtown. What has been explored to date is making some kind of investments in downtown Lodi along with the developer to meet that mitigation requirement. Kirsten would like to tighten up the verbiage for the mitigation requirements on the downtown. Mr. Rios stated that, with respect for Commissioner Kirsten's concerns, staff has put many hours into this project and the mitigation requirements, and using a quote from Mr. Bartlam that was in the paper "this is the most extensive list of Conditions of Approval that he has seen in 28 years". He does know if playing with the language, that staff has dedicated so much time too, is the most beneficial use of the Commissions time, but respects their ability if they so choose. Kirsten then asked about the examples on the increase in sales tax. In the example of a current Wal-Mart Store to a Super Wal-Mart Store what was the increase in sales tax. Mr. Rios stated that in La Quinta, where a regular Wal-Mart store was being replaced by a Super Center, the retail sales tax the year before the store opened was \$100 million, the year that the Super Center opened was \$127 million, and the year after was \$258 million. Kirsten asked for clarification as to those figures being total retail for the entire area including all growth not just for Wal-Mart. Mr. Rios stated that is correct. Kirsten asked for a math check, would you not subtract the existing Wal-Mart tax revenues from the new Super Center tax revenues to get the total of the increase in tax revenues? Mr. Rios stated that hypothetically if the current tax revenues for the existing Wal-Mart were at \$500,000 and then just by moving across the street and opening up the new Super Center that would increase the contribution just from Wal-Mart to \$790,000, now you have to consider the rest of the retail center which increases it that much more. Kirsten stated that you would have to consider the lost sales from your competition also, would you not? Rios stated that looking at the raw numbers based on past experiences the tax revenues increasing 23%. Kirsten asked about the lower prices playing a factor, example: buy a toaster at company X for \$30 and buy a toaster at company Y for \$20, do you not lose 33% of your sales revenue? Rios stated that no, because by lowering the price you increase the volume, not necessarily with toasters but overall.
- Chair Kiser asked for clarification regarding employee benefits and if Wal-Mart covers 92% of the employees with coverage. Mr. Rios stated that 92% of Wal-Mart employees have coverage either with a spouses plan or with Wal-Mart. Out of the 92% over 50% are using the Wal-Mart Plan. Kiser asked if Wal-Mart is in a LEED Program. Mr. Rios stated that they are not in a LEED Program. Kiser then stated that Wal-Mart is only doing what is mandated by the State of California regarding energy. Mr. Rios stated that it will exceed that standard.

- Commissioner Hennecke asked about Solar Panels being used in any other stores. Mr. Rios stated that yes they are currently doing a 22 store test. Hennecke asked why the Applicant is agreeing to pay so much money to the Downtown when the project shows no impact and the Reynolds Ranch Project that was just before the Commission which has retail and shows no impact, doesn't have to pay. Mr. Rios stated that was one of the conditions placed on the project by City Staff, so that the project could move on

Chair Kiser called for a 5 minute recess (8:35).

Chair Kiser Called the meeting back to order (8:46).

- Mary Miller, Lodi, came forward to oppose the project. Ms. Miller stated that she was not happy when the original store came to town and doesn't feel that the Super Center will send the right message about how Lodi should grow. She stated that she is considering moving back to Carlsbad if this passes.
- Dennis Satler, Lodi, came forward to oppose the project. Mr. Satler is concerned with the amount of retail coming to the City. The economic times are tough as the market downturn is proving. If too many big retailers are in a market it will run small retailers out. The internet is also taking up a lot of sales.
- Bruce Schweigerdt, Lodi, came forward to support the project. Mr. Schweigerdt stated that the current store is old and needing major revisions. He believes that the Planning Commission should be encouraging this project.
- Wanda Van Santen, Lodi, came forward to support the project. Ms. Van Santen stated that since she was in an accident it makes it tough to get around. She would like to have a one stop shopping store.
- Mark Anaforian, Lodi, came forward to oppose the project. Mr. Anaforian stated that when the first Wal-Mart came to town he was working for the Lodi Avenue Longs Drug Store and the same promises were made and the downtown Longs Drug Store lost 1/3 of their business and was forced to layoff employees. According to the Stockton Record of Sept. 18, 2008; grocery stores would experience 16% loss in sales the first year, Target & K-Mart together would experience a 46% loss the first year and by the third year sales would still be down by 38% with K-Mart being at a high risk of closing. As of May 2000 Wal-Mart had abandoned 25 million square feet of occupied store. The economy is not growing. Mr. Anaforian believes we should be supporting those businesses that have been here for a long time.
- Shawn Piazza, Lodi, came forward to oppose the project. Mr. Piazza stated that the forward thinking of growing is not good timing. The economy is retracting not expanding. He is hearing that the Planning Commission is here tonight just to focus on the Environmental Impact report and he believes this is wrong. The Commission should be looking at the big picture. He commended the Commission for their tough questions and bringing the base numbers to the people that weren't aware.
- Chris Podesto, Lodi, came forward to oppose the project. Mr. Podesto stated that the Food 4 Less Store has 100% Health coverage. Food 4 Less is vested in the community and has given money to support area activities. The store currently shares the shopping center with the current Wal-Mart which is the anchor store for the shopping center. When that Wal-Mart moves across the street not only does the current shopping center lose it's anchor but it puts a discount grocery competitor right across the street in an area that is already inundated with grocery stores.
- Suzie Wilbourn, Lodi, came forward as part of the Lodi First group to protect Lodi's Downtown and oppose the project. Ms. Wilbourn stated that the Environmental Document does not address the additional store closures. She also opposes the extra traffic, security, and environmental issues. Wal-Mart has a past practice of fighting the additional tax revenues assessed with the new stores in court and does not want to see that happen here.

- Marlene Borchers, Lodi, came forward to support the project. Ms. Borchers is the current store manager at Wal-Mart. Wal-Mart has given her many opportunities to advance and gives others that may not have the education to do the same. She stated that Wal-Mart donates extensively within the City. She has heard overwhelming support from customers for the new Super Wal-Mart. Wal-Mart saves people money and that is what is needed in this tough economy.
- Gene Davenport, Galt, came forward to oppose the project. Mr. Davenport stated that there are too many unknowns. The Downtown mitigation of \$680,000 isn't going to cover it when you consider the effects in down the road, it's a pittance. Mr. Rios doesn't give any figures on the cost of social and city services, which will increase. If Wal-Mart wants to be here let them be here, they don't deserve a Super Center just because they want one. The surrounding stores pay a livable wage in this community, Wal-Mart does not pay a livable wage for this community.
- Corey Manos, Lodi, came forward to oppose the project and is a part of Lodi First. Mr. Manos stated that he and his family moved to the area six years ago because of the small town feel. He wanted to point out what was happening in Elk Grove and doesn't want to see that happen in Lodi.
- Brenda Manos, Lodi, came forward to oppose the project. Mrs. Manos stated that she is a causality of the Super Wal-Mart in Stockton. She worked for a Pharmacy that had to close its doors and she lost her job. She is a part of the Lodi First group which supports the local businesses first. She pointed out that when the citizens voted for Measure R it was not for a Super Wal-Mart, but for requiring a City wide vote for any retail establishment wanting to exceed 125,000 square feet.
- Elsie Greenwood, Lodi, came forward to support the project. She has been a member of this community for over 50 years. Lodi doesn't provide for the elderly in regards to parking. Ms. Greenwood votes yes on the Super Wal-Mart.
- Treacy Elliot, Lodi, came forward to oppose the project. Lakewood Mall has become a ghost town with the loss of retail. When the EIR was done it talked about the cumulative impact it would have along with the Reynolds Ranch Project, but now we've approved even more retail in that project. If we keep building retail out the retail within will die.
- Denise Joyner, Lodi, came forward to support the project. There are a lot of handicapped and elderly that could use the wider isles to get around. The employees are very helpful. Ms. Joyner has tried to shop downtown, but it is too hard to get around.
- Rose Deak, Lodi, came forward to support the project. The associates are always available to help you out and the management is always helpful with donations to community needs.
- Shirley Burns, Lodi, came forward to support the project. She and many of her friends take special trips into Stockton to shop because they can't find the items they need here. She shops at Raley's, Food 4 Less, and S-Mart and will continue to shop at those establishments.
- Jennifer Holtz, Lodi, came forward to oppose the project because of the sale of alcohol. She doesn't feel safe with that.
- B.J. Simpson, Lodi, came forward to support the project. She stated that she is 83 years old and will some day have to depend on someone to take her to the store and she would like to have a one-stop-shop store, so she does not have to be overly burdensome.
- James Lanchester, Lodi, came forward to support the project. He stated ditto on what has been said for the project. He currently shops at the Super Center in Stockton and would like to be able to keep his tax dollars here in Lodi.
- Phyllis Rabusin, Lodi, came forward to oppose the project. She sees Lodi as a quaint tourist attraction with its downtown. Ms. Rabusin feels Wal-Mart detracts from that image.
- Linda Nelson, Lodi, came forward to support the project. Ms. Nelson stated that she is a 14 year associate at Wal-Mart and has health coverage through them. She makes a good

wage and will continue to shop at other stores around town. There are no grocery stores downtown. The Super Center will not impact that area. The current Wal-Mart has not affected that area, so adding groceries to it won't either.

- Tim Jacobsen, Lodi, is a district manager for Wal-Mart and came forward to support the project. Mr. Jacobsen stated that with the economy the way it is people will be looking to save money. People are going to Stockton to shop at the Super Center or Winco because of the hard times. He would like to see the tax dollars stay in Lodi.
- Andrea Violet, Lodi, came forward to support the project. She would like to see the item placed back on the ballot as a Super Wal-Mart item, because that is what a lot of citizens thought they were voting for with Measure R.
- Bill Freitas, Lodi, came forward to oppose the project. Where is the need for this store?
- Karen Helmandollar, Lodi, came forward to support the project. Mrs. Helmandollar is grateful to Wal-Mart for hiring a senior citizen. She has her health coverage through Wal-Mart and is very happy with it.
- Michael Tener, Lodi, came forward to oppose the project. Mr. Tener stated that the EIR states that there will be a less than significant impact on Urban Decay and he finds that very hard to believe.
- Don Mooney, Attorney for Citizens for Open Government, submitted a document (attached) and came forward to oppose the project and answer questions. Mr. Mooney stated that as a result of the Lawsuit the original EIR decisions were rescinded, therefore the original EIR is not an approved document. The provisions for greenhouse gas emissions do not meet the new requirements that have been signed into law by the Governor (AB32) and should have been taken into consideration when doing the new REIR. The economy has had some drastic changes recently. The Impact of Urban Decay should have been looked at closer in regards to other grocery store closures.
- Commissioner Hennecke asked about the focus of Citizens for Open Government on all development or just the Wal-Mart project. Mr. Mooney stated that he represents the group only on this issue.
- Vice Chair Cummins asked if Mr. Mooney knew about this meeting well in advance of tonight and if so, why is the Commission just now receiving a 100+ page document. Mr. Mooney stated that he did try to email the document earlier in the day, but it did not go through.
- Commissioner Kirsten asked that the audience to be courteous. The waving of the vote papers is not helpful.
- Commissioner Olson asked about the AB32 item mentioned earlier, is it in effect right now? Mr. Mooney stated that it is in effect now, but there is some confusion as to how it affects CEQA. Part of the Legislation associated with the budget required the State to adopt regulations under CEQA implementing AB32, which have not been adopted yet. CEQA even without the adoption has an obligation to comply with the Greenhouse Gas Emissions. The Governor's office has stated that if a project does not meet the regulations then it does not comply under CEQA. The threshold that has been set is 0% increase in emissions, so if the project increases greenhouse emissions at all then there must be impact mitigations stated. Olson asked if there has been enough study done for this project in Mr. Mooney's opinion. Mr. Mooney stated that there has not. Mr. Mooney also stated that he litigated this issue in court against CalTrans and won.
- Vice Chair Cummins asked if the AB32 reductions need to be done by 2020. Mr. Mooney stated that yes, but the thresholds should be considered now.
- Commissioner Hennecke asked staff to clarify the AB32 regulations. Mr. Hobbs stated that the emissions are to be reduced to the 1990 level by the year 2020 and became effective January 1, 2007. It does not mandate specific requirements at this time. There is a current legal debate going on right now regarding whether or not CEQA requires analysis on greenhouse gases. If you start a project right now it probably does require you to look at

that area, but this project was originally approved in 2004. The concept of greenhouse gases was not new in 2005 and should have been raised during the litigation which would have made it possible for them to pursue those claims now. Mr. Mooney's group is entitled to pursue claims that may have been raised and challenged in the original EIR. What the current procedure of this case does allow is for them to raise new issues that were not in place during the original process. The CalTrans case that Mr. Mooney referred to was a new case and the court ruled that they should have looked at the greenhouse gases.

- Anita Quroi, Lockeford, came forward to oppose the project.
- Commissioner Kirsten asked what Ms. Quroi meant by "suck-up the recourses". Ms. Quroi stated that the more people drawn to the area by this project will be sucking-up the City's resources such as; water, air quality, police services, hospital.
- Jag Batth, Lodi, came forward to state that his comments will have to wait for the Council level of this project.
- Mark Ruggiero, Lodi, came forward to oppose the project.
- Jennifer Bond, Lodi, came forward to oppose the project. Ms. Bond wants to know how all the good things that Wal-Mart does currently for the community are going to change if they move. There are a lot of other businesses other than in the Downtown that will be affected by a Super Wal-Mart.
- Brett Jolley, Attorney representing Lodi First, came forward to oppose the project and answer questions. The decision that should be made tonight should not be based on whether this is a good project or if this is a good retailer or not but whether or not the EIR has provided enough information for you to certify. There are two steps for the Commission; first is to determine if the EIR provides enough information, if it does then it should be certified, second is to determine whether or not this project is right for the community. Mr. Jolley does not feel that this project should make it to step two. The EIR states that there is insufficient evidence to determine Urban Decay. CEQA states that insufficient evidence is not a viable determination. There have been a lot of comments made by the Wal-Mart Representative about exceeding the Title 24 compliance. This is not a good quantification of what the energy saving features will be. The State Building Commission just adopted changes to Title 24 last month which are designed to in part implement the AB32 guidelines that Mr. Mooney talked about by requiring greener building standards designed to reduce greenhouse emissions. The catch is that the guidelines are voluntary through 2009 and become mandatory in 2010, so if Wal-Mart builds in 2009 and doesn't follow the voluntary guidelines they will be building a below standard project. There are two options missing from the alternative project size from the Project Alternatives Section; one being reducing the entire project proportionately, not just taking out all the other retail pads and leaving Wal-Mart at the same size. The other alternative missing is the High Efficiency (HE) alternative. If you go to Wal-Mart's website they state that the new HE store that was opened up in Las Vegas is 45% more energy efficient than a regular Super Center, which is what is planned for Lodi. In CEQA when the EIR concludes that the project will have significant and unavoidable effects, which this EIR does for both agricultural land conversion and air quality impacts, the Commission then has the obligations to make specific findings before approving the project. The Commission must decide whether the benefits of the project outweigh the significant unavoidable impacts.
- Commissioner Kirsten asked how a store closure is connected to urban decay/blight. Mr. Jolley stated that the EIR states that the urban decay will be less than significant because the space can be re-tenanted which was based on the economy in October 2007. The staff report states that new Code Enforcement Officer was hired to handle this kind of blight which is a drain on taxpayers. Kirsten asked if because of the strict code enforcement even if you don't re-tenant the store right away it won't necessarily lead to urban decay. Mr. Jolley stated that is possible.
- Ann Cerney, Lodi, came forward to oppose the project. She stated that she does not feel that the Commission has an EIR before them and that they should have one with all the comments submitted for this project.

- Gary Silva, Lodi, came forward to oppose the project. Mr. Silva would like to see the Commission consider other options such as, stores that are not grocery stores for this project area. These types of stores would overlap and work well with the surrounding area and not be so combative. He would like to see a development in that area, but would like to see something that would work with the area not against.
- Pat Patrick, President of the Chamber of Commerce, came forward to support the project. The Chamber supports free enterprise. The Chamber led the campaign for No on Measure R. Even though as stated here tonight the Measure was not technically about Wal-Mart it was emotionally about Wal-Mart. The most knowledgeable person in the City employ has recommended that the Commission accept this proposal tonight. Mr. Patrick does not believe, due to past dealings with Mr. Bartlam, that he would have brought this project before the Commission with the approval recommendation if it was going to be detrimental to rest of the business community within the City, nor would the Chamber feel the same way. For people to stand up here and tell the Commission that they need to make a decision based on the fact that the country is in a down economy then they need to tell you how long we will be in that down turn.
- Commissioner Olson asked if the membership of the Chamber of Commerce took a vote to support the project. Mr. Patrick stated that they did not.

Public Portion of Hearing Closed

Chair Kiser called for a brief recess (10:38).

Chair Kiser called the meeting back to order (10:43).

- Commissioner Heinitz stated his opposition to the project. He does not feel that a move across the street is the best move for Lodi. Heinitz stated that his main concerns are blight and the existing building. He would rather see Wal-Mart expand their current store and just make a smaller version of a Super Center. He stated his respect for staff, but also stated that staff is here to tell us if the project fits the laws, not if it fits Lodi. The Commission needs to take the next step beyond that and listen to what the citizens want also. Commissioner Heinitz stated that he can not support the project.
- Commissioner Olson asked if this project came about before the Redevelopment Area project. Mr. Bartlam stated that this is correct. Olson asked if for a Redevelopment area to be developed there has to be some blight already in the area. Mr. Bartlam agreed. Ms. Olson asked then how can there be a determination of no blight if there has already been areas found. Mr. Bartlam stated that a blight and an Urban Decay analysis are two different types of analysis. For the first EIR a blight analysis was what was essentially done and then found insufficient through the Court hence the reason for the Urban Decay analysis being done for the Revised EIR. The K-Mart Center on Cherokee Lane was the focus of concern in the Economic Analysis and is in the Redevelopment area. This should give the Commission some level of comfort because of the tools that will now be made available to assist the Center in maintaining a level playing field with any new development. Olson stated that she is a huge proponent of Redevelopment, but it seems odd to be creating a problem just because we now have the tools to fix it. She continued by stating that Mr. Bartlam was correct; just because we have an economically disadvantaged area doesn't mean that urban decay or blight is determined just by a closed store. Olson stated that with the extremely narrow view that she has been given to make any determinations regarding the project has her perplexed. She is having a hard time relating what was done a couple of years ago to what she feels is relevant today. She would like to be able to ask the applicant to go back and look at some of the environmental items such as greenhouse gas emissions and include them in the scope of the project; is that possible? Mr. Bartlam stated that yes you can ask, but Council sets the policy. The Council could have opened it up for more review, but they didn't. Olson stated that she would like to have additional areas to look at and can not support the project with the limited look that has been granted.

- Commissioner Kirsten stated that he shares Commissioners Heinitz and Olson's views and would like to focus his comments on the BAE analysis. Kirsten feels that the report is shallow and insufficient. The report acknowledges potential store closures such as; S-Mart, K-Mart, Orchard Supply/Ace, JC Penny, or Mervyns, but the report states that there is insufficient evidence to draw any conclusions. Kirsten believes that the resources and statistical modeling are available to do a more thorough analysis. He can not support the project at this time.
- Vice Chair Cummins stated that there has been a lot of discussion on whether we need a Super Wal-Mart. The 40 acre parcel that this project is proposed to occupy has been sitting vacant except for the weeds and campaign signs for over a decade. There seems to be a lot of fear regarding the economy right now. Cummins stated that he remembers back when Food-4-less was trying to open up and there was a lot of fear then about other grocery stores closing, but that didn't happen. When Rancho San Miguel opened up a few years ago there were 350,000 sf of grocery store space already in Lodi, but there wasn't any fear about other stores closing. Cummins stated that he spoke with the K-Mart store manager and learned that the store has been under producing for the last ten years. He added that he got several calls from concerned citizens. Cummins stated that he spoke with the City Manager today regarding the budget and the City is in dire need of more revenue. What other store is capable of developing a 40 acre regional shopping center other than Wal-Mart. There will be 11 other pads that will be a part of this project which will bring in several more jobs. The developer has an excellent track record in Lodi. There are some issues with AB32, but legal counsel has stated that it will not be an issue in this case. Commissioner Cummins stated his support of the project and will vote in favor of certifying the EIR.
- Commissioner Hennecke stated that while the attorneys would like to tell us that we have only to look at the EIR, we are human beings and we can not help but think of it on a personal level. He believes that one of the Commissions duties is growth, and the future growth of the City should be considered. He does not feel that a Super Wal-Mart is a good fit for Lodi. He would like to see more of the list of what the store is going to do, rather than what they could or could not do. As the project stand, he can not vote in favor of certifying the EIR.
- Chair Kiser stated that he has issues with decay and is not satisfied with the mitigations offered in this REIR. He would like to see the greenhouse gas emissions considered in regards to the new AB32 bill. He isn't satisfied with the energy standards being met. Kiser does not support this project and can not support this EIR.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Hennecke, Heinitz second, denied the request of Browman Development Company and Wal-Mart Real Estate Business Trust to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center. The motion carried by the following vote:

Ayes: Commissioners – Heinitz, Hennecke, Kirsten, Olson, and Chair Kiser
Noes: Commissioners – Cummins
Abstain: Commissioners – Mattheis

Chair Kiser asked if the rest of the item needed to have a vote. Mr. Hobbs stated that the project can not be approved because there isn't a Certified EIR, however the Commission can move to deny the rest of the project keeping it all together so that if the denial gets appealed it would keep everything together and put it all at the Council level. Mr. Hobbs recommends denying the entire project, so that it is kept together in one package.

MOTION:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, to deny the request of Browman Development Company and Wal-Mart Real Estate Business Trust to

Continued

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

Consider approval of Vesting Tentative Map 03-P-001 to create 12 parcels for the project; and

The request of Browman Development Company and Wal-Mart Real Estate Business Trust for site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive.

Commissioner Olson requested clarification on the recommendation. Mr. Bartlam stated that what Mr. Hobbs suggested was that the project could not be approved without a certified EIR, but it could be denied so that it can be kept together in a complete package with the EIR so that the City Council could review the entire project, not just the Revised EIR assuming an appeal of the Commissions action.

Commissioner Kirsten withdrew his motion.

Commissioner Olson stated that to deny the entire project would expedite the entire project for the applicant. Olson stated that she doesn't necessarily want to deny the project all together, so leaving them separate does not bother her.

Commissioner Heinitz does not want to sign off on the project all together. If this EIR goes to the City Council and they choose to override the Commissions decision, Heinitz stated that he would like to still have say in the rest of the project.

Commissioner Hennecke stated that he would like to have another look at the project if the EIR gets certified by Council.

Chair Kiser stated his agreement with his fellow Commissioners, therefore the balance of the requests were tabled for possible further action.

Commissioner Mattheis rejoined the Commission.

Deputy City Attorney Magdich stated that the Commission will need to take a vote to continue the meeting beyond 11:00pm.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Heinitz second, chose to continue with the rest of the meeting past 11:00pm. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Heinitz, Hennecke, Kirsten, Mattheis, Olson, and Chair Kiser

Noes: Commissioners – None

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Interim Director Bartlam pointed out the summary memo in the packet and stated that staff was available to answer any questions.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

Interim Director Bartlam stated that the Draft Preferred Plan will be coming before the Commission at the first meeting in November.

Continued

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

Chair Kiser gave a brief report on the meeting of October 6th, specifically regarding the property over on Cherokee Lane that the Commission denied the service station and Mini Mart plan. Kiser stated that the project came back as a Café/Deli and has been approved by SPARC. Commissioner Mattheis stated his appreciation of the Commission for sticking with their ideals and seeking a much better use of this property.

9. ART IN PUBLIC PLACES

None

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

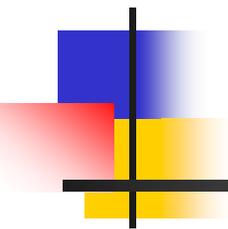
Vice Chair Cummins congratulated Commissioner Mattheis on his recent nuptials.

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 11:18 p.m.

ATTEST:

Konradt Bartlam
Interim Community Development Director



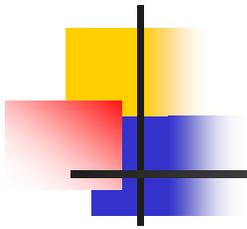
Lodi Shopping Center

Applicant:

Browman Development Company

File No.:

**EIR-03-01-Final Revised EIR
U-02-12 – Use Permit
03-P-001 – Vesting Tentative Map
08-SP-08 - SPARC**



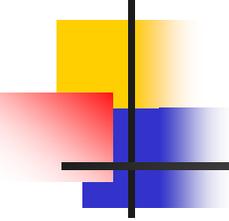
Lodi Shopping Center

- **Final Revised Environmental Impact Report:**
 - The Revised EIR includes the five (5) sections which were subject to revision or augmentation as directed by the Court.
 - Cumulative Urban Decay Impacts
 - Energy Impacts
 - Agricultural Resource Impacts
 - Project Objectives
 - Project Alternatives

- **Use Permit:** C-S, Commercial Shopping District plan review of the site as well as the sale of alcoholic beverages within Wal-Mart building.

- **Vesting Tentative Map:** Allows the subdivision of the property into 12 parcels.

- **Site Plan and Architectural Review:** Required for all buildings in a C-S zone designation. Focus on architecture and site design.

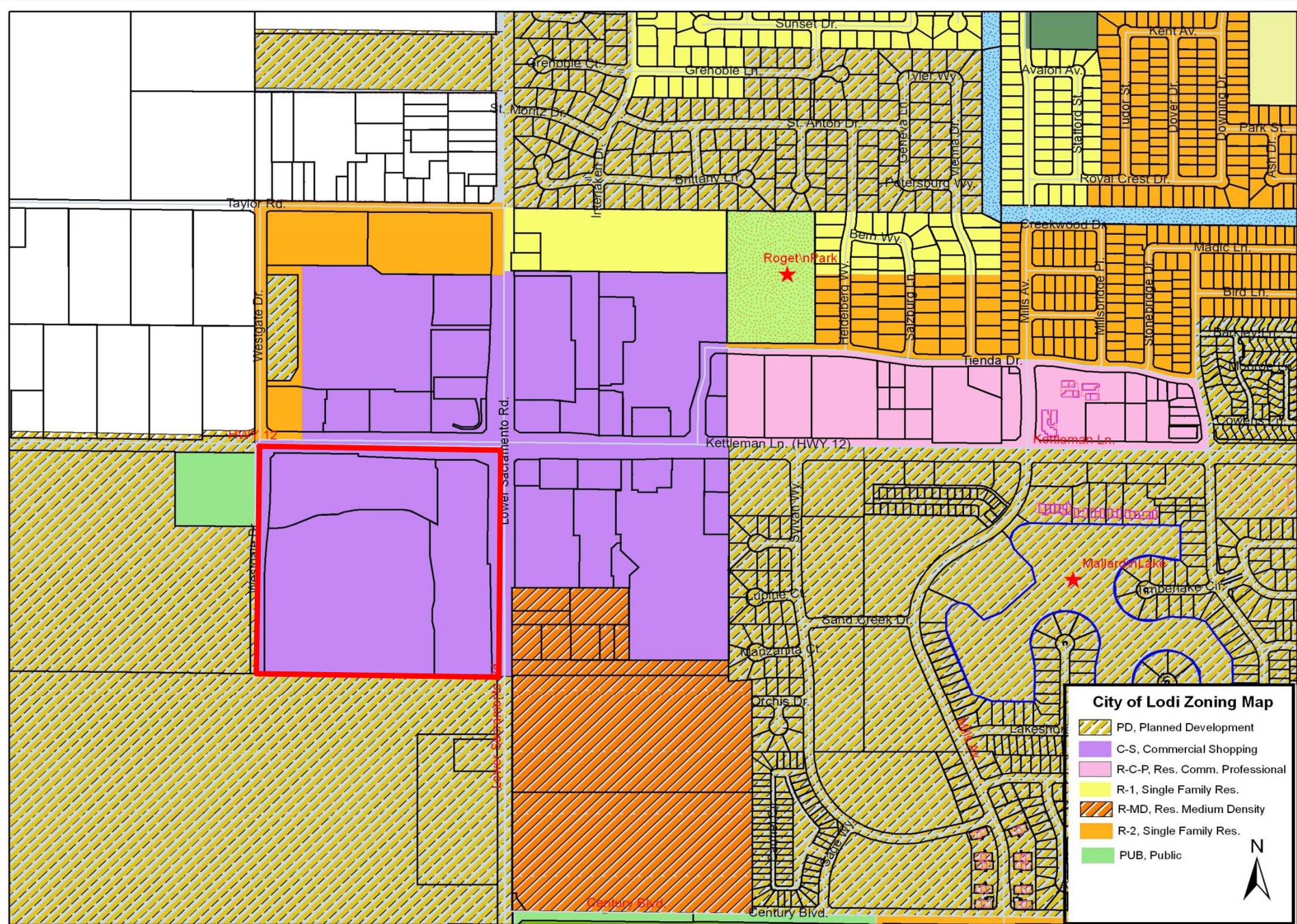


Lodi Shopping Center

■ **Background:**

- **Planning Commission approval:** December, 2004
- **City Council approval:** February, 2005
- **EIR found deficient for cumulative urban decay and energy impacts:** December, 2005
- **City Council rescinds original approvals:** May, 2006
- **Draft Revised EIR:** October, 2007
- **Final Revised EIR:** March, 2008

Lodi Shopping Center: Zoning & Vicinity Map



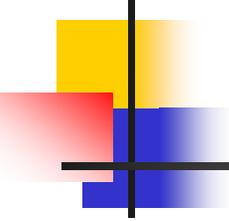
City of Lodi Zoning Map

- PD, Planned Development
- C-S, Commercial Shopping
- R-C-P, Res. Comm. Professional
- R-1, Single Family Res.
- R-MD, Res. Medium Density
- R-2, Single Family Res.
- PUB, Public

N

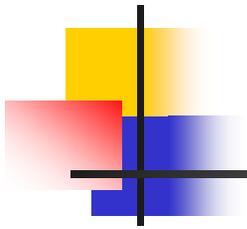
Lodi Shopping Center: Aerial View





Lodi Shopping Center

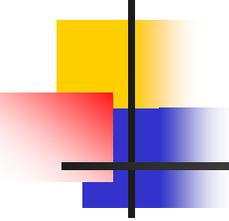
- **Summary of Environmental Impacts:**
 - The project would include new retailers who would compete with existing retailers in the City of Lodi;
 - There is insufficient evidence to suggest that this increased competition would result in any business closures, and consequently would not indirectly result in substantial deterioration of properties or urban decay.
 - This is considered less than significant



Lodi Shopping Center

■ **Summary of Impacts cont.:**

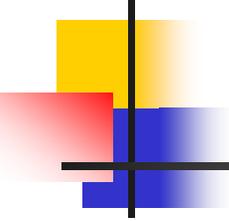
- The project would increase energy consumption in the construction and operational phases of the project.
- Energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy.
- This is considered less than significant
- 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.
- This is considered less than significant



Lodi Shopping Center

- **Summary of Impacts cont.:**

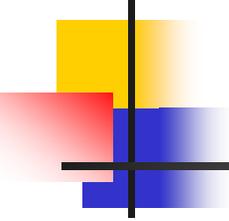
- The project would convert approximately 40 acres of prime agricultural land to urban areas.
- No mitigation is available which would reduce this impact to a less than significant level. This is considered a significant impact.
- As a result, the applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland within San Joaquin County.



Lodi Shopping Center

■ **Use Permit:**

- The C-S zoning designation requires all plot plans to be approved by the Planning Commission.
- The plan presented is identical to that approved by the Commission in December, 2004. The plan meets or exceeds all requirements of the Lodi Zoning Ordinance including the Standards for Large Retail Establishments.
- Allows the sale of alcoholic beverages within the Wal-Mart building. 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.

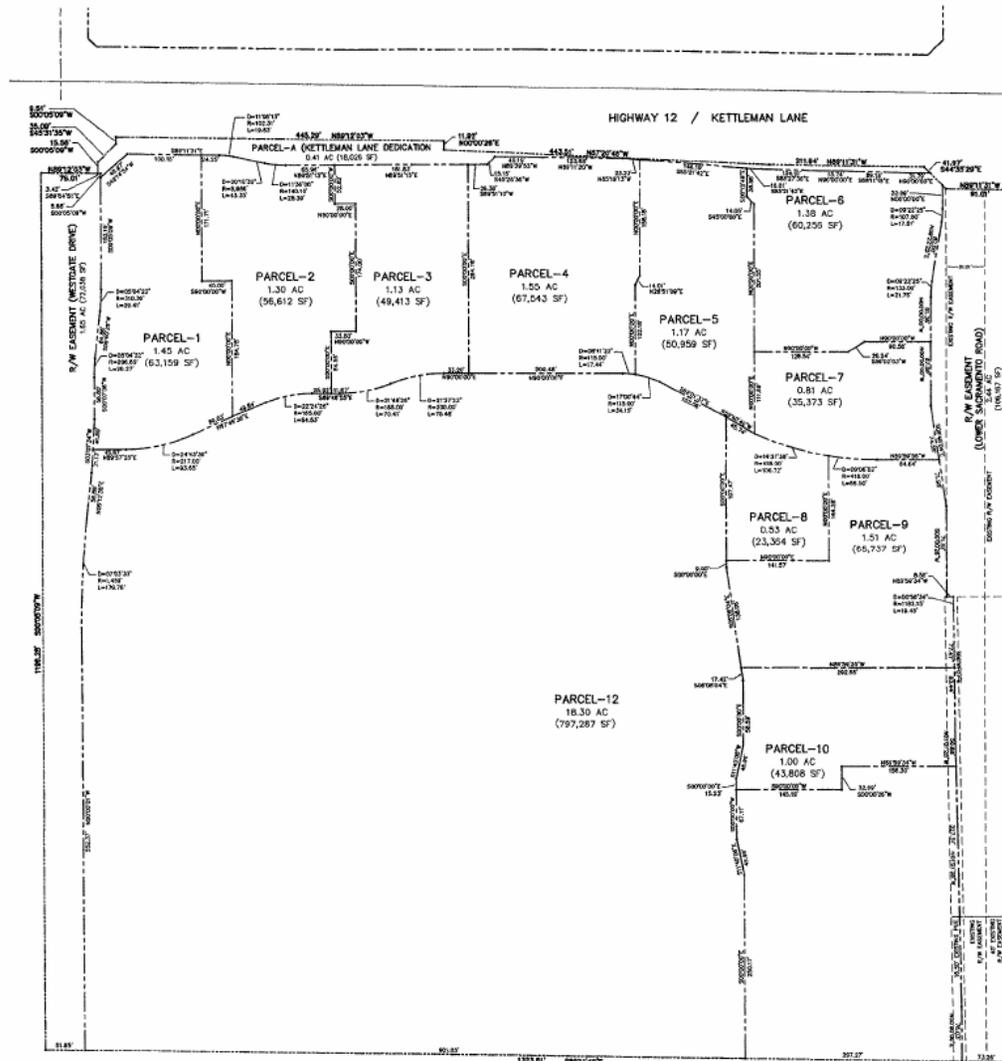


Lodi Shopping Center

- **Tentative Map:**

- The proposed Vesting Tentative Map includes 12 parcels which range in size from the largest lot at 18.3 acres to the smallest at .53 acres.
- All 12 buildings are on their own lot with associated parking.

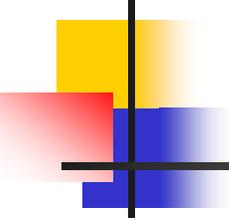
Lodi Shopping Center: Vesting Tentative Parcel Map



*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*

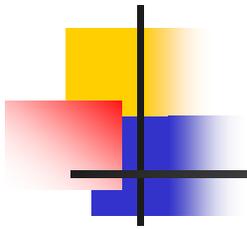


DA Doucet & Associates, Inc.
 1515 Crocker-Hale Dr., Suite 175
 Folsom, CA 95630, Phone: (916) 988-2000 Fax: (916) 988-2815
 www.doucet.com www.doucet.com/california



Lodi Shopping Center

- **Site Plan and Architectural Review:**
 - The proposed project includes the construction of a new Wal-Mart building which is approximately 216,710 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.
 - Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building.



Lodi Shopping Center

- **SPARC cont.:**

- There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (Hwy. 12), and two from Westgate Drive.
- 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
- 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.

Lodi Shopping Center: Landscape Plan



SUGGESTED PLANT LIST

TREES:	COUNT
BESOLA BERRYFRONT SODOLE COAST REDWOOD	87
LIEDORON FLUPPIA TULIP TREE	28
PIVUS CALLERTANA ARISTOCAT FLOWERING PEAR TREE	79
CEL'S OCCIDENTALIS HAWDOBBY	48
LARRETRICEMIA TUBERCARIA AND TUBEROSA ORANGE PINE	57
FRANKUS BAYWOOD BAYWOOD AHN	40
PLATANUS RADICATA BLOSSOMING BIRCHWOOD	1
MALLUS MELALEUCUS CRABAPPLE	63
PODOCARPUS GRACILIOR PINE PINE	28
ALL 3" BALLON SIZE TOTAL COUNT	
	478

SHRUBS AND ACCENTS:

- HYDRANGEA TOMSA VARIETAL
- VARIETAL TOMSA
- LEUCOPHYLLUM LARGIFOLIUM 'TANAKA'
- JAPANESE PRIVET
- SMYRNANOLEpis JACK EVANS
- PINK INDIA HAWTHORNE
- SMYRNANOLEpis CLARK
- WHITE INDIA HAWTHORNE
- FLORIBUNDA AUCULATA
- COKE PLUMBRAND
- FRAXILUS CAROLINIANA CONTRACTA
- DWARF CAROLINA LAUREL 'CHERRY'
- ESCALONIA TREES
- DWARF ESCALONIA
- BUNUS JAPONICA 'GREEN BEAUTY'
- JAPANESE BOWWOOD
- PICTATA FRASER
- RED PINE
- FRAXILUS TENNA RUSBY
- RED PLAIN
- DIPTERIS SCOLOR
- 'YELLOW BUTTERFLY' RB
- FRAXILUS TENNA PINK STEREA
- PINK STEREA PLAIN PLAIN
- ABRANTHUS AFRICANUS WHITE
- LILY OF THE NILE
- HYDRANGEA 'YELLOW EVENINGING'
- SHALY

GROUND COVERS:

- COCCINELLA KILBI
- PROSTRATE COCCINELLA
- TRACHELOSPERMUM LAMPINDES
- STAR JASMINE
- SHADONIA PUTEANA YELLOW
- 'YELLOW SHADONIA'
- LANTANA PURPLE
- 'YELLOW LANTANA'
- EGG LAWN

NOTE THAT THIS PLAN IS CONCEPTUAL IN NATURE, NOT ALL SHRUBS OR PLANTING MAY BE SHOWN, TREE SPECIES AND COUNT IS REPRESENTATIVE OF WHAT WILL BE SHOWN ON THE CONSTRUCTION DOCUMENTS. ALL PLANTERS SHALL BE PLANTED WITH 1" BARK MULCH OR SHRUBBERY SCOURING. ALL PLANTERS ARE TO BE MULCHED WITH A 2" LAYER OF BARK MULCH. THE IRRIGATION SYSTEM SHALL BE AN AUTOMATIC UNDERGROUND PIPE USING LOW VOLUME, MULTI-OUTLET DRIP SUBSYSTEMS WITH 1/2" TUBING TO EACH INDIVIDUAL PLANT, OR PLANE DRIP TUBING AND POPUP LOW VOLUME BRICKY TUBING. ALL LANDSCAPING SHALL BE IN COMPLIANCE WITH THE CITY OF LODI'S WATER USE LANDSCAPING ORDINANCE.

Lodi Shopping Center: Elevations



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations

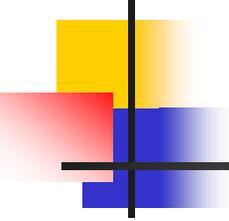


Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations





Lodi Shopping Center

- **Conclusion:**

- Based on the information contained within the Final Revised EIR, the plans submitted and the policies and previous actions of the City, staff recommends that the Planning Commission:
 - Certify Final Revised Environmental Impact Report (EIR-03-01)
 - Approve Use Permit U-02-12,
 - Approve Vesting Tentative Map 03-P-001
 - Approve Site Plan and Architectural Review 08-SP-08

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95616
Telephone (530) 758-2377
Facsimile (530) 758-7169
dbmooney@dcn.org

October 8, 2008

**VIA ELECTRONIC MAIL
AND REGULAR MAIL**

Planning Commission
City of Lodi
221 West Pine Street
Lodi, California 95241-1910

Re: Final Revisions to the Environmental Impact Report for the Lodi
Shopping Center, State Clearinghouse No. 2003042113

Dear Commissioners:

At your October 8, 2008 meeting, you will decide whether to (1) certify the City of Lodi's ("City") the Final Environmental Impact Report ("FEIR") for the Lodi Shopping Center project (or the "Project") and (2) approve the Project. On behalf of Citizens for Open Government ("Citizens"), we urge you to send the deficient FEIR back for further work and deny the Project. The two principle questions before you are whether the environmental documentation fully discloses, and mitigates where feasible, the environmental impacts of the Project and whether Lodi needs the Project given the substantial negative impact on local businesses in these lean economic times. We ask the Planning Commission to examine this latter question particularly carefully given that the City's stated objective is to approve only "commercial development which does not negatively affect Downtown and the past and ongoing investment in Downtown." (DREIR at 32.)

A. Background

As you are aware, the Lodi Shopping Center is proposed to be constructed on 40 acres of prime agricultural land on the west side of the City on the southwest corner of West Kettleman Lane and Lower Sacramento Road. The main purpose of the Project is to substitute a new 227,000 square foot Wal-Mart Supercenter for the existing Wal-Mart across the street. The Project also contains approximately 110,000 square feet of additional smaller scale commercial space.

The City considered an EIR for this Project once before and certified it as in full compliance with the California Environmental Quality Act ("CEQA") in early 2005. In litigation commenced by Lodi First, the Superior Court determined that the City made numerous errors in the analysis and remanded the EIR for an overhaul should the City desire to proceed with the Project. Citizens also sued the City over the same EIR,

asserting a range of additional CEQA errors. The Lodi City Council thereafter decertified the Final EIR and voided the project approvals. After prevailing on appeal to establish its right to sue, Citizens agreed to dismiss its case when the City released a Notice of Preparation for the “Draft Revisions” to the EIR (“DREIR”) and agreed to permit Citizens to “comment fully” on the new draft EIR. A year ago, the City produced its DREIR and on December 7, 2007, Citizens provided extensive comments. The City produced its “Final Revisions” to the EIR (“FREIR”) some six months ago in March 2008.

B. Inadequate CEQA Compliance

1. Improperly Restricted Scope of Analysis

Instead of producing a comprehensive analysis of the full environmental effects of building another 330,000 square feet of new commercial development, the City insists that it may pick and choose which issues to present to you. For example, in response to comments that the City’s CEQA documents failed to adequately analyze certain critical environmental effects, (e.g., global warming, certain air quality impacts such as PM2.5 emissions and SJVAPCD 9510 compliance), the City contends that it may ignore these impacts by restricting the scope of its “Revised” EIR. The City contends that it can avoid properly disclosing the full impact of the Wal-Mart Supercenter to the Planning Commission and the public because they were not allegedly addressed by the court in the *Lodi First* litigation or were not voluntarily considered in the DREIR.

The City presumption of its ability to exclude analysis and consideration of environmental impacts caused by the Project exceeds its legal ability and gives short shrift to the Planning Commission’s need for complete disclosure of impacts. Under the Stipulation for Dismissal executed by the Citizens and the City, the City agreed that Citizens “shall have the right to comment fully on the revised draft and final EIRs” without limitation. The City then agreed that it would not assert any defense to any subsequent litigation “claims” that is not inconsistent with the terms of this Stipulation” In other words, the City cannot agree on the one hand to allow Citizens to comments fully but on the other hand disregard those comments.

More importantly, the City is asking the Planning Commission to certify that all the environmental documentation before it meets CEQA’s obligation to fully disclose all impacts and fully mitigate were feasible. The Planning Commission may examine the FEIR in order ensure that it discloses and mitigates all impacts regardless of Wal-Mart’s desire to shield as much information as possible from public disclosure.

2. Land Use – Urban Decay

In 2005, the City asserted that approval of the Lodi Shopping Center with over 330,000 square feet of commercial/retail would not result in urban decay. The Superior

Court held this conclusion irrational because the City did not consider the cumulative impacts of surrounding commercial development, including new close by Wal-Mart Supercenters. In 2006, the City approved 350,000 square feet of new commercial retail Reynolds Ranch, apparently concluding that this 350,000 square feet would have no adverse affect on downtown retailers. Recently, the City approved more than doubling of commercial area to 750,000 square feet again apparently concluding no adverse consequences from this development.¹ Central to this determination was that the Reynolds Ranch project did not contain any big box stores like a Wal-Mart Supercenter. (See Planning Commission Minutes wherein Mr. Gillespie “stated that because there isn’t any Big Box stores planned for this area the effects on the downtown are not significant.”)

Now the City asserts that – in addition to the new nearby Wal-Marts and the 750,000 of new commercial of Reynolds Ranch – the Lodi Shopping Center, including a “Big Box” Wal-Mart Supercenter and more than 330,000 square feet will not adversely affect the downtown core notwithstanding a projected 34% loss of sales. We urge the Planning Commission to ask “Is conclusion rational in this economic climate?” We also urge the Planning Commission to review carefully the economic analysis for this report and ask probing questions such as “did the economic analysis include the re-tenanted Wal-Mart space?” and “on what factual basis does the City assume that 100% of sales leakages will be captured by the Project and Reynolds Ranch?” We ask this question because we not only believe this assumption to be unsupported and irrational (particularly 100% of the \$29,229,496 in annual service station leakages), but also because this assumption is used by the economic consultant to reduce on a dollar for dollar basis the effect from the Project on local retailers. In other words, the actual adverse sales impact to existing local businesses will be substantially greater than reported because “using a lower assumed capture rate would raise the percent capture from existing” local retailers. (See DREIR Table 22, at 64, note e.)

We also ask whether another fundamental assumption central to the consultant’s “no effects” conclusion is rationale: that growth in trade area will expand the economic pie so that the addition of over 1 million square feet of new commercial will keep existing business viable (see e.g., FREIR at 39). Is continued growth sufficient to cover the admitted over supply of retail space objectively reasonable given the economic downturn?

We note that while the City seems institutionally unable to conclude that any new amount of retail will adversely affect downtown, it rests its CEQA conclusion on the absence of urban decay on implementation of the new prioritized code enforcement

¹ In light of the expansion of the Reynolds Project beyond what was disclosed to the public in the DREIR, the City is obligated to recirculate the DREIR in order to provide a meaningful opportunity to comment on Land Use/Urban Decay cumulative impacts and the City’s last minute disclosure of additional consultant analysis.

policy. We attach a copy of Resolution 2006-39 and ask the Planning Commission to note that contrary to its representations in the EIRs, the City has placed enforcement of “[v]iolations related to property maintenance issues” next to the bottom of its “Operational Priorities” (9th out of 10). In addition, while Resolution No. 2006-39 includes abatement of nuisances as a potential topic for one of five “Focused Enforcement Efforts,” we ask for proof in these tight budgetary times that such an effort has actually been funded for the long term, for adopted criteria indicating how much urban decay is necessary before a “nuisance” is established, and instances of past nuisance building prosecutions, if any.

Finally, we note that the proposed adopting ordinance imposes Condition HH “to address the economic affects of the Lodi Shopping Center on the Downtown.” Condition HH requires an investment of not less than \$680,000 in downtown buildings owned or rented by the developer (or by others). It is difficult to reconcile the City’s previous conclusion that development of the Lodi Shopping Center will not adversely affect downtown with the imposition of a condition “to address” those non-existent impacts. More fundamental, however, is the disconnect between substantial loss of sales for existing retailers and the urban decay conditions likely to result there from and Condition HH – which can be satisfied simply by the developer upgrading buildings it owns (which may or may be related to retailing or contributing to urban decay). Has the City undertaken any analysis that links Project impacts to Condition HH or is it simply a monetary sweetener?

2. Agricultural Resources

The City has made significant strides in recognizing that agricultural conservation easements may mitigate loss of prime agricultural lands. We also applaud the City for taking many of our suggestions to improve the easement mitigation requirement imposed on the Project. The City ignored, however, one of our central points – that mitigation should occur at a ratio greater than 1:1 in order to more fully mitigate the loss and that is certainly feasible to do so. In response the City simply points to other jurisdictions that have required minimal mitigation requirements (while other jurisdictions require much more). CEQA, however, does not permit the City to meet some “least common denominator” test to limit its mitigation obligation. If the City desires to override the significant but unavoidable impacts to agricultural resources CEQA requires that it adopt all feasible mitigation measures to reduce significant impacts. (CEQA Guidelines § 15043(a).) In this instance, it is imminently feasible to require greater mitigation ratios in order to lessen the individual and cumulative loss of prime agricultural lands.

3. Energy

As we pointed out in our comments on the DREIR, global warming has become one the most critical environmental problems that humans must confront. Despite discussing global warming in its revised Energy chapter, the City failed to undertake any

analysis of global warming impacts and greenhouse gas (GHG) emissions caused by the Project. The City responded that, even though it raised the global warming issue in the DREIR, it need not discuss it as (1) global warming lies outside the alleged restricted scope of the DRIER, and (2) no meaningful analysis could be undertaken in any event absent more guidance from state government.

The City is wrong. As discussed above, global warming is a legitimate issue raised in timely comments and must be addressed. Moreover, the City cannot raise the issue, inadequately assess its impact, and then claim immunity from comment because global warming lies outside the scope of DREIR.

Next, the City self-servingly asserts that CEQA does not require assessment of global warming impacts until the State if California has provided it with step-by-step guidance on measuring impacts and rendering significance determinations. CEQA's mandate to assess all impacts is not limited to those issues for which a local jurisdiction believe it has sufficient guidance. Instead, as the Governor's Office of Planning and Research ("OPR") has recognized in its June 19, 2008, Technical Advisory entitled *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review* requires a global warming analysis and that the Energy section of an EIR is an appropriate place for such an analysis. (A copy of the Technical Advisory is attached as Attachment A.) In the Technical Advisory, OPR provides a recommended approach:

Each public agency that is a lead agency for complying with CEQA needs to develop its own approach to performing a climate change analysis for projects that generate GHG emissions. A consistent approach should be applied for the analysis of all such projects, and the analysis must be based on best available information. For these projects, compliance with CEQA entails three basic steps: identify and quantify the GHG emissions; assess the significance of the impact on climate change; and if the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance. (Technical Advisory at p. 5.)

The Technical Advisory also informs lead agencies must assess whether the emissions are individually or cumulatively significant. (*Id.*) Thus, the City must consider the impact of the Project when viewed in connection with the effects of past, current, and probable future projects. (*Id.*)

As indicated in the Technical Advisory (at p. 6), CEQA requires the lead agency must also determine the threshold of significance for the project. It should be noted that the State Lands Commission recently stated in a draft Environmental Impact Report for the Venoco Ellwood Oil Development and Pipeline Project determined that a project would be considered having a significant impact if its GHG emissions have a net increase

over the baseline. Because of the severity of the global warming problem as the result of cumulative GHG emissions worldwide, the State Lands Commission's Draft EIR concludes that the zero-threshold approach appears to be the most scientifically supportable of the options.²

Additionally, there are available mitigation measures that could be incorporated into the project, before it is approved, that could feasibly and substantially reduce the Project's global warming impacts to a level of insignificance. Submitted as Attachment C with this comment letter is the California Air Pollution Control Officer's Association's ("CAPCOA") January 2008 report titled *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act.* Appendix B of this report presents 45 pages of potential mitigation measures that could reduce air quality impacts. Many of which could be incorporated to offset air quality impacts, including GHG emissions.

In sum, in light of the Governor's Executive Order S-3-05 (June 1, 2005) and the requirement that GHG be significantly reduced by 2020 and even further reduced by 2050, it is incomprehensible that the City, a subdivision of the state, has essentially thumbed its nose at the Governor's Executive Order and refused to even attempt to evaluate the Project's GHG emission and contributions to global warming.

4. Alternatives

Has the City presented the Planning Commission with an adequate array of alternatives that meet critical project objectives that offer environmental benefits over the proposed Project; or is the Alternative Analysis simply an exercise in rationalizing the development as proposed by the developer to maximize his fiscal return? We fear the latter as we have consistently pointed out that the City lacked a meaningful set of alternatives. We were encouraged when in the City represented to the public that its consultants would include in the DREIR up to two additional project alternatives. It now appears that one of the alternatives the City expected to include was the Reynolds Ranch site – the same site the City has now approved 750,000 square feet of commercial development. We urge the Planning Commission to require that the City present a meaningful alternative, including redevelopment of the existing Wal-Mart site that not

² The State Lands Commission's Draft Environmental Impact Report is available on line at:

http://slc.ca.gov/Division_Pages/DEPM/DEPM_Programs_and_Reports/Venoco_Santa_Barbara/Venoco_Santa_Barbara.html

A copy of the Lands Commission's Draft EIR's GHG analysis is Attachment B to these comments.

only will avoid many of the main environmental impacts but also more in line with the objective of avoiding new development harmful to downtown.

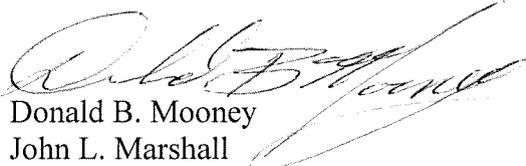
B. Statement of Overriding Considerations

The City proposes to override the significant but unavoidable environmental impacts with a host of unsupported, speculative benefits. Given the projected sales decline of at least 34 percent in the City, and the likely loss of established business, added expense of an alleged stepped up urban decay enforcement, no evidence is presented that actually shows the Project to be a net tax benefit to the City once the true cost of the Project is measured. Without some supporting analysis the City cannot override the adverse environmental consequences.

C. Conclusion

The proposed Lodi Shopping Center is not good planning for a healthy Lodi in these uncertain and tenuous economic times. The City has already approved nearly one million square feet on new commercial space close to the downtown. Why approve even more to drive more existing business down. On behalf of Citizens for Open Government, we urge the Planning Commission to reject the EIR and fundamentally inadequate and deny the Project as simply unwise to undertake at this time.

Sincerely,



Donald B. Mooney

John L. Marshall

Attorneys for Citizens for Open Government