

**CERTIFIED FOR PARTIAL PUBLICATION\***

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BAKERSFIELD CITIZENS FOR LOCAL  
CONTROL,

Plaintiff and Appellant,

v.

CITY OF BAKERSFIELD,

Defendant and Respondent;

PANAMA 99 PROPERTIES LLC,

Real Party in Interest.

F044943

(Super. Ct. No. 249669)

BAKERSFIELD CITIZENS FOR LOCAL  
CONTROL,

Plaintiff and Appellant,

v.

CITY OF BAKERSFIELD,

Defendant and Respondent;

CASTLE & COOKE COMMERCIAL-CA,  
INC.,

Real Party in Interest and Appellant.

F045035

(Super. Ct. No. 249668)

**OPINION**

APPEALS from judgments of the Superior Court of Kern County. Kenneth C.  
Twisselman II, Judge.

Herum Crabtree Brown, Steven A. Herum and Brett S. Jolley for Plaintiff and  
Appellant Bakersfield Citizens for Local Control.

~~Jones & Beardsley, Mark A. Jones, Craig N. Beardsley and Christopher Finberg~~  
for Real Party in Interest and Appellant Castle & Cooke California, Inc.

\* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is  
certified for publication with the exception of parts VII, VIII and IX.

Virginia Gennaro, City Attorney; Hogan Guiney Dick and Michael M. Hogan for Defendant and Respondent City of Bakersfield.

Gresham Savage Nolan & Tilden, John C. Nolan and Jennifer M. Guenther for Real Party in Interest Panama 99 Properties LLC.

## INTRODUCTION

Appellant Bakersfield Citizens for Local Control (BCLC) has challenged development of two retail shopping centers in the southwestern portion of the City of Bakersfield (City), alleging violations of the California Environmental Quality Act (CEQA). The shopping centers are located 3.6 miles apart.<sup>1</sup> When complete, they will have a combined total of 1.1 million square feet of retail space. Each shopping center will contain a Wal-Mart Supercenter (Supercenter) plus a mix of large anchor stores, smaller retailers, and a gas station. An Environmental Impact Report (EIR) was prepared and certified for each project.

In these consolidated appeals we are called upon to assess the sufficiency of the EIR's. In the published portion of this opinion, we first determine that BCLC has standing, that it exhausted its administrative remedies and that the appeals are not moot. We then explain that the EIR's do not fulfill their informational obligations because they failed to consider the projects' individual and cumulative potential to indirectly cause urban/suburban decay by precipitating a downward spiral of store closures and long-term vacancies in existing shopping centers. Furthermore, the cumulative impacts analyses are defective because they did not treat the other shopping center as a relevant project or consider the combined environmental impacts of the two shopping centers. Finally, we explain that failure to correlate the acknowledged adverse air quality impacts to resulting adverse effects on human respiratory health was erroneous. These defects are prejudicial

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<sup>1</sup> References to mileage, square footage and acreage are approximate.

and compel decertification of the EIR's and rescission of project approvals and associated land use entitlements. In the unpublished portion of this decision, we resolve the rest of the CEQA challenges.

### **FACTUAL OVERVIEW**

Real party in interest Panama 99 Properties LLC (P99) is developing a 370,000-square-foot retail shopping center named Panama 99 (Panama) on 35 acres of vacant land located at the northeast corner of Panama Lane and Highway 99. The project site was zoned for mobile home use and its general plan designation was low-density residential/open space.

Real party in interest and appellant Castle and Cooke Commercial-CA, Inc. (C & C), is developing a 700,000-square-foot regional retail shopping center named Gosford Village (Gosford) on 73 acres of vacant land located on the southwest corner of Pacheco Road and Gosford Road. The project site's zoning and general plan land use designation was service industrial.

Panama is located 3.6 miles east of Gosford. The two shopping centers share some arterial roadway links.

Each shopping center will feature a 220,000-square-foot Supercenter as its primary anchor tenant. Supercenters "combin[e] the traditional Wal-Mart discount store with a full-size grocery store." Supercenters compete with large discount stores, traditional department stores, supermarkets and other grocery stores, as well as drug stores and apparel stores. The Supercenter at Panama will replace an existing Wal-Mart store that currently is located 1.4 miles north of the Panama site. In addition to the Supercenter, Panama will contain a Lowe's Homes Improvement Warehouse (Lowe's), a gas station and a satellite pad. Gosford will contain a total of 17 retail stores, plus fast food restaurants and a gas station. In addition to the Supercenter, there will be six other anchor tenants, including Kohl's Department Stores (Kohl's) (apparel and home related

items) and Sam's Club (warehouse club selling groceries and a wide array of consumer products).

P99 and C & C (collectively developers) applied in early 2002 for project approvals and associated zoning changes and general plan amendments. A separate EIR was prepared for each shopping center (hereafter the Panama EIR and the Gosford EIR). The Panama EIR concluded that Panama would have significant and unavoidable direct adverse impacts on air quality and noise. The Gosford EIR concluded that Gosford would have a significant and unavoidable adverse impact on air quality, both individually and cumulatively.

The Panama EIR identified the Supercenter and Lowe's as the two anchor tenants. The Gosford EIR did not identify any tenants. In response to comments questioning the environmental effects resulting from locating two Supercenters in a 3.6-mile radius, the Gosford EIR states that no tenants have been identified. However, it is clear from the administrative record that prior to certification of the Gosford EIR, the public and the City knew that one of Gosford's tenants was going to be a Supercenter.

The planning commission and the City Council considered the two projects at the same meetings. On February 12, 2003, the City Council certified the EIR's and adopted statements of overriding considerations on the nonpublic consent calendar. Then, after public hearing, it approved both projects and granted associated zoning changes and general plan amendments.

In March 2003, BCLC filed two CEQA actions challenging the sufficiency of the EIR's and contesting the project approvals and related land use entitlements (the Panama action and the Gosford action).

Soon thereafter, construction related activities commenced on the project sites. In July 2003, the trial court denied BCLC's request for a temporary restraining order enjoining construction related activities at the Gosford site.

Trial was held on the Panama action in November 2003 and on the Gosford action in January 2004. In both actions, the court concluded that CEQA required study of the question whether the two shopping centers, individually or cumulatively, could indirectly trigger a series of events that ultimately result in urban decay or deterioration.

BCLC unsuccessfully sought a temporary restraining order enjoining construction related activities at the Panama site after the court orally announced its decision in the Panama action.

Argument was held concerning the proper remedy. The trial court concluded that the failure to study urban decay rendered the EIR's inadequate as informational documents and it ordered them decertified. It left the project approvals and associated land use entitlements intact and it severed the Supercenters from the remainder of the projects. It enjoined further construction of the partially built Supercenter buildings but allowed all other construction activities to continue pending full CEQA compliance. In its written judgments, the court found the EIR's deficient because they did not consider the direct and cumulative potential of "the Panama 99 project and the related Gosford Park project" to indirectly cause urban decay. However, the additional environmental review it ordered focused exclusively on the Supercenters, ordering study of the following two points: (1) cumulative impacts "on general merchandise businesses" arising from operating both Supercenters; (2) urban decay that could result from closure of the existing Wal-Mart on White Lane.

BCLC partially appealed both judgments; C & C partially cross-appealed the judgment in the Gosford action. The appeals were consolidated on our own motion.

Previously, we have denied petitions for writ of supersedeas that BCLC filed in March and June of 2004. Therein, BCLC sought an injunction prohibiting construction related activities on the project sites pending resolution of the appeals.<sup>2</sup>

During the pendency of these actions, the Lowe's store was constructed and it is operating at Panama. The Kohl's store was constructed and it is operating at Gosford. Sam's Business Trust acquired a 12-acre parcel at Gosford and we were notified in June 2004 that this entity would seek issuance of a building permit to construct the Sam's Club. A group known as Gosford at Pacheco LLC, has purchased 25 acres of the Gosford site. Both Supercenters are partially constructed.

#### **DISCUSSION**

At the outset, it is necessary to explicitly reject certain philosophical and sociological beliefs that some of the parties have vigorously expressed. For the record, we do not endorse BCLC's elitist premise that so-called "big box" retailers are undesirable in a community and are inherently inferior to smaller merchants, nor do we affirm its view that Wal-Mart, Inc. (Wal-Mart), is a destructive force that threatens the viability of local communities. Wal-Mart is not a named party in these actions and we rebuff BCLC's transparent attempt to demonize this corporation. We do not know whether Wal-Mart's entry into a geographic region or expansion of operations within a region is desirable for local communities. Similarly, we do not know whether Wal-Mart is a "good" or a "bad" employer. We offer no comment on Wal-Mart's alleged miserly compensation and benefit package because BCLC did not link the asserted low wages

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<sup>2</sup> BCLC made a disastrous tactical choice when it did not diligently and expeditiously seek a preliminary injunction in the trial court and extraordinary relief in this court at the first hint of construction activities. By the time BCLC petitioned us, the Kohl's store at Gosford was operating and the Lowe's store at Panama was almost complete. At that point, the equities did not weigh in BCLC's favor.

and absence of affordable health insurance coverage to direct or indirect adverse environmental consequences.

Likewise, we will not dignify with extended comment C & C's complaint that BCLC is just a "front" for a grocery worker's union whose disgruntled members feel threatened by nonunionized Wal-Mart's entry into the grocery business. As will be explained, BCLC has standing to pursue this litigation and it exhausted its administrative remedies. This is sufficient. We do not know whether Wal-Mart adversely affects the strength of organized labor and we have not considered this question.

In sum, we have no underlying ideological agenda and have strictly adhered to the accepted principle that the judicial system has a narrow role in land use battles that are fought through CEQA actions. "The only role for this court in reviewing an EIR is to ensure that the public and responsible officials are adequately informed "of the environmental consequences of their decisions *before* they are made." (Berkeley Keep Jets Over The Bay Com. v. Board of Port Cmrs. (2001) 91 Cal.App.4th 1344, 1356 (Berkeley).)

### **I. Standard of Review**

CEQA is codified at Public Resources Code section 21000 et. seq. CEQA is augmented by the state CEQA Guidelines, codified at title 14 of the California Code of Regulations section 15000 et. seq.<sup>3</sup> The Guidelines must be interpreted "in such a way as to 'afford the fullest possible protection of the environment.'" (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 868 (*Eel River*).) No party has challenged the legality of any of the applicable Guidelines and none of them appear to be "clearly unauthorized or erroneous under CEQA." (*Laurel Heights*

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<sup>3</sup> Unless otherwise specified, statutory references are to the Public Resources Code. The state CEQA Guidelines will be cited as Guidelines.

*Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, fn. 4 (*Laurel Heights II*.) Therefore, we will afford them “great weight.” (*Ibid.*)

The applicable standard of review is well established. If the substantive and procedural requirements of CEQA are satisfied, a project may be approved even if it would create significant and unmitigable impacts on the environment. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.) “In reviewing an agency’s determination under CEQA, a court must determine whether the agency prejudicially abused its discretion. (§ 21168.5.) Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 25-26 (*Dry Creek*.) Courts are “not to determine whether the EIR’s ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document.” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391 (*Irrigated Residents*.) “The appellate court reviews the administrative record independently; the trial court’s conclusions are not binding on it.” (*Id.* at p. 1390.)

“The EIR must contain facts and analysis, not just the bare conclusions of the agency.’ [Citation.] ‘An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Irrigated Residents, supra*, 107 Cal.App.4th at p. 1390.) “CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive.” (*Dry Creek, supra*, 70 Cal.App.4th at p. 26.) Therefore, “[n]oncompliance with CEQA’s information disclosure requirements is not per se reversible; prejudice must be shown.” (*Irrigated Residents, supra*, 107 Cal.App.4th at p. 1391; § 21005, subd. (b).) Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and

informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. (*Dry Creek, supra*, 70 Cal.App.4th at p. 26; *Irritated Residents, supra*, 107 Cal.App.4th at p. 1391.)

The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259 (*Hillside*)). "Substantial evidence is defined as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.'" (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1391; Guidelines, § 15384, subd. (a).) Substantial evidence is not "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); Guidelines, § 15384.)

## **II. Procedural Issues**

### **A. Standing**

C & C asserts that BCLC lacks standing because it is an economic competitor and not a bona fide environmental group. We reject this accusation as unproved speculation. The record supports the trial court's determination that BCLC has standing to pursue this litigation. "CEQA litigants often may be characterized as having competing economic interests." (*Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1138.) One of BCLC's members is a homeowner residing near Gosford and he spoke in opposition to the projects at a public hearing prior to their approval. This is sufficient to

satisfy CEQA's liberal standing requirement. (*Id.* at pp. 1138-1139; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 272 (*Bozung*)). In any event, unions have standing to litigate environmental claims. (See, e.g., *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265.) Since C & C did not support with legal argument or authority its perfunctory assertion that the trial court erred by quashing a deposition meant to elicit facts about BCLC's standing, we deem this point to be without foundation and reject it on this basis. (*In re Steiner* (1955) 134 Cal.App.2d 391, 399.)

### **B. Exhaustion**

Next, we reject C & C's complaint about the timing of BCLC's objections to the shopping centers. C & C decries BCLC's failure to submit written comments on the draft EIR's and points out that BCLC's attorney presented his client's oral and documentary objections to the projects at the public hearing concerning project approvals that was held by the City Council on February 12, 2003. C & C does not specifically contend with proper legal argument and citation to applicable authority that BCLC failed to exhaust its administrative remedies but this appears to be the implication of its argument. Although we could dismiss as undeveloped whatever legal point C & C might have intended, we have elected to substantively resolve the exhaustion question because the issue is likely to reoccur.

Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action. Only a proper party may petition for a writ of mandate to challenge the sufficiency of an EIR or the validity of an act or omission under CEQA. ~~The petitioner is required to have~~ "objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (§ 21177, subd. (b).) The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative

proceedings. (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894.) Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120-1121 (*Galante*)).) However, the lead agency is not required to incorporate in the final EIR specific written responses to comments received after close of the public review period. (*City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, 1043-1044.)

When discussing exhaustion some opinions have identified certification of the EIR rather than approval of the project as the crucial cutoff point. (See, e.g., *Galante, supra*, 60 Cal.App.4th at p. 1121.) However, section 21177 specifically refers to close of the public hearing on project approval prior to issuance of the notice of determination, not certification of the EIR. (§ 21177, subs. (a) & (b).) The correct formulation is expressed in *Hillside, supra*, 83 Cal.App.4th at page 1263: “[A] party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project.”

We believe that the apparent inaccuracy in some case law results from the fact that environmental review is not supposed to be segregated from project approval. “[P]ublic participation is an ‘essential part of the CEQA process.’” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1123.) Although public hearings are encouraged, they are not explicitly required by CEQA at any stage of the environmental review process. (Guidelines, § 15087, subd. (i).) “Public comments may be restricted to written communications.” (Guidelines, § 15202, subd. (a).) Yet, “[p]ublic hearings on draft EIRs are sometimes required by agency statute, regulation, rule, ordinance, or the agency’s written procedures for implementation of CEQA.” (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2004) § 9.26, p. 408 (CEQA Practice).) “If an

agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.” (Guidelines, § 15202, subd. (b).) Since project approval and certification of the EIR generally occur during the same hearing, the two events are sometimes treated as interchangeable. (See, e.g., *Hillside*, supra, 83 Cal.App.4th at p. 1257 [final EIR certified at same hearing during which project was approved]; *Irritated Residents*, supra, 107 Cal.App.4th at p. 1389 [same].)

C & C disparagingly refers to BCLC’s oral presentation and its submission of evidence at the February 12, 2003 City Council hearing as a last minute “document dump” and an intentional delaying tactic, pointing out that EIR’s had been certified prior to opening of the public hearing. We reject this complaint because C & C omitted the key fact that the City had improperly segregated environmental review from project approval in contravention of Guidelines section 15202, subdivision (b). The planning commission bifurcated the process by agendizing certification of the EIR’s as nonpublic hearing items and separately agendizing project approval and related land use entitlements as public hearing items. Similarly, the City Council agendized certification of the EIR’s on the closed consent calendar and agendized the “concurrent general plan amendment/zone change[s]” necessary to implement the projects on the public hearing calendar. Since certification of the EIR’s had been placed on the nonpublic consent calendar that was handled prior to the opening of the public hearing, counsel for BCLC necessarily voiced all of BCLC’s objections, including defects in CEQA compliance, during the hearing on project approvals. He specifically objected to the bifurcated process and asked for certification of the EIR’s to be removed from the consent calendar and heard concurrently with the hearing on the project approvals and land use entitlements. The City Attorney recommended against this, incorrectly stating that this “would open up the entire EIR process, open up the new comment period, and delay the entire project because it would not be able to certify the EIR tonight.”

City appears to have thought that the public's role in the environmental review process ends when the public comment period expires. Apparently, it did not realize that if a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing. (§ 21177, subd. (b); Guidelines, § 15202, subd. (b); *Hillside*, *supra*, 83 Cal.App.4th at p. 1263.) If the decision making body elects to certify the EIR without considering comments made at this public hearing, it does so at its own risk. If a CEQA action is subsequently brought, the EIR may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval.

C & C seems to assume that it was somehow entitled to final project approval in February 2003. On the contrary, the City Council was not obligated to certify the EIR's that evening. "[E]xpediency should play no part in an agency's efforts to comply with CEQA." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 (*Reasonable Growth*)). As was cogently noted by the trial court, "the public agency decides when they are going to certify the EIR... [¶] ... [¶] ... They didn't have to do it that night." C & C's complaint that allowing project opponents to raise objections after close of the public comment period for the draft EIR allows them to "sandbag" project proponents and delay certification "ad infinitum" should be presented to the Legislature, for it is a complaint about the design of the CEQA process.

We reject C & C's related contention that BCLC failed to participate in the public review process prior to certification of the EIR's because it is factually incorrect. BCLC actively participated in the administrative review process prior to certification of the EIR's. The City Planning Commission accepted public comment concerning the adequacy of the draft EIR's at a hearing on October 3, 2002. Sheila Stubblefield, who is described in the minutes of this meeting as BCLC's president and founder, spoke in opposition to both projects at that meeting. After the City Planning Commission voted in December 2002 to recommend certification of the EIR's and approval of the projects,

BCLC notified the City in writing that it was appealing the planning commission's decision. The issues specifically raised by BCLC in this letter include urban decay and cumulative impacts. If an EIR is certified by an unelected planning commission, then the lead agency must allow the public an opportunity to appeal the certification to an elected body. (§ 21151, subd. (c); Guidelines, § 15090, subd. (b); *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525-526.) BCLC sent a second letter to City before the February 2003 City Council meeting. It outlined several inadequacies in the EIR's and raised other objections to approvals of the project. Then, BCLC's legal counsel appeared at the City Council meeting and proffered oral and documentary support for BCLC's previously expressed position that the EIR's were legally inadequate. Since the certification of the EIR's had been placed on the nonpublic consent calendar, he necessarily spoke during the hearing on project approvals.

Finally, we dismiss C & C's assertion that BCLC only challenged the Supercenter aspect of the shopping centers. The evidence contradicts this position and demonstrates that BCLC's objections concerning urban decay and cumulative impacts related to the shopping centers as a whole. For example, BCLC's December 2002 letter appealing the decision of the planning commission specifically referenced the addition of over one million square feet of retail space. Nowhere within this letter did BCLC mention Wal-Mart or the Supercenters. BCLC's February 2003 letter also references urban decay as a consequence of the shopping centers and it cites relevant authorities. The trial court's oral decisions and written judgments found the EIR's deficient because they failed to consider whether the shopping centers could indirectly cause urban decay. It was only the remedy that inexplicably was limited to the Supercenters.

In essence, C & C has imputed bad faith on BCLC's part without offering any evidence to justify the accusation. BCLC actively and properly participated in the administrative review process. It did not contravene CEQA by challenging the adequacy of the EIR's at the February 2003 City Council meeting and submitting evidence

supporting their position. There is no indication in the record that if the City had seriously considered the objections asserted by BCLC and others and if it had revised the EIR's in response to these objections, BCLC subsequently would have asserted new inadequacies solely to delay the projects. It is the City's bifurcated process, which resulted in segregation of environmental review from project approval, that supports an imputation of bad faith, an inference BCLC civilly does not press.

### C. Mootness

Developers achieved an important practical victory when they convinced the trial court to leave the project approvals in place, sever the Supercenters from the remainder of the projects and allow construction of the rest of the shopping centers to proceed prior to full CEQA compliance. As a result, retail businesses currently are operating at both project sites and nonparties have acquired portions of the project sites. This has generated substantial economic and psychological pressures in favor of the shopping centers as presently approved and partially constructed. BCLC cannot provide any precedent for closure of an operating retail establishment because the retailer's landlord failed to adequately comply with CEQA and it has not asked us to order these businesses to cease operations pending full CEQA compliance. Given this state of affairs, questions necessarily arise concerning redressability and consequent mootness. Has the danger of irreversible momentum in favor of the shopping centers, about which we warned in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 at page 742 (*Raptor*), been realized?

Undoubtedly some would view further environmental study of the partially completed projects as a futile waste of time and money. Since CEQA's purpose is not to generate meaningless paperwork (*Bozung, supra*, 13 Cal.3d at p. 283), we were tempted to find the alleged defects in CEQA compliance essentially nonredressable and therefore moot. Yet, after reviewing briefing on this question, we decided not to adopt this rather

cynical position. For the following reasons, we have concluded that the CEQA issues remain viable and therefore, we decline to dismiss the appeals as moot.

First, developers expressly recognized that they were proceeding at their own risk when they relied on the contested project approvals during the pendency of this litigation. When an injunction is not granted after commencement of a CEQA action, the agency is to assume that the contested EIR or negative declaration satisfies CEQA's requirements. However, "[a]n approval granted by the responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit." (Guidelines, § 15233, subd. (b).) Although BCLC's failure to diligently and expeditiously seek injunctive relief necessitated our denial of its belated pleas for issuance of extraordinary relief pending issuance of this opinion, it did not provide developers with a "pass" on full CEQA compliance or grant them any vested interest in improvements that were completed at their own risk. The sale or lease of land to third parties was beyond BCLC's control. Such third party transactions do not immunize defective land use approvals. As a matter of public policy and basic equity, developers should not be permitted to effectively defeat a CEQA suit merely by building out a portion of a disputed project during litigation or transferring interests in the underlying real property. Failure to obtain an injunction should not operate as a de facto waiver of the right to pursue a CEQA action.

Second, questions concerning urban decay and cumulative impacts constitute important issues of broad public interest that are likely to reoccur. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1202, fn. 8; *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479.)

Finally, even at this late juncture full CEQA compliance would not be a meaningless exercise of form over substance. The City possesses discretion to reject either or both of the shopping centers after further environmental study and weighing of the projects' benefits versus their environmental, economic and social costs. As

conditions of reapproval, the City may compel additional mitigation measures or require the projects to be modified, reconfigured or reduced. The City can require completed portions of the projects to be modified or removed and it can compel restoration of the project sites to their original condition. (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 641; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888-890.) We presume that the City will fully and sincerely assess the new information contained in the revised EIR's and that it will fairly and independently decide whether reapproval of the projects is in the best interests of the City's residents, giving no weight to the fact that the shopping centers are partially constructed.

### **III. Urban Decay**

Water contamination and air pollution, now recognized as very real environmental problems, initially were scoffed at as the alarmist ravings of environmental doomsayers. Similarly, experts are now warning about land use decisions that cause a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake. In this case, the trial court recognized that the shopping centers posed a risk of triggering urban decay or deterioration<sup>4</sup> and it concluded that CEQA required analysis of this potential impact. C & C has challenged this determination. We find C & C's arguments unpersuasive and agree that CEQA requires analysis of the shopping centers' individual and cumulative potential to indirectly cause urban decay.

Guidelines section 15126.2 requires an EIR to identify and focus on the significant environmental impacts of the proposed project. In relevant part, this section provides:

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<sup>4</sup> Some of the parties use the term "urban blight," assuming that it is interchangeable with "urban decay." This is incorrect. "Blight" is a term with specialized meaning that has not been shown to be applicable. (See Health & Saf. Code, § 33030 et. seq.)

“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.” (Guidelines, § 15126.2, subd. (a).) Guidelines section 15064, subdivision (d) mandates that both primary (direct) and “reasonably foreseeable” secondary (indirect) consequences be considered in determining the significance of a project’s environmental effect.

“CEQA is not a fair competition statutory scheme.” (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1235.) Therefore, the economic and social effects of proposed projects are outside CEQA’s purview. (Guidelines, § 15131, subd. (a).) Yet, if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019 (*Friends of Davis*); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445-446 (*Mt. Shasta*).) Subdivision (e) of Guidelines section 15064 provides that when the economic or social effects of a project cause a physical change, this change is to be regarded as a significant effect in the same manner as any other physical change resulting from the project. (See, e.g., *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 131 [potential of increased student enrollment in an already overcrowded school resulting from construction of the proposed apartment complex was an environmental effect that required treatment in an EIR because it could lead to the necessity of constructing at least one new high school].) Conversely, where economic and social effects result from a physical change that was itself caused by a proposed project, then these economic and social effects may be used to determine that the physical change constitutes a significant effect on the environment. (See, e.g., *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 [when a waste management facility was proposed next to a religious retreat center, CEQA required study whether the

physical impacts associated with the new facility would disturb worship in the natural environment of the retreat center].) Guidelines section 15131, subdivision (a) provides, “An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes in turn caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.”

Case law already has established that in appropriate circumstances CEQA requires urban decay or deterioration to be considered as an indirect environmental effect of a proposed project. The relevant line of authority begins with *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 (*Bishop*). There, the appellate court held that adoption of multiple negative declarations for different aspects of the same large regional shopping center violated CEQA. (*Id.* at p. 167.) The court also agreed with appellant that on remand “the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown Bishop.” (*Id.* at p. 169.) Citing Guidelines section 15064, the court found that the lead agency had an affirmative duty to consider whether the new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area. (*Id.* at p. 170.) Therefore, “[o]n remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center.” (*Id.* at p. 171.)

Next, *Mt. Shasta, supra*, 198 Cal.App.3d 433, invalidated an EIR for a proposed shopping center for numerous reasons. In relevant part, the court determined that the EIR was defective because it failed to “consider the potential physical effect of the rezoning on the central business area. The EIR pointed out the proposed project may pose a

significant economic problem for existing businesses, but offered little analysis of the issue.” (*Id.* at p. 445.) The court rejected respondent’s justification that “no analysis of economic effects was required in the EIR.” (*Id.* at p. 446.) Citing *Bishop, supra*, 172 Cal.App.3d 151 and Guidelines section 15064, it explained that “[t]he potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area. Therefore, on remand, City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.” (*Mt. Shasta, supra*, 198 Cal.App.3d at p. 446.)

*City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810 addressed this issue as part of its determination whether a project to relocate a parole office was exempt from CEQA. In assessing whether the significant effect exception applied, the court discussed *Bishop, supra*, 172 Cal.App.3d 151. It agreed that social and economic effects must be considered if they will cause physical changes but found *Bishop* distinguishable because appellant in this case had not made a “showing or argument that [relocation of the parole office] would cause the physical deterioration of the area.” (*Id.* at p. 828.)

*Friends of Davis, supra*, 83 Cal.App.4th 1004 (distinguished, *post*) rejected the position that identification of a Borders bookstore as a prospective tenant in a retail development compelled supplemental environmental review. There, the City of Davis (Davis) certified an EIR for a specific plan that reflected designation of the subject property for retail use. The applicant subsequently acquired an option to purchase the property and applied for design review of a proposed retail development that conformed to the specific plan and current zoning designation. During the design review process, it was revealed that one of the tenants would be a Borders bookstore. Davis planning staff took the position that the design review process did not differentiate between one type of retail tenant and another. Over objection from citizens who sought to use the design review ordinance to exclude Borders from locating in Davis, the planning commissions’

decision to approve the design review application was upheld. The appellate court agreed with Davis, carefully explaining that it was “not reviewing the record to determine whether it demonstrates a possibility of environmental impact, but are viewing it in a light most favorable to the City’s decision in order to determine whether substantial evidence supports the decision not to require additional review.” (*Id.* at p. 1021.) Prior environmental review already encompassed retail use of the property. A subsequent EIR was not required merely because it “appears likely” that Borders would compete with existing bookstores. (*Ibid.*) Appellant had not presented any evidence supporting its assumptions “that existing downtown bookstores will not be able to compete with Borders and will close[,] ... that the bookstores will not be replaced by new or different businesses ... [and] that the bookstore closures will cause other downtown businesses to close, thus leading to a general deterioration of the downtown area.” (*Ibid.*)

Most recently, it was held that the project description for a proposed warehouse distribution center did not have to specifically identify the end user because this information did not implicate new or different environmental effects other than those that had been addressed in the EIR. (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396 (*Apple Valley*).

It is apparent from the case law discussed above that proposed new shopping centers do not trigger a conclusive presumption of urban decay. However, when there is evidence suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact. Many factors are relevant, including the size of the project, the type of retailers and their market areas and the proximity of other retail shopping opportunities. The lead agency cannot divest itself of its analytical and informational obligations by summarily dismissing the possibility of urban decay or deterioration as a “social or economic effect” of the project.

C & C contends that study is not required because the record does not contain substantial evidence proving that the shopping centers will cause urban decay. This argument founders because it is premised on the wrong standard of review. Substantial evidence is the standard applied to conclusions reached in an EIR and findings that are based on such conclusions. (*Irritated Residents, supra*, 107 Cal.App.4th at pp. 1390-1391.) BCLC is not challenging a conclusion in the EIR's that the shopping centers would not indirectly cause urban decay or a finding adopted by the City. It is not arguing that the City used the wrong methodology in assessing whether urban decay will be an indirect effect of the project or challenging the validity of an expert's opinion on this topic. Rather, BCLC's argument is that the EIR's failed to comply with the information disclosure provisions of CEQA because they omitted any meaningful consideration of the question whether the shopping centers could, individually or cumulatively, trigger a series of events that ultimately cause urban decay. Neither EIR even contains a statement indicating reasons why it had been determined that urban decay was not a significant effect of the proposed projects. (§ 21100, subd. (c).) BCLC is challenging the City's view that such an analysis was purely economic and therefore was outside the scope of CEQA. The substantial evidence standard of review is not applied to this type of CEQA challenge. The relevant question is whether the lead agency failed to proceed as required by law. (1 Kostka & Zischke, CEQA Practice, *supra*, § 12.5, pp. 464-466.1.)

"[A]lthough the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute." (*Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 118 (*Peninsula*)). If C & C is contending that claims concerning omission of information from an EIR essentially should be treated as inquiries whether there is substantial evidence supporting the decision approving the projects, we reiterate

our rejection of this position for the reasons previously expressed in *Irritated Residents*, *supra*, 107 Cal.App.4th at page 1392.

In any event, C & C's position has no substantive merit. There is a great deal of evidence in the record supporting the validity of concerns that the shopping centers could cause a ripple of store closures and consequent long-term vacancies that would eventually result in general deterioration and decay within and outside the market area of the two shopping centers. Although much of BCLC's evidence specifically applied to the Supercenters, the administrative records as a whole contain sufficient indication that addition of 1.1 million square feet of retail space in the shopping centers' overlapping market areas could start the chain reaction the ultimately results in urban decay to necessitate study of the issue with respect to the entirety of the shopping centers.

First, BCLC retained a professor of economics at San Francisco State University, C. Daniel Vencill, to study the cumulative economic effects that will be caused by the two new Supercenters (the Vencill report). Together with two colleagues, Vencill reviewed literature and analyzed the five-mile area surrounding the project sites. Photographs were taken of the sites and "existing blight conditions which have remained unabated for some years in the area surrounding the proposed new sites" were documented. The Vencill report determined that the two shopping centers are in the same shopper catchment area and they will be competing with each other as well as with existing retail establishments. It states that "[t]here are [four] existing shopping centers and malls that will be adversely affected by [Gosford and Panama]. One regional mall is suspected of being in serious decline." The two Supercenters represent significant excess capacity as configured and located. "This will result in oversaturation and fall-out of weaker competitors in the at-risk commercial blight zone the developments will create." The Vencill report identified 29 businesses, primarily but not exclusively grocery stores, that are at direct risk of closure. Two Albertsons are "facing extinction" and a small nursery that is located across the street from Gosford "would certainly become defunct."

Additionally, no “alternative plans” were observed for the Wal-Mart building on White Lane that will be vacant when this Wal-Mart store is replaced by the Supercenter at Panama. The Vencill report finds:

“It is reasonably probable [that] competition provided by the two proposed [Supercenters] (i.e., the diversion of existing sales from local merchants), individually and especially cumulatively, will have economic impacts on existing businesses triggering a chain of events that may lead to adverse effects on the physical environment in the southern part of Bakersfield. One of the ways this may occur is that smaller retailers in the area, particularly those located within five miles of the sites, and even more specifically those retailers already struggling or on the verge of having to terminate operations, will be unable to compete and will have to go out of business. In turn, this may cause permanent or long-term vacancies of retail space in the area. The result is typically neglect of maintenance and repair of retail facilities, the deterioration of buildings, improvements, and facilities. This may then culminate in physical effects associated with blight-like conditions, which include visual and aesthetic impacts accompanying the physical deterioration.”

BCLC also submitted numerous studies and articles analyzing the adverse effects other communities in California (San Diego, Orange County and Calexico,) and elsewhere (Oklahoma City, Oklahoma; Bath, Maine; Eastern Pennsylvania; Chicago, Illinois; Syracuse, New York) have experienced as a result of saturation of a market area with super-sized retailers.<sup>5</sup> As relevant here, the authors found numerous adverse effects

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<sup>5</sup> Rea & Parker Research report prepared for San Diego County Taxpayers Association entitled *The Potential Economic and Fiscal Impact of Supercenters in San Diego, A Critical Analysis* (2000) of report by Boarnet & Crane entitled *The Impact of Big Box Grocers on Southern California Jobs, Wages and Municipal Finances*; *The Impact of Big Box Grocers on Southern California, Jobs, Wages, and Municipal Finances* prepared for Orange County Business Council (1999); Rea & Parker Research, *Smart Growth's Response to Big-Box Retailers: City of Villages--A Renewed Orientation Toward Communities and Neighborhoods* (2001) prepared for the independent Grocers Association of Calexico; Shils & Taylor, *Measuring the Economic and Sociological Impact of the Mega-Retail Discount Chains on Small Enterprise in Urban, Suburban and Rural Communities* (1997); Welles, *When Wal-Mart Comes to Town* (July 1, 1993) Inc.

resulting from saturation of a market area with Supercenters and similar retail facilities, such as SuperTargets and SuperKmart. These effects include, but are not limited to, physical decay and deterioration resulting from store closures in the same market area or in established areas of the community (i.e., the “traditional downtown area”) due to competitive pressures, followed by an inability to easily re-lease the vacated premises. The authors also found that it had been difficult to find tenants for buildings that formerly housed Wal-Mart stores that were replaced by the new Supercenters. Many of the empty buildings physically deteriorated.

This evidence cannot be cavalierly dismissed as “hit pieces” designed to disparage a specific corporation. Studies discussing the experiences of other communities constitute important anecdotal evidence about the way the proposed shopping centers could serve as a catalyst for urban deterioration and decay in the City. The Vencill report is extremely significant and it strongly supports BCLC’s position that CEQA requires analysis of urban decay.<sup>6</sup>

Moreover, numerous individuals commented about urban decay during the administrative process. For example, at the planning commission’s public hearing on the adequacy of the draft EIR’s, Cindy Fabricius stated, “[T]here are 45 empty Wal-Marts in the state of Texas. There are 34 empty standing Wal-Marts in the state of Georgia. There are 27 in Utah. Find them. Go look at them. They are empty. When Wal-Mart moves on they leave their boxes. Those boxes are not bought up by other [businesses]; who can afford that huge of a store; that huge of a rent?” Herman Lee commented that there are parts of East Bakersfield that need revitalization. Yet, the proposed shopping centers are out in the southwest part of town. He queried, “What about the people on the

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<sup>6</sup> City Council Member Maggard’s comment at the February 2003 City Council meeting that BCLC’s documentary support is merely fit “for recycling” demonstrates his lack of awareness of the relevant legal principles.

east side of town?” Some comments made at the February 2003 City Council meeting are also relevant. A representative of Save Mart Supermarkets spoke in opposition to the project and submitted the data concerning Oklahoma City. He stated that the addition of the two shopping centers will adversely affect existing shopping centers and asserted that the “[t]he potential for urban blight and decay is a matter which must be considered” in the EIR’s. Another commercial property owner wrote that he had been unable to re-lease a building that formerly housed a grocery store and he ended up demolishing the building. When a grocery store closes, the remainder of the stores in the shopping center are likely to close. The center “could end up with many boarded up storefronts.”

Another citizen wrote a letter that included six examples of buildings in the City that formerly housed large retail stores and now are “vacant, rundown box buildings and shopping centers.” He was concerned that the proposed projects would result in more “empty warehouse type, rundown buildings” littering the City. While these individuals are not experts in any sense of the word, their firsthand observations should not casually be dismissed as immaterial because “relevant personal observations are evidence.”

*(Bishop, supra, 172 Cal.App.3d at p. 173; see also Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402.)*

The responses in the EIR’s to these and other comments do not meaningfully address the issue of urban decay. The Gosford EIR states that vacant buildings “are part of the evolutionary change of the retail environment.” It then asserts that further analysis is outside the scope of CEQA because economic and social effects are not considered environmental effects under CEQA. The response in the Panama EIR is similarly incomplete. Ignoring the question of urban decay or deterioration, it simply replies that “blight” is a legal term that does not apply. It also asserts that vacancy rates and business closures are purely economic impacts and therefore outside of CEQA. Finally, it states that a survey of vacant buildings had been prepared and this survey demonstrated that

“retailers entering or leaving the market, relocations, re-leasing to new tenants or conversions to other uses is a normal part of a dynamic market.”<sup>7</sup>

The Retail Impact Analysis (retail analysis) that was appended to the Panama EIR does not constitute an acceptable substitute for proper identification and analysis in an EIR. The retail analysis analyzed “the potential market support and retail sales impacts” of the Supercenter component of Panama. It found that general merchandise stores have a market area of approximately five miles; grocery stores have a market area of approximately two miles.<sup>8</sup> It concluded that there is sufficient capacity to sustain the Supercenter at Panama without causing closure of existing general merchandise or grocery stores. However, the Supercenter would reduce the business volume of existing stores. The retail analysis stated that the existing Wal-Mart store building could be utilized in another unspecified capacity.

The retail analysis did not reference Gosford or consider whether there is sufficient capacity to sustain both shopping centers. It did not analyze whether the combined influx of both shopping centers would lead to the closure of existing grocery or general merchandise stores, particularly where their market areas overlap. Rather, it focused on the single narrow question whether there is sufficient demand to sustain the Supercenter at Panama. It did not meaningfully consider whether addition of 1.1 million

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<sup>7</sup> The parties did not mention this survey. Since the survey did not consider questions concerning the likely effects that addition of 1.1 million square feet of new retail space would have on the vacancy rate in the City or address the likelihood of re-leasing vacant premises that formerly were occupied by competitors of the proposed shopping centers, we find it unhelpful.

<sup>8</sup> After stating that general merchandise stores have a market area of five miles or more, the retail analysis inexplicably assigns without explanation three miles as the relevant market area with respect to the Supercenter at Panama. Since this conclusion is not supported by any explanation or analysis and it is directly contradicted by other information in the retail analysis, we decline to afford it any weight.

square feet of new retail space, much of it housing Supercenters, Sam's Club and other large retailers such as Lowe's and Kohl's (who dominate individual merchandise areas and are sometimes referred to as "category killers") will displace older, smaller retail stores and shopping centers, leaving long-term vacancies that deteriorate and encourage graffiti and other unsightly conditions. Furthermore, the retail analysis fails to meaningfully address the question whether the building on White Lane that currently houses a Wal-Mart store will experience a long-term vacancy when this store is closed. No facts are offered in support of the retail analysis's conclusion that the building can be leased to another tenant. "Can" is not equivalent to "will" and the difference in the two words is crucial when assessing whether the store closure will result in an adverse environmental impact. The retail analysis characterizes vacancies as normal parts of a dynamic and evolving retail environment without considering whether those vacancies are clustered in one area or are likely to be long term.

We agree with BCLC that *Mt. Shasta, supra*, 198 Cal.App.3d 433 is analogous. Just as in *Mt. Shasta*, it is apparent that in this case the shopping centers could, individually and cumulatively, trigger the same downward spiral of business closures, vacancies and deterioration that other communities have experienced when they allowed similar saturation development. Therefore, CEQA requires analysis of this potential environmental impact.

C & C argues that the instant case is analogous to *Friends of Davis, supra*, 83 Cal.App.4th 1004. We disagree. *Friends of Davis* considered whether a supplemental EIR was required. No zoning change or nonconformity with the existing specific plan existed and retail development on the project site had already been subjected to full environmental review. In contrast here, there has not been any previous study of the environmental effects associated with the requested zoning changes and general plan amendments. No prior EIR's considered the consequences of building shopping centers on the project sites. Rather, it is the sufficiency of the initial EIR's that is at issue.

It must be mentioned that although we do not quarrel with the holding in *Apple Valley, supra*, 120 Cal.App.4th 396, it is factually distinguishable from this situation. Here, recognition of the characteristics of the shopping centers' tenants is a necessary prerequisite to accurate identification and analysis of the environmental consequences that will result from approval of the proposed projects. When the particular type of retail business planned for a proposed project will have unique or additional adverse impacts, then disclosure of the type of business is necessary in order to accurately recognize and analyze the environmental effects that will result from the proposed project. A rendering plant has different environmental impacts than a Chandler. In the retail context, Supercenters are similarly unique. Unlike the vast majority of stores, many Supercenters operate 24 hours per day seven days a week. Such extended operational hours raise questions concerning increased or additional adverse impacts relating to lights, noise, traffic and crime. While specific identification of the name of the tenant may be unnecessary, to simply state as did the Gosford EIR that "no stores have been identified" without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity.

Accordingly, we hold that the omission of analysis on the issue of urban/suburban decay and deterioration rendered the EIR's defective as informational documents. (*Mt. Shasta, supra*, 198 Cal.App.3d at p. 446.) On remand, the EIR's must analyze whether the shopping centers, individually and/or cumulatively, indirectly could trigger the downward spiral of retail closures and consequent long-term vacancies that ultimately result in decay. (*Ibid.*; *Bishop, supra*, 172 Cal.App.3d at p. 171.)

#### **IV. Cumulative Impacts**

The Gosford EIR and the Panama EIR considered each shopping center in isolation. The cumulative impacts sections of each EIR does not reference the other shopping center and neither EIR contains any discussion of or reference to retail development in the area surrounding the project site. BCLC argues that the "failure to

treat Panama and Gosford as ‘relevant projects’ for purposes of evaluating cumulative effects” is “[a]n overarching legal flaw in both EIRs.” We agree. The trial court correctly realized that the cumulative effect of the two shopping centers must be analyzed with respect to the topic of urban decay. However, it inexplicably failed to follow the applicable chain of reasoning to its logical conclusion and recognize that the cumulative effects analyses were fundamentally flawed because they did not recognize that the shopping centers were relevant projects and did not analyze the type and severity of impacts that will result from construction and operation of both projects.

“A fundamental purpose of CEQA is to ensure that governmental agencies regulate their activities ‘so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.’ [Citations.] The heart of CEQA is the EIR. [Citation.] Its purposes are manifold, but chief among them is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment. [Citations.] [¶] Part of this vital informational function is performed by a cumulative impact analysis.” (*Reasonable Growth, supra*, 151 Cal.App.3d at pp. 72-73.) “The term “[c]umulative impacts” refer[s] to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (*Raptor, supra*, 27 Cal.App.4th at p. 739.) “[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (Guidelines, § 15130, subd. (a)(1).) ““The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.’ (CEQA Guidelines, § 15355, subd. (b).)

‘Cumulative impact analysis “assesses cumulative damage as a whole greater than the sum of its parts.”’” (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1403.)

“The significance of a comprehensive cumulative impacts evaluation is stressed in CEQA.” (*Schoen v. Department of Forestry & Fire Prevention* (1997) 58 Cal.App.4th 556, 572.) Proper cumulative impact analysis is vital “because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, fns. omitted; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) “[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA’s mandate to review the actual effect of the projects upon the environment.” (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306.)

When faced with a challenge that the cumulative impacts analysis is unduly narrow, the court must determine whether it was reasonable and practical to include the omitted projects and whether their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723 (*Farm Bureau*).

It is beyond dispute that the two shopping centers are both “present” projects within the meaning of Guidelines section 15355, subdivision (b). They were proposed within a month of each other and both shopping centers were considered at the same

meetings of the City Planning Commission and the City Council. Many citizens, including BCLC, voiced their opinions about both shopping centers at the same time. Thus, the determinative question is whether Gosford and Panama also are “closely related” within the meaning of Guidelines section 15355, subdivision (b). We answer this question in the affirmative.

First, there is evidence showing that the two shopping centers will compete with each other. Some of the anchor tenants at both shopping centers are regional draws with a market area in excess of five miles. The Vencill report states that the market area for stores like Supercenters is about five miles. It concludes that the two shopping centers are in the same shopper catchment area and the Supercenters will compete with each other. Similarly, the retail analysis states that general merchandise stores have a market area of five miles or more. Grocery stores have a market area of two miles or more. Since Gosford and Panama are 3.6 miles apart, the two market areas necessarily overlap. As previously discussed, the record contains numerous studies analyzing the adverse effects other communities have experienced when a market area was saturated with large-scale retailers such as traditional Wal-Mart stores and their siblings, Supercenters and Sam’s Clubs. Studies discussing the adverse effects that other communities experienced after similar retail development constitutes important anecdotal evidence about the adverse impacts that the City may experience.

Second, the Gosford EIR and the Panama EIR show that the two shopping centers share four arterial roadways: Pacheco Road, Panama Lane, Harris Road and White Lane. A planning commissioner stated that he was concerned that the two projects could have combined, unrecognized adverse impacts on traffic.

Third, ambient air quality is a serious concern. Each of the EIR’s concluded that the proposed shopping center would have an unavoidable adverse impact on ambient air quality. The San Joaquin Valley Air Pollution Control District (SJVAPCD) expressed the opinion that each project “and others similar to it will cumulatively reduce air quality

We are unpersuaded by C & C's argument that the cumulative impacts of the two projects were accounted for because the Gosford EIR based its discussion of certain environmental effects, such as air quality, on a summary of projections contained in an approved planning document. Use of a planning document does not preclude challenge to the accuracy or sufficiency of the cumulative impacts analysis. As recognized in a respected CEQA treatise, "[t]he summary-of-projections approach may present problems if the projections in the general plan or related planning document are inaccurate or outdated." (1 Kostka & Zischke, CEQA Practice, *supra*, § 13.39, p. 537.) Such is the case here. Both of the shopping center projects required amendment of the general plan. The addition of large regional shopping centers such as Gosford and Panama are not accounted for in the projections. We need not comment on the propriety of using the list of projects method for some aspects of cumulative impacts analysis and using the summary of projections for other aspects because, under either method, the cumulative impacts section is underinclusive. (*Id.* at § 13.39, pp. 537-538.)

Proper cumulative impacts analysis is absolutely critical to meaningful environmental review of the shopping center projects. Four analogous cases support our conclusion that the EIR's are legally inadequate due to their underinclusive and misleading cumulative impacts analysis.

In *Reasonable Growth*, *supra*, 151 Cal.App.3d 61, the appellate court ordered an EIR prepared for a high-rise project to be decertified because it underestimated the amount of new downtown development and consequently had not evaluated "the true severity and significance" of the cumulative impacts. (*Id.* at p. 80.) The court explained that the danger created by providing understated information subverts an agency's ability to adopt appropriate and effective mitigation measures, skews its perspective concerning the benefits of the particular projects under consideration and precludes it from gaining a true perspective on the consequences of approving the project. (*Ibid.*)

Similarly, in *Farm Bureau*, *supra*, 221 Cal.App.3d 692, this court determined that limiting the scope of cumulative impacts analysis to the mid-San Joaquin valley was unduly restrictive and resulted in an inaccurate minimization of the cumulative impacts on air quality resulting from construction of the proposed cogeneration plan together with the many other proposed energy projects. (*Id.* at pp. 721-724.)

Next, in *Raptor*, *supra*, 27 Cal.App.4th 713, we invalidated an EIR prepared for a housing project, in part because it failed to analyze the project in conjunction with other development projects in the surrounding area. (*Id.* at pp. 739-741.)

Most recently, in *Eel River*, *supra*, 108 Cal.App.4th 859, the court found that an EIR considering a project to divert water was legally inadequate because the cumulative impacts analysis did not take into account other pending proposals that would curtail water diversions. The court concluded that it was “reasonable and practical” to include other pending curtailment proposals in the cumulative impacts analysis and that this omission resulted in an EIR that failed to alert decision makers and the public to the possibility that the agency would not be able to supply water to its customers in an environmentally sound way. (*Id.* at pp. 868-872.)

Following and applying these authorities, we likewise conclude that the EIR’s are inadequate because they did not analyze the cumulative environmental impacts of other past, present and reasonably foreseeable retail projects in the market areas served by the proposed shopping centers. Neither EIR meaningfully addressed comments stating that the two shopping centers will have cumulative adverse impacts. As a result, the cumulative impacts analyses in both EIR’s are underinclusive and misleading.

The record raises numerous questions respecting the type and severity of cumulative adverse environmental impacts that likely will result from the two shopping centers. Topics such as traffic, noise, air quality, urban decay and growth inducement

immediately surface.<sup>9</sup> City and developers cannot fault BCLC because it does not have evidence answering these and other questions related to the cumulative impacts resulting from construction and operation of both Gosford and Panama. “To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information.” (*Farm Bureau, supra*, 221 Cal.App.3d 692, 724.)

On remand, each EIR must analyze the cumulative impacts resulting from construction and operation of the proposed shopping center in conjunction with all other past, present or reasonably foreseeable retail projects that are or will be located within the proposed project’s market area. This includes, but is not limited to, analysis of the combined adverse impacts resulting from construction and operation of Gosford and Panama.<sup>10</sup>

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<sup>9</sup> Specific questions such as the following immediately come to mind: How will traffic patterns be affected on the shared roadways? Will combined traffic cause an increase in mobile emissions that adversely affects sensitive receptors? Will the presence of two shopping centers containing large value-oriented retailers result in an overall increase in shoppers who may come from outlying areas because of the abundance of retail opportunities in a relatively small area? In other words, is there a synergy whereby one and one equals more than two? Alternatively, will Gosford and Panama draw customers from each other, thereby increasing the potential that one of the shopping centers will not be successful and could deteriorate? Does addition of multiple new shopping facilities stimulate growth in the surrounding area and if so, what type?

<sup>10</sup> This conclusion obviates any need to address BCLC’s other claims concerning the sufficiency of the cumulative impacts analyses. However, we mention that when the City assesses the combined effects that the two shopping centers will have on ambient air quality, it must apply the principles we explained in *Farm Bureau, supra*, 221 Cal.App.3d 692. The magnitude of the current air quality problems in the San Joaquin Valley cannot be used to trivialize the cumulative contributions of the shopping centers and the scope of the analysis cannot be artificially limited to a restricted portion of the air basin. (*Id.* at pp. 718, 723.)

## **V. Failure to Correlate Adverse Air Quality Impacts to Resulting Adverse Health Impacts**

The Gosford EIR concluded that Gosford would cause significant unavoidable direct adverse impacts to regional air quality from construction and operation. The direct adverse air quality impacts are derived "primarily from automobile emissions during operation and from architectural coatings and construction equipment during construction phase. No feasible mitigation measures are available that would reduce impacts to less than significant levels." Furthermore, Gosford "could potentially result in cumulatively considerable impacts to regional air quality from construction and operation."

Similarly, the Panama EIR concluded that Panama "may result in an overall increase in the local and regional pollutant load due to direct impacts from vehicle emissions and indirect impacts from electricity and natural gas consumption. This impact is considered significant and unavoidable for ROG and NOx." The Panama EIR reached a different conclusion than the Gosford EIR with respect to cumulative impacts, determining that a "less than significant" impact would occur in this regard.

BCLC contends that both EIR's omitted relevant information when they failed to correlate the identified adverse air quality impacts to resultant adverse health effects. We agree.

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, *inter alia*, "health and safety problems caused by the physical changes" that the proposed project will precipitate. Both of the EIR's concluded that the projects would have significant and unavoidable adverse impacts on air quality. It is well known that air pollution adversely affects human respiratory health. (See, e.g., Bustillo, *Smog Harms Children's Lungs for Life, Study Finds*, L.A. Times (Sept. 9, 2004).) Emergency rooms crowded with wheezing sufferers are sad but common sights in the San Joaquin Valley and elsewhere. Air quality indexes are published daily in local newspapers, schools monitor air quality and restrict outdoor play when it is especially poor and the public is warned to limit their activities on days when air quality is particularly bad. Yet, neither EIR acknowledges the

health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as “air pollution” are brief references to respiratory illnesses. However, there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR’s, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR’s.

## **VI. Prejudice**

“When the informational requirements of CEQA are not complied with, an agency has failed to proceed in ‘a manner required by law.’” (*Peninsula, supra*, 87 Cal.App.4th at p. 118.) If the deficiencies in an EIR “preclude[] informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred.” (*Id.* at p. 128.)

An EIR’s role “as an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return” (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810) is equally vital whether one is protecting our coastline and forests or preserving our inland neighborhoods as viable communities. For many of us, adverse environmental impacts such as reduction of endangered species habitat are regrettable but largely abstract harms. In contrast, deterioration of our local communities is a very real problem that directly impacts the quality of our daily life. When our morning commutes are marred by the sight of numerous vacant or half-vacant strip malls adorned with graffiti and weeds, when we hesitate to move into an established neighborhood because of the absence of close and convenient shopping and when it hurts to take a deep breath on hot August afternoons because of the poor air quality, the importance of thorough

environmental analysis and complete disclosure before new projects are approved is all too evident.

In this case, City's failure to assess whether the shopping centers, individually and cumulatively, will indirectly cause urban decay, to evaluate the cumulative impacts of both shopping centers and to correlate the adverse air quality impacts to resulting adverse health consequences, cannot be dismissed as harmless or insignificant defects. As a result of these omissions, meaningful assessment of the true scope of numerous potentially serious adverse environmental effects was thwarted. No discrete or severable aspects of the projects are unaffected by the omitted analyses; the defects relate to the shopping centers in their entirety, not just to one specific retailer. These deficiencies precluded informed public participation and decision making. Therefore, certification of the EIR's was a prejudicial abuse of discretion. (*Peninsula, supra*, 87 Cal.App.4th at p. 128.)

The Guidelines unequivocally require the lead agency to certify a legally adequate final EIR prior to deciding whether or not to approve or carry out a contested project. (Guidelines, §§ 15089 to 15092.) "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) Thus, the project approvals and associated land use entitlements also must be voided. (See, e.g., *Eel River, supra*, 108 Cal.App.4th at p. 882; *Raptor, supra*, 27 Cal.App.4th at pp. 742-743.)

## **VII. Additional Defects in the EIR's\***

The defects and omissions identified in this portion of the opinion also must be corrected in the new EIR's.

### **A. Finding that Gosford will not Obstruct Implementation of the Air Quality Attainment Plan (Gosford EIR)**

The Gosford EIR states: “[T]he California CAA requires non-attainment districts with severe air quality problems to provide for a five percent reduction in non-attainment emissions per year. The SJVAPCD prepared an Air Quality Attainment Plan ... in compliance with the requirements of the Act.” The Gosford EIR concluded that Gosford would not conflict with or obstruct implementation of the Air Quality Attainment Plan because it “recognized growth of the population and economy within the air basin.... [Gosford] can be viewed as growth that was anticipated by the [Air Quality Plan].” The SJVAPCD commented, in relevant part, “[t]his project will make it more difficult to meet mandated emission reductions and air quality standards.” The response to this letter acknowledges that “the proposed project will generate significant operational air quality impacts due to emissions that would be generated by vehicular trips to the site.” However, it did not respond to SJVAPCD’s concern that construction and operation of Gosford will make it more difficult to meet mandated air quality standards.

BCLC challenges the finding that Gosford will not conflict with or obstruct implementation of the Air Quality Attainment Plan, arguing that this finding is unsupported and is logically inconsistent with the conclusion that Gosford has significant and unavoidable direct and cumulative adverse air quality impacts. We agree; the two findings are inconsistent on their face.

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\* See footnote, *ante*, page 1.

Under the chain of logic advanced in the Gosford EIR, virtually no new projects would impair the fulfillment of the Air Quality Attainment Plan despite serious adverse air quality impacts because such projects almost always could all be characterized by the applicant as “anticipated growth.” The inherent tension between growth on the one hand and satisfaction of mandates to reduce emissions on the other should have been recognized and addressed in this section of the EIR. At a minimum, the Gosford EIR should have addressed this point in its response to SJVAPCD’s comment letter. A good faith response should have acknowledged and grappled with SJVAPCD’s assertion that Gosford will make it more difficult to meet mandated standards, which is another way of stating that it would make it harder to fulfill the Air Quality Attainment Plan. In this respect, the Gosford EIR “failed to acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR’s analysis of this subject.” (*Berkeley, supra*, Cal.App.4th at p. 1371.) We agree with BCLC that CEQA required the City to “take a hard look at [SJVAPCD’s opinion] and supply the analytic framework for ignoring it.”

#### **B. Railroad Spur (Gosford EIR)**

As part of the traffic analysis, the Gosford EIR considered whether Gosford would substantially increase roadway hazards due to a design feature or incompatible uses. In relevant part, the Gosford EIR states, “[a] railroad spur crossing along Pacheco Road and in the proposed parking lot may be constructed at a future time. This crossing would not have a significant impact on traffic in the area.”

On June 28, 2002, the Resource Management Agency submitted a letter stating, in relevant part: “Issue XV Transportation and Traffic (d) states that a traffic study will be done to analyze the traffic flow around the project site. No mention is made of the future rail spur that is part of the project. Approval from the Public Utilities Commission is required for this aspect of the plan. This would be the second railroad crossing of

Pacheco in less than a half-mile, and a risk study may be necessary to assess the impacts from this.” This letter preceded the public review period for the Gosford draft EIR.

BCLC argues that the Gosford EIR’s conclusion respecting the railroad spur crossing is unsupported and lacks proper analysis and explanation. We agree. The Gosford EIR does not mention the important fact that the possible railroad spur crossing will be the second railroad crossing of Pacheco in less than half of a mile. It also did not support its conclusion that the railroad spur will not adversely affect traffic conditions with any analysis or explanation. This is insufficient. As we explained in *Irrigated Residents, supra*, 107 Cal.App.4th 1383, “‘The EIR must contain facts and analysis, not just the bare conclusions of the agency.’ [Citation.] ‘An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Id.* at p. 1390.) The treatment of the proposed rail spur does not satisfy these information obligations.

### **C. Kit Fox (Panama EIR)**

#### **i. Failure to Consult**

Guidelines section 15086 requires the lead agency to “consult with and request comments on the draft EIR” from numerous entities, including “[a]ny ... state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project.” (Guidelines, § 15086, subd. (a)(3).) The San Joaquin Kit Fox (kit fox) is listed as endangered under the federal Endangered Species Act of 1973 and as threatened under the California Endangered Species Act. (16 U.S.C. §§ 1531 et seq.; Fish & G. Code, §§ 2050 et seq.) It is undisputed that the United States Fish and Wildlife Service (USFWS) exercises jurisdiction over resources that are affected by Panama, including the kit fox. It is also undisputed that the City did not consult with USFWS about Panama or request comments on the Panama draft EIR.

City and P99 argue that failure to notify and consult with USFWS was excused because the City and USFWS entered into an agreement in 1990, the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP), that obviated any requirement to consult with USFWS on specific projects. We reject this argument as unsubstantiated because the MBHCP is not part of the administrative record and we cannot assess the provisions of this agreement. Although the MBHCP was one of many documents the Panama EIR incorporated by reference, a copy of the MBHCP was not appended to the Panama EIR. A copy of the MBHCP was not before the City Council when it certified the Panama EIR. The trial court denied a request to take judicial notice of excerpted portions of the MBHCP and this evidentiary decision was not appealed. No party has asked this court to take judicial notice of the MBHCP.

On this limited record, we must agree with BCLC that the City erred by failing to “consult with and request comments” from the USFWS in compliance with subdivision (a)(3) of Guidelines section 15086. Although the Panama EIR states that “the Project is subject to [MBHCP],” it does not state that the MBHCP supplants or affects the rights and responsibilities of USFWS or California Department of Fish and Game with respect to the Panama site. We express no opinion on the question whether compliance with this subdivision legally can be excused by prior agreement because the issue has not been properly presented with an adequate record.

#### **ii. Mitigation**

The initial study indicated that the Panama site could be kit fox habitat and it recommended further analysis to determine whether Panama could adversely impact this protected species. The City retained a certified wildlife biologist who conducted a clearance survey on the Panama site. The biologist found several active kit fox dens and observed three kit fox on the site: an adult and two juveniles. He concluded that Panama could adversely impact kit fox and he recommended a series of mitigation measures. The Panama EIR exclusively references mitigation pursuant to the terms of the MBHCP. It

concluded that, as mitigated, Panama's impact on kit fox would be less than significant. The mitigation measures recommended in the Panama EIR do not track the measures recommended by the biologist. There is no explanation for the differences or discussion why some of the biologist's mitigation measures were rejected. For example, the biologist suggested the following mitigation measure that is not mentioned in the Panama EIR: "[T]he Endangered Species Recovery Program, California State University, Stanislaus, be encouraged to trap and collar the foxes as an aid in finding the foxes in the future."

BCLC contends that the City failed to adequately analyze and mitigate kit fox impacts and it challenges the EIR's conclusion that, as mitigated, kit fox impacts will be insignificant. Once again, we agree. Guidelines section 15126.4 requires an EIR to "describe feasible measures which could minimize significant adverse impacts." (Guidelines, § 15126.4, subd. (a)(1).) "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." (Guidelines, § 15126.4, subd. (a)(1)(B).) The Panama EIR does not discuss all of the mitigation measures suggested by the biologist or explain why mitigation measures other than those referenced in the MBHCP were rejected. The record does not support the Panama EIR's conclusion that the limited mitigation measures identified in the EIR will mitigate kit fox impacts to insignificance.

We reject as unsubstantiated City and P99's assertion that it was only required to discuss mitigation measures contained in the MBHCP. As previously discussed, the MBHCP is not part of the administrative record.

Accordingly, based on this limited record, we conclude that the Panama EIR failed to adequately analyze and mitigate kit fox impacts. We express no opinion on the question whether mitigation solely pursuant to the MBHCP can be legally sufficient because the issue has not been properly presented with an adequate record.

### **VIII. Severance**

We have found numerous grounds of CEQA noncompliance and we agree with BCLC that these errors compel decertification of the EIR's and voiding of the contested project approvals and associated land use entitlements. As previously explained, the defects in the EIR's apply to the entirety of the contested projects, not a single retailer or a severable facet of the shopping centers. We also have rejected C & C's contention that BCLC's single focus was to stop the Supercenter component of the shopping centers.

The narrow remedy issued by the trial court pursuant to section 21168.9, subdivision (b) is premised on the erroneous conclusion that the sole defect in the EIR's was the failure to study urban decay. Since this determination has been rejected, the trial court's associated finding regarding severability pursuant to section 21168.9, subdivision (b) necessarily falls as well. Neither City nor developers argued that even if there are multiple insufficiencies in the EIR's and even if these insufficiencies are caused by the entirety of the projects, we should still leave the project approvals and associated land use entitlements intact.

### **IX. Rejected Challenges**

BCLC has raised additional challenges to the sufficiency of the EIR's, arguing that the air quality and traffic analyses are deficient in various respects and it contends that preparation of a health risk assessment after expiration of the comment period necessitated recirculation of the Panama EIR. We have considered and rejected all of these additional contentions because they lack factual and legal merit.

### **DISPOSITION**

The judgments are reversed and the actions are remanded to the Superior Court of Kern County. BCLC is awarded its statutory costs in both actions. C & C is to pay the

entirety of the cost award in the Gosford action; P99 is to pay the entirety of the cost award in the Panama action. (Cal. Rules of Court, rule 27(a)(4).) BCLC's request for judicial notice is granted.

Upon remand, the superior court is directed as follows in both actions:

(1) To issue new peremptory writs of mandate ordering the City to void its certification of the EIR's and findings of overriding considerations and to void its approval of the projects and associated zoning changes, general plan amendments and other related land use entitlements;

(2) To issue orders, after notice and hearing, that set a date by which the City must certify new EIR's in accordance with CEQA standards and procedures, including provisions for public comment, and make any findings that CEQA may require. These orders are to require the City, after full CEQA compliance is effected, to determine upon further consideration and in accordance with all applicable laws, whether or not to reapprove the projects and grant associated zoning changes, general plan amendments and land use entitlements. The City may require modification of the projects and/or additional mitigation measures as conditions of reapproval; it may require completed portions of the projects to be changed or removed;

(3) To determine, after notice and hearing, whether continuance of construction and retail activities on the project sites prior to full CEQA compliance and reapproval will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project and to issue appropriate relief pursuant to section 21168.9. As part of this determination it is to consider the following: (i) continuance of construction activities, other than those necessary to ensure safety; (ii) continued operation of businesses that currently are open to the public; (iii) opening of new businesses; (iv) expansion of existing businesses;

(4) To determine, after notice and hearing, whether BCLC should be awarded attorney fees and costs pursuant to Code of Civil Procedure section 1021.5, the proper

amounts, the party or parties against whom the fee awards should be assessed and to issue appropriate orders.

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Buckley, Acting P.J.

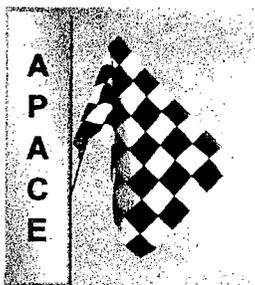
WE CONCUR:

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Wiseman, J.

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Levy, J.



ALLIANCE for the PROTECTION of the  
AUBURN COMMUNITY ENVIRONMENT  
P.O. BOX 4951  
AUBURN, CALIFORNIA 95604-4951  
www.APACE2010.org

NOUS GAGNONS

Date: June 1, 2010

To: Chairman,  
North Auburn Municipal Council

Subj.: Bohemia Retail Project; Re-Circulation of

RECEIVED  
JUN 01 2010  
PLANNING DEPT.

As has been previously reported, the developer recently commissioned a follow-up traffic study to ones already commissioned by the county. Apparently, the new custom-built traffic study overcame Placer County's refusal to allow 15% of Wal-Mart traffic on Canal Street via a Secondary Access. Similarly, it overcame Caltrans' refusal to allow the additional 15% of Wal-Mart traffic on SR 49 at Hubert Way via a Single Access.

It is well known that traffic studies use estimates based on any one or a combination of many models. Like all models, it's easy to change a few factors and achieve a desired result.

Nevertheless, the "Follow-up Traffic Study" represents a significant and major revision of the related chapters:

- Chapter 3 Project Description Chapter 10 Noise
- Chapter 8 Transportation & Circulation Chapter 17 Alternatives
- Chapter 9 Air Quality Chapter 18 Cumulative Impacts

Therefore, in accordance with California Statutes (CEQA 15088.5 (a:1,3,4), (b), (c), (d), (e), (f), (g)); the revised Draft EIR for Bohemia Retail Project is to be re-circulated.

It has been noted that Mr. Gerry Haas, Environmental Review Committee, considers this major revision to be only 'additional information' and that re-circulation is not required. It is doubtful that Mr. Haas' opinion is justified by substantial evidence in the administrative record.

Pending the EIR re-circulation, we respectfully request that that the Council rejects the certification and all permits or approvals of the Bohemia Retail Project. A re-circulated BOHEMIA EIR will allow the public's informed response to the revised scope and content.

Sincerely,

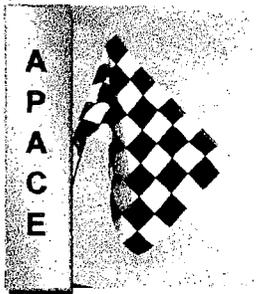
Lee Lively  
1702 Tracy Lane; Auburn, CA 95603

CC: Placer County Board of Supervisors  
✓ Placer County Planning Commission  
Gary Haas, Chairperson, Environmental Review Committee

Mission Statement:

To strengthen our community's economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

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NOUS GAGNONS

ALLIANCE for the PROTECTION of the  
AUBURN COMMUNITY ENVIRONMENT  
P.O. BOX 4951  
AUBURN, CALIFORNIA 95604-4951  
www.APACE2010.org

RECEIVED  
JUN 01 2010  
PLANNING DEPT

Date: June 1, 2010

To: Chairman,  
North Auburn Municipal Council

Subj.: Bohemia Retail Project

The harmful economic effects of the Bohemia project on a community such as ours are well known. The historical record is ample and readily available to any interested person. We assume that the members of the Council are among those interested persons.

- The Bohemia Project, as proposed, violates the Auburn-Bowman Community Plan.

The developer, refuses to identify his intended occupant for the Bohemia Project. An honest developer is proud to disclose all details about their project – unless it is a Wal-Mart. Then, silence is necessary due to the universally known negative impact that a Wal-Mart will have on the local economy.

- Wal-Mart sales will be sales lost from local supermarkets, drug stores, clothing stores, hardware stores, bookstores, home furnishings or any business in competition with a Wal-Mart.
- 53% of the money spent at a local retailer stays in our local economy. 14% of the money spent at Wal-Mart stays in our local economy. 40% goes to Corp. HQ in Arkansas.
- Wal-Mart stores reduce county-wide retail payroll. For each new retail clerk hired by Wal-Mart, it costs 1.4 jobs because existing businesses will downsize.
- When retail supply exceeds retail demand, “The proposed project would compete with existing businesses in Placer County to the extent that those businesses would close and contribute to physical deterioration and urban decay. *Bohemia EIR, Chapter 16: Socio-Economic*

An intelligent developer does not dedicate years and allocate significant investment without knowing with whom he is doing business. The US Army Corps of Engineers also know the occupant will be Wal-Mart. It is hoped that the Council will not insult the intelligence of the citizens of Placer County by claiming ignorance.

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**ALLIANCE for the PROTECTION of the  
AUBURN COMMUNITY ENVIRONMENT**

Our group of concerned citizens (APACE) has begun a campaign to inform the people of our North Auburn Community of the impending injury to our local retail businesses that a Wal-Mart will cause. In addition, we will report on the proceedings of our county officials.

Our public information campaign has begun with two mailed notices that were sent to 3,000 and 5,000 selected addresses of our affected citizens. Our basic distribution list includes the registered voters of Placer County – District 3. Future aspects of the campaign will include additional notices, personal letters, newspaper advertisement, etc.

On behalf of the people of our North Placer community, we respectfully request that the Council ignore the myth of ‘Jobs’ and ‘Increased tax revenue’ and advise against the approval of the Bohemea Retail Project.

Sincerely,

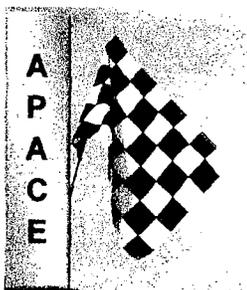
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**ALLIANCE for the PROTECTION of the  
AUBURN COMMUNITY ENVIRONMENT  
P.O. BOX 4951  
AUBURN, CALIFORNIA 95604-4951**

NOUS GAGNONS

Date: May 27, 2010

To: County of Placer Planning Commission

Subj.: Bohemia Retail Project

Gentlemen:

May we, again, inquire as to why our county officials would consider a project that will trash a residential neighborhood and injure our local retail businesses?

Also; we again demand, on behalf of the people of Placer County, that the substantially revised subject EIR be re-circulated to provide citizens with sufficient information to make meaningful responses as to the scope and content. (CEQA 15088.5)

As you may know, our group of concerned citizens (APACE) has begun a campaign to inform the general public about the historical negative effects of a Wal-Mart on a local economy such as ours. We believe that the people of our North Auburn community should be aware of the probable injury to our local retail businesses that a Wal-Mart will cause.

Our public information campaign has begun with the two Mailed Flyers that were sent to selected addresses – the text of both is included. Our basic distribution list includes the registered voters of Placer County – District 3. Aspects of our future campaign will include additional Mailed Flyers, personal letters, newspaper advertisements, etc.

Sincerely,

Lee Lively  
1702 Tracy Lane; Auburn, CA 95603

CC: Placer County Board of Supervisors

North Auburn Municipal Council

Gerry Haas, Chairperson, Environmental Review Committee

Mission Statement:

To strengthen our community's economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

PLACER COUNTY  
DATE RECEIVED  
**MAY 27 2010**  
PLANNING COMMISSION

## THE BOHEMIA WAL-MART RETAIL PROJECT

### The Mission Of Our County Officials

Intensity and use of land parcels should be governed by considerations of the impact to health, safety and compatibility with established residential areas due to air quality, traffic, noise, night lighting or other disturbing conditions and protection of natural land characteristics.

Promote economic growth in Placer County, providing employment opportunities, additional revenues while maintaining the environmental character of the County.

### The Guidelines For Our County Officials

Bohemia (Wal-Mart) Retail Project violates Placer County community design guidelines.

- |  |
|--|
| 1. The Auburn Bowman Community Plan (ABCP)<br>Establishes goals and principles to regulate the use of land and development.                            |
| 2. The California Environmental Quality Act (CEQA)<br>Land use and environmental law based on due process of regulations which affect property rights. |

### The Law That Restrains Our County Officials

We all have the fundamental property right of Sole Dominion – property may be used however the owner chooses. Those rights are limited, and they end when they invade property rights of others.

*“People cannot use their property in ways that damage their neighbors’ property.” “Property owners must rely on the enforcement powers of the state (Superior Courts) for the realization of their rights.”*

Ref: CATO Institute, ‘Legal Protection for Property Rights’

### The Hoax On Our County Officials

The developer still refuses to identify his intended occupant for the Bohemia Project. He says, *“This time around, Costco is the frontrunner but nothing has been made official.”* Are we to believe the ridiculous suggestion that Wal-Mart, Costco and others are contending for occupancy of the location?

A developer is proud to disclose all details about their project – unless it is a Wal-Mart. In that case, the bait and Switch technique is always used. Not unlike the technique being used today.

Wal-Mart was rejected 10 years ago, and there are greater reasons to reject Wal-Mart today.

### The Questions To Our County Officials

Will they disregard the Socio-Economic damage of a Wal-Mart in our community?

Will they approve a Wal-Mart project that will trash a residential neighborhood and injure our local retail business while relying on the myth of increased employment and higher tax revenue?

Visit [www.APACE2010.org](http://www.APACE2010.org) for more information and get involved today!

2/62

Never doubt that a small group of thoughtful, committed citizens can change the world.  
Indeed it's the only thing that ever has." *Margaret Mead, Anthropologist*

***JOIN YOUR NEIGHBORS! VOICE YOUR OPINION!***

**\* \* \***

**ATTEND THE MUNICIPAL ADVISORY COUNCIL MEETING**

**They will make recommendation to the Planning Commission  
Tuesday, June 8, 2010; 7:00 P.M. (Tentative)  
3091 County Center Drive**

**To Confirm : Call (530) 889-4010. or check our Website  
They meet on the 2<sup>nd</sup> Tuesday of each month.**

**\* \* \***

**ATTEND THE PLACER COUNTY PLANNING COMMISSION MEETING**

**They will make recommendation to the Board of Supervisors  
Thursday, June 24; 10:00 A.M. (Tentative)  
3091 County Center Drive**

**To Confirm : Call (530) 745-3000. or check our Website  
They meet on the 2<sup>nd</sup> and 4<sup>th</sup> Thursday of each month.**

**\* \* \***

**CONTACT THE MEMBERS OF OUR BOARD OF SUPERVISORS**

**Send an email: [bos@placer.ca.gov](mailto:bos@placer.ca.gov) or call (530) 889-4010.**

**NOTE: Loomis and Rocklin are also fighting against Wal-Mart.**

# THE BOHEMIA WAL-MART RETAIL PROJECT

## The Mission Of Our County Officials

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## The Questions To Our County Officials

Will they disregard the Socio-Economic damage of a Wal-Mart in our community?

Will they approve a Wal-Mart project that will trash a residential neighborhood and injure our local retail business while relying on the myth of increased employment and higher tax revenue?

Visit [www.APACE2010.org](http://www.APACE2010.org) for more information and get involved today!

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Never doubt that a small group of thoughtful, committed citizens can change the world.  
Indeed it's the only thing that ever has." *Margaret Mead, Anthropologist*

***JOIN YOUR NEIGHBORS! VOICE YOUR OPINION!***

**\* \* \***

**ATTEND THE MUNICIPAL ADVISORY COUNCIL MEETING**

**They will make recommendation to the Planning Commission  
Tuesday, June 8, 2010; 7:00 P.M. (Tentative)  
3091 County Center Drive**

**To Confirm : Call (530) 889-4010. or check our Website  
They meet on the 2<sup>nd</sup> Tuesday of each month.**

**\* \* \***

**ATTEND THE PLACER COUNTY PLANNING COMMISSION MEETING**

**They will make recommendation to the Board of Supervisors  
Thursday, June 24; 10:00 A.M. (Tentative)  
3091 County Center Drive**

**To Confirm : Call (530) 745-3000. or check our Website  
They meet on the 2nd and 4th Thursday of each month.**

**\* \* \***

**CONTACT THE MEMBERS OF OUR BOARD OF SUPERVISORS**

**Send an email: [bos@placer.ca.gov](mailto:bos@placer.ca.gov) or call (530) 889-4010.**

**NOTE: Loomis and Rocklin are also fighting against Wal-Mart.**

**Michele Kingsbury**

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**From:** June Gillam [junegillam700@comcast.net]  
**Sent:** Wednesday, June 02, 2010 7:16 AM  
**To:** Michele Kingsbury  
**Cc:** Julie Davies; June Gillam  
**Subject:** request to speak

Hello,

I am requesting to speak at the Municipal Advisory Council meeting Tuesday, June 8, at 7:00 p.m. at 3091 County Center Drive, please.

I am a home-owner new to Auburn and wish to speak against Walmart coming to town.

Please let me know how to proceed.

→ Many thanks,  
June Gillam  
12510 Dennis Court  
Auburn, CA 95603

**Kathi Heckert**

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**From:** LARI L KNEDEL [lknedel@sbcglobal.net]  
**Sent:** Thursday, June 17, 2010 1:26 PM  
**To:** Kathi Heckert  
**Cc:** Gerry Haas  
**Subject:** Comments lost for Bohemia FEIR  
**Attachments:** Bohemia Lari & Terre\_Final.doc

Ms. Heckert and Honorable Planning Commission Members:

Attached are comments submitted to the Planning Commission regarding the DEIR for the Bohemia Retail Project prior to the deadline date of 5:00 PM on March 4, 2010. Comments could be faxed or sent via e-mail. These comments were e-mailed and confirmation of receipt was sent at 8:36 AM 3/4/10.

It is rather frustrating and disconcerting that the attached comments, which took a considerable amount of time and effort could just be "merely displaced," when I have a fax confirmation from Maywan Krach, Environmental Coordination Services, that she received the comments within the comment deadline. According to Gerry Haas, Project Planner for this project, he has no explanation other than it must have been submitted after the dealine, or it must have been misplaced due to the number of comments that were received.

Please consider the comments.

I humbly request confirmation of where my comments ended up, including the time and date, if that can be determined.

Sincerely,

Lari L. Knedel

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March 3, 2010

Maywan Krach  
Environmental Coordination Services  
Placer County  
Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95603

**RE: Bohemia Retail Project (PEIR T20080235 / State Clearinghouse #2001042086)**

Placer County Planning Commission Members:

We have several questions concerning the following statements in the Executive Summary of the Draft EIR (**hereinafter referred to as "EIR"**).

Under *Land Use*, the EIR states:

1. *The Auburn/Bowman Community Plan – (hereinafter referred to as "ABCP") - includes various policies that are intended to reduce a project's land use impacts, both to the project site itself and to surrounding uses.*
2. *The project would comply with the ABCP policies related to physical aspects of land use considerations, and impacts were found to be less-than-significant.*

The impacts we have examined in the EIR are "very significant and unavoidable," not only to residents in the surrounding neighborhoods, but to many of the small businesses in Auburn.

The following EXAMPLES illustrate how the Bohemia Retail Project is **does not comport** with the goals and policies found in the ABCP:

#### **EXAMPLE 1**

Under Section III - COMMUNITY DEVELOPMENT ELEMENT, the ABCP states:

Section B – Land Use / General Development (s.)

*Encourage land uses that accommodate commercial services, ... while at the same time acknowledging that site constraints, design guidelines, and other land use considerations may limit the development of 'regional malls,' 'power centers,' very large commercial boxes or similar types of development.*

Chapter 3, Item 3.4 – Project Objectives, the EIR states:

*Design and construct a retail building that will provide a buffer between the residential neighborhoods to the north and east and more intensive commercial/industrial uses to the south and west, with the end goal of a retail project that is not only compatible on all fronts with its adjoining uses, but contributes to an overall sense of community in the area [emphasis added]. (Page 3-4)*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No Mitigation Measures are required because the Proposed Project would include services that would compete with existing businesses, including general retailers and groceries, in Placer County to the extent that those businesses would close and the resultant vacancies would contribute to physical deterioration and urban decay. (Page 2-58)*
2. *No Mitigation Measures are necessary for cumulative socio-economic impacts of the proposed project. (Page 2-72)*

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### Questions

1. Statements 1 and 2 in the EIR contradict one another; so how do these statements comply with the ABCP?
2. The map included in the EIR shows the location of the retail building in the **northeast portion** of the project site property, with the north side of the retail building directly behind the residents' homes along the **south** side of Dyer Court, and **east** side of the retail building 45-feet from the west side of Canal Street, intruding directly into the Fiddler Green subdivision and the Country Club Estates private park. Parking lots are located in the **south and west** area of the site. How does the description of the retail building's location in the EIR comply with its own project objective?

### EXAMPLE 2

Under Section II - A. GENERAL COMMUNITY GOALS, the ABCP goal states:

*The Plan must recognize that clean air and water are essential resources for maintaining a high quality of living, and ensure that these resources are maintained at **acceptable levels [emphasis added]**.*

Under Section IV- B, item #6-Air Quality, the ABCP states:

*Protect and improve air quality in the Auburn area.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *Cumulative impacts concerning the production of greenhouse gases were determined to be significant and unavoidable even with implementation of the required mitigation. (Page 2-6)*
2. *Because implementation of feasible mitigation would not reduce the project's short term Nitrogen Oxide emissions below the Placer County Air Pollution Control District's significance threshold, the project would result in a significant and unavoidable impact. (Page 2-6)*
3. *No mitigation measures are required to the impacts related to Carbon Monoxide emissions and impacts related to Long-Term increases of criteria air pollutants. (Page 2-32)*

The EIR defines "criteria air pollutants" as: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, and respirable particulate matter.

Chapter 9 – Air Quality, Table 9-1 of the EIR entitled "Effects of Major Criteria Pollutants" lists the following effects of **criteria air pollutants [emphasis added]**:

#### *Health effects of Ozone:*

- *Breathing difficulties*
- *Lung tissue damage*
- *Damage to rubber and some plastics*
- *Eye and skin irritation*

#### *Health effects of Carbon Monoxide:*

- *Chest pain in heart patients*
- *Headaches and nausea*
- *Reduced mental alertness*
- *High concentration can result in death*

#### *Health effects of Nitrogen Dioxide:*

- *Lung irritation and damage*
- *Reacts in the atmosphere to form ozone and rain and acid rain*

*Health effects of Sulfur Dioxide:*

- *Increased lung disease and breathing problems for asthmatics*
- *Reacts in the atmosphere to form acid rain*

*Health effects of Particulate Matter:*

- *Increased respiratory disease*
- *Lung damage*
- *Premature death*
- *Reduced visibility*

Under Chapter 9 – AIR QUALITY, 9.2 ENVIRONMENTAL SETTING, “Sensitive Receptors,” the EIR states:  
Residents located to the north and east areas of the proposed project location are elderly, which the EIR states  
“are more sensitive to air pollution because they tend to be at home for extended periods of time resulting in  
sustained exposure to any pollutants present.”

**Questions**

1. How does the proposed Bohemia Retail Project comply with these ABCP goals?
2. How will the Proposed Project mitigate this added risk to the nearby elderly residents? – As no mitigating measures are found in the EIR.

**EXAMPLE 3**

Under Section I – B. Description of the Study Area, the ABCP states:

*Auburn’s attractiveness for residents and visitors is in large part attributable to its vitality and beauty of its natural setting and environment. The open spaces surrounding Auburn serve as a crucial urban function as well. They separate the highly developed areas from the working landscape and from other urban areas.*

Under Chapter 3 – Project Description – Page 3-4, the EIR states:

*Design and construct a retail building that will provide a buffer between the residential neighborhoods to the north and east and more intensive commercial/industrial uses to the south and west, with the end goal of a retail project that is not only compatible on all fronts with its adjoining uses, but contributes to an overall sense of community in the area [emphasis added].*

*No mitigation measures are required for the impact on compatibility with existing adjacent land uses. (Page 2-13)*

**Question**

How is a 155,000 square foot commercial building being squeezed into a residential area with access off Canal Street - a two-lane residential street that is the only main entrance to several housing developments - being **compatible** with the “adjacent land uses”?

**EXAMPLE 4**

Under Section III – F. Noise, the ABCP goals/policies state:

1. *To protect Community Plan Area residents from the harmful and annoying effects of exposure to excessive noise [emphasis added].*
2. *To preserve the rural noise environment [emphasis added] of the Community Plan area and surrounding areas.*
3. *Residential and other noise sensitive land uses and commercial/industrial land uses create inherently different noise environments owing to the differences in necessary activities [emphasis added]. When such*

*incompatible uses come closely into contact, residents may complain and otherwise make it difficult for commercial/industrial uses to conduct their business.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No mitigation measures are required for traffic-related noise impacts as a result of project implementation. (Page 2-35)*
2. *No mitigation measures are required for impacts associated with new sources of light and glare. (Page 2-19)*
3. *No mitigation measures are required for the impact of cumulative increase in project vicinity noise levels. (Page 2-70)*

**Question**

How does the “*Delivery Truck and Loading Dock Activity limited to 6:00AM until 12:00 AM,*” – 10-3(b) of the Executive Summary EIR - and “*On-site operational activities that would potentially exceed County noise levels and therefore result in a potentially significant impact including truck circulation, loading dock activity, and parking lot sweeper activity*” – **NOT have an impact** on the adjacent residents and existing sensitive receptors mentioned in the EIR to the north and east of the Projected Project site?

**EXAMPLE 5**

Under Section I - C. THE REGIONAL SETTING AND CONTEXT, the ABCP states:

*Air quality is a regional issue since regional traffic is responsible for much of the deterioration of the local air quality and because air pollution moves out of the more densely developed areas into Placer County and to the east.*

Chapter 2 of the EIR Executive Summary states:

1. *Cumulative impacts associated with regional air quality would be significant and, even with the implementation of mitigation measures, cumulative impacts would remain significant and unavoidable. (Page 2-6)*
2. *Approximately 15 % of traffic associated with the proposed project would utilize the Canal Street access – 1615 cars per day – while the remaining 85% would use the project’s Primary Access – SR 49 and Hulbert Way. Therefore under the No Canal Street Access Alternative, the Primary Access location could expect a 15% increase in trips ... Because the No Canal Street Alternative Access is proposed to increase traffic congestion at the Primary Access, and CO2 emissions are directly related to traffic congestion, ... this Alternative would have a greater impact - in regard to air quality - than the Proposed project. (Pages 17-9, 17-10)*
3. *Because the No Canal Street Access Alternative is projected to increase traffic congestion at the Primary Access, and Carbon Monoxide emissions are directly related to traffic congestion, the No Canal Street Access Alternative would have a greater impact as compared to the proposed Project. (Page 17-10)*

**Question**

How is the EIR compliant with this ABCP goal?

**EXAMPLE 6**

Under Section V – D. Level of Service, the ABCP states:

*The level of service (LOS) minimum standard for roadways and intersections throughout the Plan area shall generally be LOS “C”.*

Chapter 8, page 8-7, the EIR defines Level Of Service (LOS) as:

Roadway operating conditions which is a qualitative measure of the effect of a number of factors, including speed and travel time, traffic interruptions, freedom to maneuver, safety driving comfort and convenience,

delay, and operating costs. An "LOS" is designated a single letter reference, between "A" through "F," which represents the best to worst service range traffic operations that could occur.

According to Table 8-1 of the EIR, page 8-12, the LOS Criteria defines "A" through "F" as:

Level of Service (LOS)	Description
A	Very low control delay. Most vehicles do not stop at all. Most vehicles arrive during the green light.
B	Generally occurs with good progression. More vehicles stop than with LOS "A" causing higher levels of average delay.
C	Delays from fair progression, longer cycle lengths or both. The number of vehicles stopping is significant at this level, though many still pass through the intersection without stopping.
D	Congestion becomes more noticeable. Longer delays result from unfavorable congestion. Many vehicles stop, and the proportion of vehicles not stopping declines.
E	High delays and generally poor progression.
F	This level, considered to be unacceptable to most drivers, often occurs with oversaturation, that is, when arrival flow rates exceed the capacity of the intersection.

The ABCP #V: Traffic Circulation Element - Table 17 shows the exception to the LOS "C" standard for the SR 49 / Luther Road intersection to be an "E."

Table 8-15, page 8-43, in the EIR states:

For the **Discount Club** – projected to be a Costco or Sam’s Club,

- The LOS projected conditions for the SR 49/Luther Road intersection will be a "D" during peak PM hours.
- The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during peak PM hours.

Table 8-7, page 8-25, in the EIR states:

The Total "Unadjusted" Proposed Project External Trips to be 9,076.  
 'Unadjusted External Trips includes Pass-by Trips'

Table 8-16, page 8-45, in the EIR states:

For the **Discount Superstore** – projected to be a Walmart,

- The LOS projected conditions for the SR 49 / Luther Road intersection will be a "D" during peak PM hours.
- The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during PM peak hours.

Table 8-8, page 8-27, in the EIR states:

The Total "Unadjusted" Proposed Project External Trips to be 10,773.  
 'Unadjusted External Trips includes Pass-by Trips'

Page 8-52 which addresses the Christmas Season Conditions states:

The Short Term Plus Project with Christmas Season Conditions would cause the Luther Road / Canal Street intersection to operate at an unacceptable LOS. Also Implementation of the proposed project would result in the lack of available storage length at several intersections. In addition, project construction activities could have a significant impact on circulation in the vicinity of the project.

Table 8-17 and 8-18, pages 8-46 & 8-4,7 in the EIR states:

Roadway conditions for both the Discount Club store and the Discount Superstore to be level "C" for Northbound traffic at SR 49 / Hulbert Way intersection, and level "D" for Southbound traffic at SR 49 / Hulbert Way intersection – during PM peak hours.

#### Question

With all the projected new daily vehicle trips and the "LOS" projections for the affected main intersections associated with this proposed project, how does the proposed project comply with the ABCP?

#### EXAMPLE 7

Under III - COMMUNITY DEVELOPMENT, D. # 5, Public Protection, the ABCP states:

*Provide public projection services which are appropriate for the urban and rural development proposed by the Community Plan, increasing the level of services as development occurs. In addition, traffic enforcement and accident investigations are provided by the California Highway Patrol.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

Many Mitigation Measures exist for impacts to surrounding intersections, including signaling the Luther Road / Canal Street Intersection – which is the Secondary Access for the Proposed Project site.

#### Question

Due to "The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during peak PM hours – which is only 0.1 miles from the only ingress and egress to a multi-resident senior trailer-park, how will those senior residents safely pull out on east bound or west bound Luther Road when the intersection 0.1 mile away – Intersection #18 - will be projected to be at an "Unacceptable Level of Service?"

#### EXAMPLE 8

Under II – GENERAL COMMUNITY GOALS AND PLANNING PRINCIPLES, Section B – 3, the ABCP states:

A mixed use concept should be sought for new development on the larger developable parcels of land and within designated areas where redevelopment may occur. A balance of compatible commercial, industrial, residential civic uses, enjoyable public places, and parks will enhance the community's sense of identity and interaction, **as well as address traffic congestion, air quality, [emphasis added]** and affordable housing issues.

Reference is made in the Executive Summary of the EIR to a "Mixed Use Alternative" – which would include a 35% reduction in square footage and would include two separate retail buildings – one 64,300 sq. ft. building and one 35,700 sq. ft. building, and states:

*The Mixed Use Alternative would have fewer impacts to visual resources, public services and utilities, and hazardous materials and hazards as compared to the proposed project.*

In Chapter 17, - "Alternatives" under "Transportation and Circulation," the EIR states:

1. *Impacts related to transportation and circulation would be less with The Mixed Use Alternative as compared to the proposed project.*
2. *Under the Mixed Use Alternative, vehicle trips would not be reduced as compared to the proposed project and congestion would generally be the same at the two access locations.*

In Chapter 17, - "Alternatives," pages 17-3, 17-10, and 17-16 under "Air Quality," the EIR states:

1. *Implementation of the proposed project would result in significant impacts in regard to air quality. Construction activities associated with the proposed project would generate PM10 emissions at a level that would exceed Placer County Air Pollution Control District (PCAPCD) significance threshold of 82 pounds per day. In addition, the project would be located in an area of Placer County that **potentially [emphasis added]** contains naturally occurring asbestos (NOA) and construction of the project could result in the release of NOA into the air.*
2. *Both the proposed project and the No Canal Street Access Alternative could result in the release of NOA into the air. If on-site rocks contain asbestos, grading and construction activities could release asbestos fibers into the environment.*
3. *Because air quality impacts are directly related to construction activities and land disturbance area, the Mixed Use Alternative would be expected to have a similar impact during construction operations as compared to the proposed project.*

#### Questions

1. How do the Proposed Project, the No Canal Street Access Alternative, and the Mixed Use Alternative comply with the ABCP policy?
2. Why are the Transportation and Circulation statements contradictory?
3. In reference to the *November 4, 2008 Department of Conservation California Geological Survey*, the "NOA Hazard Map of the North Auburn Vicinity" indicates details of the likelihood of the presence of NOA in North Auburn and surrounding vicinities. This reference directly contradicts the EIR statement that this area of Placer County could "**potentially**" contain NOA. The scale for the presence of NOA is as follows:
  - Areas **MOST** likely to contain NOA
  - Areas **MODERATELY** likely to contain NOA
  - Areas **LEAST** likely to contain areas of NOA
  - Areas of **Faulting or Shearing**: which adds to the likelihood of NOA

According to this map and scale, the proposed project is located in the area "**MOST**" likely to contain NOA and contains Areas of "**Faulting and Shearing**."

4. This "NOA Hazard Map of the North Auburn Vicinity" was easily accessible online. Why then the contradiction in the EIR statement?

#### EXAMPLE 9

Under II - GENERAL COMMUNITY GOALS AND PLANNING PRINCIPLES, the ABCP states:

*The protection of the environment within the Plan area is necessary in order to maintain the most important attributes that attract people here in the first place and keep long-term residents from moving away.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No Mitigation Measures are required for the impact of this Proposed Project that would include services that would compete with existing businesses, including general retailers and groceries, in Placer County to the extent that those businesses would close and the resultant vacancies would contribute to physical deterioration and urban decay.*
2. *No Mitigation Measures are necessary for cumulative socio-economic impacts of the proposed project.*

**Question**

How will this project protect and maintain the most attractive attributes that attracted people here in the first place? – One being the sense of a small-town community, where local, smaller businesses are kept intact.

**EXAMPLE 10**

Under III - COMMUNITY DEVELOPMENT ELEMENT #C – Community Design, the ABCP states:

*Maintain the present character of established residential areas. Discourage the appearance of creating walled-off communities such as is done with the use of sound walls along roadways that do not contribute to the sense of the community desired for the area.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*A noise barrier 6-8 feet in height would be required to reduce future Delivery Movements and Loading Dock Activity noise levels. Barriers could take the form of earth berms, solid walls, or a combination of the two.*

**Question**

How do these mitigations maintain the character of residential areas and comply with the ABCP?

**EXAMPLE 11**

Under III - COMMUNITY DEVELOPMENT ELEMENT, #C-(b.)- Commercial, the ABCP states:

*Night lighting, visible from the exterior of a building and the projects boundaries should be limited to that necessary for security, safety, and identification. Night lighting should also be screened from adjacent, residential areas and not be directed in an upward manner.*

Under III - COMMUNITY DEVELOPMENT ELEMENT #B-(i.)-General Development, the ABCP states:

*Intensity and use of individual parcels and buildings should be governed by considerations of health and safety impacts on adjoining properties due to noise, traffic, night lighting or other disturbing conditions, and protection of natural land characteristics.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The Mitigation Measure for the impacts of on-site noise sources of Loading and Delivery Activities would be to limit these activities between 6AM and 12AM.'*

**Question**

How is this mitigation compliant with this ABCP?

**EXAMPLE 12**

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*Loss of 'Peace and Quiet' are often complaints from rural residents as areas build out, particularly when vehicular traffic increases near homes.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

- 1. No mitigation measures are required for traffic related noise impacts as a result of the project implementation.*
- 2. No mitigation measures are required due to cumulative increases in project vicinity noise levels.*

**Question**

How is the projected 10,773 new daily car trips to the project and the estimated 1615 new daily car trips on Canal Street alone, NOT contributing to excess vehicle noise?

### EXAMPLE 13

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*'Through' traffic which must pass through this Plan area shall be accommodated in a manner which will not encourage the use of neighborhood roadways. This 'through traffic' shall be directed to appropriate routes in order to maintain public safety & local quality of life.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No mitigation measures are required for impacts related to vehicular safety from design features or incompatible uses.*
2. *No mitigation measures are required for impacts related to emergency vehicle access.*

### Questions

1. How will the developer prevent the use of neighborhood roads being used to reach the retail site?
2. With the estimated 1615 new cars per day on Canal Street – with little or no “roadway shoulder” – how will the project comply with access for emergency vehicles, since Canal Street is the main access to several neighborhoods?

### EXAMPLE 14

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*Provide safe and efficient Transportation systems for residents of the Plan area and others who use the systems.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The consideration of traffic impacts on roadway capacity concluded that impacts would be 'less-than-significant.'*

### Question

How is the projected 10,773 new daily car trips to the project and the estimated 1615 new daily car trips on Canal Street considered “less-than-significant?”

### EXAMPLE 15

Under III - COMMUNITY DEVELOPMENT ELEMENT, B - LAND USE, the ABCP states:

*Preserve and maintain the rural character and quality of the outlying areas. Factors that contribute to this rural character include the predominance of native vegetation.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The mitigation measures for the 'Impacts to Protected Trees' would be to Submit to the Placer County Tree Preservation Fund, payment in the amount of \$65,180 for impacts to woodland oaks.*

### Question

How will “clear-cutting” existing native oak trees on the Bohemia Property preserve this rural character?

The Developer claims these oak trees are “sick and need to be removed.”

I would advocate these mature native oak trees not be removed before they are examined by a licensed certified arborist before determining their worth or demise. The three sources Mr. Conkey mentions as specialists are not licensed, certified arborists.

**Bruce D. Barnett** is an Environmental Consulting & Regulatory Compliance Service;

**Gibson & Skordal** is a Wetland Consulting Firm; and

**Yamasaki Landscape Architecture Planning & Construction** is a Landscape Construction Business

**IN CLOSING:**

After reviewing the EIR and ABCP, the developer has many questions to answer regarding its NON-COMPLIANCE with the ABCP goals and policies and some of its own goals.

**THIS PROJECT SHOULD NOT:**

Contribute to deterioration of air quality;

**THIS PROJECT SHOULD NOT:**

Contribute to physical deterioration and urban decay of the area;

**THIS PROJECT SHOULD NOT:**

Contribute to increased disturbing conditions to adjacent properties;

**THIS PROJECT SHOULD NOT:**

Increase traffic patterns to the extent that they will invade surrounding residential areas;

**THIS PROJECT SHOULD NOT:**

Contribute more traffic congestion to an already congested section of the Hwy49 corridor;

**THIS PROJECT SHOULD NOT:**

Eliminate existing, mature native oak trees not examined by a licensed certified arborist before determining their worth or demise.

My first option is to support the **“Mixed Use Alternative, with NO CANAL Street Access.**

If we, - as a community - fail to convince the Decision Makers that this project is **“just not the right fit”** for the area, then I would urge the **Decision Makers to approve the “NO CANAL Street Access Alternative.”**

I can understand the Developer’s desire to develop this property so he can “just move on.”

I would hope that he understands how the surrounding property owners’ will suffer the long-term Impacts of this project, and will **not** be able to just **“move-on”** due to the financial hardship of relocating.

Thank you for considering our comments and concerns.

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Lari L. Knedel, BSN, RN  
13180 Erin Drive  
Auburn, CA 95603  
530-888-6465

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Terre A. Davis, BSA,  
13180 Erin Drive  
Auburn, CA 95603  
530-888-6465

Cc: North Auburn MAC Members: Placer County Board of Supervisors:  
Gregory Wilbur F. C. “Rocky” Rockholm  
Ken Gregory Robert Weygandt  
Laurence Farinha Jim Holmes  
Dave Hungerford Kirk Uhler  
Chuck Rydell Jennifer Montgomery  
Jacquie Flecklin  
Mark Watts

received certified

Michael J. Johnson, AICP  
Agency Director  
Environmental Coordination Services  
Placer County Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95603

June 21, 2010

Received

JUN 23 2010

**RE: Bohemia Retail Project (PEIR T20080235 / State Clearinghouse #2001042086)**

**CDRA-Admin.**

Dear Sir:

The Final Environmental Impact Report (FEIR) for the above mentioned project became available for a 10-day public review on June 16, 2010. To our astonishment, we did not appear in the list of Commenters' included in the FEIR.

Lari Knedel contacted the offices of Maywan Krach – Environmental Coordination Services - and Gerry Haas, Bohemia Project Planner; to inquire why our 10-page comments on the Draft Environmental Impact Report (DEIR) were not included in the published comments. This 10-page document was submitted electronically March 3, 2010 at 7:26pm, so it should have been included in the Final Environmental Impact Report. Ms. Krach electronically confirmed receipt of our comments on March 4, 2010 at 8:35am, copy attached.

This is very disconcerting; given the amount of time and effort it took to evaluate the DEIR and Auburn Bowman Community Plan so that we could submit informed and intelligent comments and concerns regarding the Bohemia Retail Project. It is also very disconcerting that based on the notice that we have only 4 more days to provide written comments to the FEIR, when your agency has not even responded to our comments on the DEIR.

Ms. Krach also informed Lari today that your agency would have written comments to our March 3<sup>rd</sup> comments posted to the public web-page by 5:00 p.m. today. It is our understanding that the comments are forwarded to the respective consultant for response. Given that we are supposed to have written comments by 5:00 p.m. today, we question the due diligence in responding to our comments/concerns. Ms. Krach also stated that there would be an extension of the 10-day review period due to the oversight of our March 3, 2010 written comments on the DEIR.

Please confirm ASAP, the date on which written comments on the FEIR are due.

Sincerely,

*Lari L. Knedel & Terre A. Davis*

Lari L. Knedel & Terre A. Davis  
13180 Erin Drive  
Auburn, CA 95603  
530.888.6465

Cc via e-mail:  
Maywan Krach  
Gerry Haas  
Placer County Planning Commission Members

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**FW: Bohemia Retail Project - Comments on Draft EIR**

Thu, June 17, 2010 11:09:30 AM

From: Davis, Terre <Terre.Davis@rb.ca.gov> View Contact  
To: LARI L KNEDEL <lknedel@sbcglobal.net>

Here is the email acknowledging receipt of our comments.

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**From:** Maywan Krach [mailto:MKrach@placer.ca.gov]  
**Sent:** Thursday, March 04, 2010 8:36 AM  
**To:** terre davis; Placer County Environmental Coordination Services  
**Cc:** lknedel@sbcglobal.net; Davis, Terre  
**Subject:** RE: Bohemia Retail Project - Comments on Draft EIR

Comments received and have been forwarded to the planner

Thanks.

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Maywan Krach  
Community Development Technician  
Environmental Coordination Services  
Placer County Community Development Resource Agency  
3091 County Center Drive, Suite 190, Auburn, CA 95603  
530-745-3132 fax 530-745-3003  
8am-5pm, Mon-Fri

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**From:** terre davis [mailto:terred@sbcglobal.net]  
**Sent:** Wednesday, March 03, 2010 7:26 PM  
**To:** Placer County Environmental Coordination Services  
**Cc:** lknedel@sbcglobal.net; Terre Davis  
**Subject:** Bohemia Retail Project - Comments on Draft EIR

Maywan Krach,

Attached for your consideration are our comments regarding the draft EIR for the Bohemia Retail Project. If you have any questions, please do not hesitate to contact me at the number listed below.

Sincerely,

Terre Davis  
530.888.6465

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March 3, 2010

Maywan Krach  
Environmental Coordination Services  
Placer County  
Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95603

**RE: Bohemia Retail Project (PEIR T20080235 / State Clearinghouse #2001042086)**

Placer County Planning Commission Members:

We have several questions concerning the following statements in the Executive Summary of the Draft EIR (**hereinafter referred to as "EIR"**).

Under *Land Use*, the EIR states:

1. *The Auburn/Bowman Community Plan – (hereinafter referred to as "ABCP") - includes various policies that are intended to reduce a project's land use impacts, both to the project site itself and to surrounding uses.*
2. *The project would comply with the ABCP policies related to physical aspects of land use considerations, and impacts were found to be less-than-significant.*

The impacts we have examined in the EIR are "very significant and unavoidable," not only to residents in the surrounding neighborhoods, but to many of the small businesses in Auburn.

The following EXAMPLES illustrate how the Bohemia Retail Project is **does not comport** with the goals and policies found in the ABCP:

#### **EXAMPLE 1**

Under Section III - COMMUNITY DEVELOPMENT ELEMENT, the ABCP states:

Section B – Land Use / General Development (s.)

*Encourage land uses that accommodate commercial services, ... while at the same time acknowledging that site constraints, design guidelines, and other land use considerations may limit the development of 'regional malls,' 'power centers,' very large commercial boxes or similar types of development.*

Chapter 3, Item 3.4 – Project Objectives, the EIR states:

*Design and construct a retail building that will provide a buffer between the residential neighborhoods to the north and east and more intensive commercial/industrial uses to the south and west, with the end goal of a retail project that is not only compatible on all fronts with its adjoining uses, but contributes to an overall sense of community in the area [emphasis added]. (Page 3-4)*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES ,the EIR states:

1. *No Mitigation Measures are required because the Proposed Project would include services that would compete with existing businesses, including general retailers and groceries, in Placer County to the extent that those businesses would close and the resultant vacancies would contribute to physical deterioration and urban decay. (Page 2-58)*
2. *No Mitigation Measures are necessary for cumulative socio-economic impacts of the proposed project. (Page 2-72)*

**Questions**

1. Statements 1 and 2 in the EIR contradict one another; so how do these statements comply with the ABCP?
2. The map included in the EIR shows the location of the retail building in the **northeast portion** of the project site property, with the north side of the retail building directly behind the residents' homes along the **south** side of Dyer Court, and **east** side of the retail building 45-feet from the west side of Canal Street, intruding directly into the Fiddler Green subdivision and the Country Club Estates private park. Parking lots are located in the **south and west** area of the site. How does the description of the retail building's location in the EIR comply with its own project objective?

**EXAMPLE 2**

Under Section II - A. GENERAL COMMUNITY GOALS, the ABCP goal states:

*The Plan must recognize that clean air and water are essential resources for maintaining a high quality of living, and ensure that these resources are maintained at acceptable levels [emphasis added].*

Under Section IV-B, item #6-Air Quality, the ABCP states:

*Protect and improve air quality in the Auburn area.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *Cumulative impacts concerning the production of greenhouse gases were determined to be significant and unavoidable even with implementation of the required mitigation. (Page 2-6)*
2. *Because implementation of feasible mitigation would not reduce the project's short term Nitrogen Oxide emissions below the Placer County Air Pollution Control District's significance threshold, the project would result in a significant and unavoidable impact. (Page 2-6)*
3. *No mitigation measures are required to the impacts related to Carbon Monoxide emissions and impacts related to Long-Term increases of criteria air pollutants. (Page 2-32)*

The EIR defines "criteria air pollutants" as: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, and respirable particulate matter.

Chapter 9 – Air Quality, Table 9-1 of the EIR entitled "Effects of Major Criteria Pollutants" lists the following effects of **criteria air pollutants [emphasis added]**:

*Health effects of Ozone:*

- *Breathing difficulties*
- *Lung tissue damage*
- *Damage to rubber and some plastics*
- *Eye and skin irritation*

*Health effects of Carbon Monoxide:*

- *Chest pain in heart patients*
- *Headaches and nausea*
- *Reduced mental alertness*
- *High concentration can result in death*

*Health effects of Nitrogen Dioxide:*

- *Lung irritation and damage*
- *Reacts in the atmosphere to form ozone and rain and acid rain*

*Health effects of Sulfur Dioxide:*

- *Increased lung disease and breathing problems for asthmatics*
- *Reacts in the atmosphere to form acid rain*

*Health effects of Particulate Matter:*

- *Increased respiratory disease*
- *Lung damage*
- *Premature death*
- *Reduced visibility*

Under Chapter 9 – AIR QUALITY, 9.2 ENVIRONMENTAL SETTING, “Sensitive Receptors,” the EIR states:  
Residents located to the north and east areas of the proposed project location are elderly, which the EIR states  
*“are more sensitive to air pollution because they tend to be at home for extended periods of time resulting in sustained exposure to any pollutants present.”*

**Questions**

1. How does the proposed Bohemia Retail Project comply with these ABCP goals?
2. How will the Proposed Project mitigate this added risk to the nearby elderly residents? – As no mitigating measures are found in the EIR.

**EXAMPLE 3**

Under Section I – B. Description of the Study Area, the ABCP states:

*Auburn’s attractiveness for residents and visitors is in large part attributable to its vitality and beauty of its natural setting and environment. The open spaces surrounding Auburn serve as a crucial urban function as well. They separate the highly developed areas from the working landscape and from other urban areas.*

Under Chapter 3 – Project Description – Page 3-4, the EIR states:

*Design and construct a retail building that will provide a buffer between the residential neighborhoods to the north and east and more intensive commercial/industrial uses to the south and west, with the end goal of a retail project that is not only compatible on all fronts with its adjoining uses, but contributes to an overall sense of community in the area [emphasis added].*

*No mitigation measures are required for the impact on compatibility with existing adjacent land uses. (Page 2-13)*

**Question**

How is a 155,000 square foot commercial building being squeezed into a residential area with access off Canal Street - a two-lane residential street that is the only main entrance to several housing developments - being compatible with the “adjacent land uses”?

**EXAMPLE 4**

Under Section III – F. Noise, the ABCP goals/policies state:

1. *To protect Community Plan Area residents from the harmful and annoying effects of exposure to excessive noise [emphasis added].*
2. *To preserve the rural noise environment [emphasis added] of the Community Plan area and surrounding areas.*
3. *Residential and other noise sensitive land uses and commercial/industrial land uses create inherently different noise environments owing to the differences in necessary activities [emphasis added]. When such*

*incompatible uses come closely into contact, residents may complain and otherwise make it difficult for commercial/industrial uses to conduct their business.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No mitigation measures are required for traffic-related noise impacts as a result of project implementation. (Page 2-35)*
2. *No mitigation measures are required for impacts associated with new sources of light and glare. (Page 2-19)*
3. *No mitigation measures are required for the impact of cumulative increase in project vicinity noise levels. (Page 2-70)*

**Question**

How does the “*Delivery Truck and Loading Dock Activity limited to 6:00AM until 12:00 AM,*” – 10-3(b) of the Executive Summary EIR - and “*On-site operational activities that would potentially exceed County noise levels and therefore result in a potentially significant impact including truck circulation, loading dock activity, and parking lot sweeper activity*” – **NOT have an impact** on the adjacent residents and existing sensitive receptors mentioned in the EIR to the north and east of the Projected Project site?

**EXAMPLE 5**

Under Section I - C. THE REGIONAL SETTING AND CONTEXT, the ABCP states:

*Air quality is a regional issue since regional traffic is responsible for much of the deterioration of the local air quality and because air pollution moves out of the more densely developed areas into Placer County and to the east.*

Chapter 2 of the EIR Executive Summary states:

1. *Cumulative impacts associated with regional air quality would be significant and, even with the implementation of mitigation measures, cumulative impacts would remain significant and unavoidable. (Page 2-6)*
2. *Approximately 15 % of traffic associated with the proposed project would utilize the Canal Street access – 1615 cars per day – while the remaining 85% would use the project’s Primary Access – SR 49 and Hulbert Way. Therefore under the No Canal Street Access Alternative, the Primary Access location could expect a 15% increase in trips ... Because the No Canal Street Alternative Access is proposed to increase traffic congestion at the Primary Access, and CO2 emissions are directly related to traffic congestion, ... this Alternative would have a greater impact - in regard to air quality - than the Proposed project. (Pages 17-9, 17-10)*
3. *Because the No Canal Street Access Alternative is projected to increase traffic congestion at the Primary Access, and Carbon Monoxide emissions are directly related to traffic congestion, the No Canal Street Access Alternative would have a greater impact as compared to the proposed Project. (Page 17-10)*

**Question**

How is the EIR compliant with this ABCP goal?

**EXAMPLE 6**

Under Section V – D. Level of Service, the ABCP states:

*The level of service (LOS) minimum standard for roadways and intersections throughout the Plan area shall generally be LOS “C”.*

Chapter 8, page 8-7, the EIR defines Level Of Service (LOS) as:

Roadway operating conditions which is a qualitative measure of the effect of a number of factors, including speed and travel time, traffic interruptions, freedom to maneuver, safety driving comfort and convenience,

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delay, and operating costs. An "LOS" is designated a single letter reference, between "A" through "F," which represents the best to worst service range traffic operations that could occur.

According to Table 8-1 of the EIR, page 8-12, the LOS Criteria defines "A" through "F" as:

Level of Service (LOS)	Description
A	Very low control delay. Most vehicles do not stop at all. Most vehicles arrive during the green light.
B	Generally occurs with good progression. More vehicles stop than with LOS "A" causing higher levels of average delay.
C	Delays from fair progression, longer cycle lengths or both. The number of vehicles stopping is significant at this level, though many still pass through the intersection without stopping.
D	Congestion becomes more noticeable. Longer delays result from unfavorable congestion. Many vehicles stop, and the proportion of vehicles not stopping declines.
E	High delays and generally poor progression.
F	This level, considered to be unacceptable to most drivers, often occurs with oversaturation, that is, when arrival flow rates exceed the capacity of the intersection.

The ABCP #V: Traffic Circulation Element - Table 17 shows the exception to the LOS "C" standard for the SR 49 / Luther Road intersection to be an "E."

Table 8-15, page 8-43, in the EIR states:

**For the Discount Club** – projected to be a Costco or Sam's Club,

- The LOS projected conditions for the SR 49/Luther Road intersection will be a "D" during peak PM hours.
- The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during peak PM hours.

Table 8-7, page 8-25, in the EIR states:

The Total "Unadjusted" Proposed Project External Trips to be 9,076.  
 'Unadjusted External Trips includes Pass-by Trips'

Table 8-16, page 8-45, in the EIR states:

**For the Discount Superstore** – projected to be a Walmart,

- The LOS projected conditions for the SR 49 / Luther Road intersection will be a "D" during peak PM hours.
- The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during PM peak hours.

Table 8-8, page 8-27, in the EIR states:

The Total "Unadjusted" Proposed Project External Trips to be 10,773.  
 'Unadjusted External Trips includes Pass-by Trips'

Page 8-52 which addresses the Christmas Season Conditions states:

The Short Term Plus Project with Christmas Season Conditions would cause the Luther Road / Canal Street intersection to operate at an unacceptable LOS. Also Implementation of the proposed project would result in the lack of available storage length at several intersections. In addition, project construction activities could have a significant impact on circulation in the vicinity of the project.

Table 8-17 and 8-18, pages 8-46 & 8-4,7 in the EIR states:

Roadway conditions for both the Discount Club store and the Discount Superstore to be level "C" for Northbound traffic at SR 49 / Hulbert Way intersection, and level "D" for Southbound traffic at SR 49 / Hulbert Way intersection – during PM peak hours.

#### Question

With all the projected new daily vehicle trips and the "LOS" projections for the affected main intersections associated with this proposed project, how does the proposed project comply with the ABCP?

#### EXAMPLE 7

Under III - COMMUNITY DEVELOPMENT, D. # 5, Public Protection, the ABCP states:

*Provide public projection services which are appropriate for the urban and rural development proposed by the Community Plan, increasing the level of services as development occurs. In addition, traffic enforcement and accident investigations are provided by the California Highway Patrol.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

Many Mitigation Measures exist for impacts to surrounding intersections, including signaling the Luther Road / Canal Street Intersection – which is the Secondary Access for the Proposed Project site.

#### Question

Due to "The LOS projected conditions for the Luther Road / Canal Street intersection will be an "E" during peak PM hours – which is only 0.1 miles from the only ingress and egress to a multi-resident senior trailer-park, how will those senior residents safely pull out on east bound or west bound Luther Road when the intersection 0.1 mile away – Intersection #18 - will be projected to be at an "Unacceptable Level of Service?"

#### EXAMPLE 8

Under II – GENERAL COMMUNITY GOALS AND PLANNING PRINCIPLES, Section B – 3, the ABCP states:

A mixed use concept should be sought for new development on the larger developable parcels of land and within designated areas where redevelopment may occur. A balance of compatible commercial, industrial, residential civic uses, enjoyable public places, and parks will enhance the community's sense of identity and interaction, as well as address traffic congestion, air quality, [emphasis added] and affordable housing issues.

Reference is made in the Executive Summary of the EIR to a "Mixed Use Alternative"– which would include a 35% reduction in square footage and would include two separate retail buildings – one 64,300 sq. ft. building and one 35,700 sq. ft. building, and states:

*The Mixed Use Alternative would have fewer impacts to visual resources, public services and utilities, and hazardous materials and hazards as compared to the proposed project.*

In Chapter 17, - "Alternatives" under "Transportation and Circulation," the EIR states:

1. *Impacts related to transportation and circulation would be less with The Mixed Use Alternative as compared to the proposed project.*
2. *Under the Mixed Use Alternative, vehicle trips would not be reduced as compared to the proposed project and congestion would generally be the same at the two access locations.*

In Chapter 17, - "Alternatives," pages 17-3, 17-10, and 17-16 under "Air Quality," the EIR states:

1. *Implementation of the proposed project would result in significant impacts in regard to air quality. Construction activities associated with the proposed project would generate PM10 emissions at a level that would exceed Placer County Air Pollution Control District (PCAPCD) significance threshold of 82 pounds per day. In addition, the project would be located in an area of Placer County that **potentially [emphasis added]** contains naturally occurring asbestos (NOA) and construction of the project could result in the release of NOA into the air.*
2. *Both the proposed project and the No Canal Street Access Alternative could result in the release of NOA into the air. If on-site rocks contain asbestos, grading and construction activities could release asbestos fibers into the environment.*
3. *Because air quality impacts are directly related to construction activities and land disturbance area, the Mixed Use Alternative would be expected to have a similar impact during construction operations as compared to the proposed project.*

#### Questions

1. How do the Proposed Project, the No Canal Street Access Alternative, and the Mixed Use Alternative comply with the ABCP policy?
2. Why are the Transportation and Circulation statements contradictory?
3. In reference to the *November 4, 2008 Department of Conservation California Geological Survey*, the "NOA Hazard Map of the North Auburn Vicinity" indicates details of the likelihood of the presence of NOA in North Auburn and surrounding vicinities. This reference directly contradicts the EIR statement that this area of Placer County could "**potentially**" contain NOA. The scale for the presence of NOA is as follows:
  - Areas **MOST** likely to contain NOA
  - Areas **MODERATELY** likely to contain NOA
  - Areas **LEAST** likely to contain areas of NOA
  - Areas of **Faulting or Shearing**: which adds to the likelihood of NOA

According to this map and scale, the proposed project is located in the area "**MOST**" likely to contain NOA and contains Areas of "**Faulting and Shearing**."

4. This "NOA Hazard Map of the North Auburn Vicinity" was easily accessible online. Why then the contradiction in the EIR statement?

#### EXAMPLE 9

Under II - GENERAL COMMUNITY GOALS AND PLANNING PRINCIPLES, the ABCP states:

*The protection of the environment within the Plan area is necessary in order to maintain the most important attributes that attract people here in the first place and keep long-term residents from moving away.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No Mitigation Measures are required for the impact of this Proposed Project that would include services that would compete with existing businesses, including general retailers and groceries, in Placer County to the extent that those businesses would close and the resultant vacancies would contribute to physical deterioration and urban decay,*
2. *No Mitigation Measures are necessary for cumulative socio-economic impacts of the proposed project.*

**Question**

How will this project protect and maintain the most attractive attributes that attracted people here in the first place? – One being the sense of a small-town community, where local, smaller businesses are kept intact.

**EXAMPLE 10**

Under III - COMMUNITY DEVELOPMENT ELEMENT #C – Community Design, the ABCP states:

*Maintain the present character of established residential areas. Discourage the appearance of creating walled-off communities such as is done with the use of sound walls along roadways that do not contribute to the sense of the community desired for the area.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*A noise barrier 6-8 feet in height would be required to reduce future Delivery Movements and Loading Dock Activity noise levels. Barriers could take the form of earth berms, solid walls, or a combination of the two.*

**Question**

How do these mitigations maintain the character of residential areas and comply with the ABCP?

**EXAMPLE 11**

Under III - COMMUNITY DEVELOPMENT ELEMENT, #C-(b.)- Commercial, the ABCP states:

*Night lighting, visible from the exterior of a building and the projects boundaries should be limited to that necessary for security, safety, and identification. Night lighting should also be screened from adjacent, residential areas and not be directed in an upward manner.*

Under III - COMMUNITY DEVELOPMENT ELEMENT #B-(i.)-General Development, the ABCP states:

*Intensity and use of individual parcels and buildings should be governed by considerations of health and safety impacts on adjoining properties due to noise, traffic, night lighting or other disturbing conditions, and protection of natural land characteristics.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The Mitigation Measure for the impacts of on-site noise sources of Loading and Delivery Activities would be to limit these activities between '6AM and 12AM.'*

**Question**

How is this mitigation compliant with this ABCP?

**EXAMPLE 12**

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*Loss of 'Peace and Quiet' are often complaints from rural residents as areas build out, particularly when vehicular traffic increases near homes.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

- 1. No mitigation measures are required for traffic related noise impacts as a result of the project implementation.*
- 2. No mitigation measures are required due to cumulative increases in project vicinity noise levels.*

**Question**

How is the projected 10,773 new daily car trips to the project and the estimated 1615 new daily car trips on Canal Street alone, **NOT** contributing to excess vehicle noise?

### EXAMPLE 13

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*'Through' traffic which must pass through this Plan area shall be accommodated in a manner which will not encourage the use of neighborhood roadways. This 'through traffic' shall be directed to appropriate routes in order to maintain public safety & local quality of life.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

1. *No mitigation measures are required for impacts related to vehicular safety from design features or incompatible uses.*
2. *No mitigation measures are required for impacts related to emergency vehicle access.*

### Questions

1. How will the developer prevent the use of neighborhood roads being used to reach the retail site?
2. With the estimated 1615 new cars per day on Canal Street – with little or no “roadway shoulder” – how will the project comply with access for emergency vehicles, since Canal Street is the main access to several neighborhoods?

### EXAMPLE 14

Under V - TRAFFIC CIRCULATION ELEMENT, the ABCP states:

*Provide safe and efficient Transportation systems for residents of the Plan area and others who use the systems.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The consideration of traffic impacts on roadway capacity concluded that impacts would be 'less-than-significant.'*

### Question

How is the projected 10,773 new daily car trips to the project and the estimated 1615 new daily car trips on Canal Street considered “less-than-significant?”

### EXAMPLE 15

Under III - COMMUNITY DEVELOPMENT ELEMENT, B - LAND USE, the ABCP states:

*Preserve and maintain the rural character and quality of the outlying areas. Factors that contribute to this rural character include the predominance of native vegetation.*

Under SUMMARY OF IMPACTS AND MITIGATION MEASURES, the EIR states:

*The mitigation measures for the 'Impacts to Protected Trees' would be to Submit to the Placer County Tree Preservation Fund, payment in the amount of \$65,180 for impacts to woodland oaks.*

### Question

How will “clear-cutting” existing native oak trees on the Bohemia Property preserve this rural character?

The Developer claims these oak trees are “sick and need to be removed.”

I would advocate these mature native oak trees not be removed before they are examined by a licensed certified arborist before determining their worth or demise. The three sources Mr. Conkey mentions as specialists are not licensed, certified arborists.

**Bruce D. Barnett** is an Environmental Consulting & Regulatory Compliance Service;

**Gibson & Skordal** is a Wetland Consulting Firm; and

**Yamasaki Landscape Architecture Planning & Construction** is a Landscape Construction Business

**IN CLOSING:**

After reviewing the EIR and ABCP, the developer has many questions to answer regarding its NON-COMPLIANCE with the ABCP goals and policies and some of its own goals.

**THIS PROJECT SHOULD NOT:**

Contribute to deterioration of air quality;

**THIS PROJECT SHOULD NOT:**

Contribute to physical deterioration and urban decay of the area;

**THIS PROJECT SHOULD NOT:**

Contribute to increased disturbing conditions to adjacent properties;

**THIS PROJECT SHOULD NOT:**

Increase traffic patterns to the extent that they will invade surrounding residential areas;

**THIS PROJECT SHOULD NOT:**

Contribute more traffic congestion to an already congested section of the Hwy49 corridor;

**THIS PROJECT SHOULD NOT:**

Eliminate existing, mature native oak trees not examined by a licensed certified arborist before determining their worth or demise.

My first option is to support the "Mixed Use Alternative, with NO CANAL Street Access.

If we, - as a community - fail to convince the Decision Makers that this project is "just not the right fit" for the area, then I would urge the Decision Makers to approve the "NO CANAL Street Access Alternative."

I can understand the Developer's desire to develop this property so he can "just move on."

I would hope that he understands how the surrounding property owners' will suffer the long-term Impacts of this project, and will not be able to just "move-on" due to the financial hardship of relocating.

Thank you for considering our comments and concerns.

Lari L. Knedel, BSN, RN  
13180 Erin Drive  
Auburn, CA 95603  
530-888-6465

Terre A. Davis, BSA,  
13180 Erin Drive  
Auburn, CA 95603  
530-888-6465

Cc: North Auburn MAC Members: Placer County Board of Supervisors:  
Gregory Wilbur F. C. "Rocky" Rockholm  
Ken Gregory Robert Weygandt  
Laurence Farinha Jim Holmes  
Dave Hungerford Kirk Uhler  
Chuck Rydell Jennifer Montgomery  
Jacquie Flecklin  
Mark Watts



**COUNTY OF PLACER**  
**Community Development Resource Agency**

ENVIRONMENTAL  
COORDINATION SERVICES

Michael J. Johnson, AICP  
Agency Director

**NOTICE OF AVAILABILITY OF A FINAL EIR  
FOR PUBLIC REVIEW**

The Final Environmental Impact Report for the following project has been released by Placer County :

PROJECT NAME: **Bohemia Retail Project** (PEIR T20080235 / State Clearinghouse# 2001042086)

REVIEW PERIOD: **June 16, 2010 – June 25, 2010**

PROJECT DESCRIPTION: The proposed project is surrounded by existing or approved residential, commercial and industrial uses. The proposed project includes the construction of a 155,000-square-foot retail building on 18.62 acres. A tenant (or tenants) for the project has not been determined at this time. The proposed project would have the potential for a range of products and services for the retail consumer. The tenant(s) could include a discount club store, a discount superstore, a home improvement center, or a general retailer. It should be noted that the project could potentially allow for a portion of the site to be used as an outdoor garden center, lumberyard, or home improvement outdoor storage area.

PROJECT LOCATION: The 18.62-acre project site is located approximately 2.3 miles north of downtown Auburn, within Placer County, and consists of four parcels located on the east side of State Route 49 near the intersection of SR 49 and Luther Road. (Assessor's Parcel Numbers 052-102-012, 013, 017, 053)

The Final EIR consists of (1) Introduction and List of Commenters, (2) Revisions to the Draft EIR text, (3) Responses to Comments on the Draft EIR, and (4) A Mitigation Monitoring and Reporting Plan. Any comments on the Final EIR should be forwarded to the following address no later than 5:00 pm on **June 25, 2010** to be included in the materials to be sent to the Planning Commission. The Planning Commission will consider this proposal at a hearing on Thursday, July 8, 2010 at 10:05 am in the Placer County Planning Commission Hearing Room, located at 3091 County Center Drive (corner of Richardson Drive and Bell Road in the Dewitt Center), Auburn. Property owners within 300 feet of the project area will also be notified of the hearing.

Environmental Coordination Services  
Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95602  
email: [cdraecs@placer.ca.gov](mailto:cdraecs@placer.ca.gov)  
fax 530-745-3003

The Final EIR is available for public review at the following locations: (County offices are closed on Friday, June 18, 2010 for furlough.)

- Community Development Resource Center public counter, 3091 County Center Drive, Auburn
- Placer County Clerk-Recorder's Office, 2954 Richardson Drive, Auburn
- Auburn Public Library, 350 Nevada Street, Auburn
- County website:

<http://www.placer.ca.gov/Departments/CommunityDevelopment/EnvCoordSvcs/EIR/BohemiaRetailProject.aspx>

Published in Sacramento Bee on Wednesday, June 16, 2010

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RECEIVED  
JUN 24 2010  
CDRA

June 24, 2010

**VIA EMAIL AND U.S. MAIL**

Placer County Planning Commission  
3091 County Center Drive Suite 140  
Auburn, CA 95603

**Re: Bohemia Retail Project (PEIR T20080235/State Clearinghouse # 2001042086)**

Dear Commissioners:

My law firm represents the Mountain Shadows Homeowners Association ("Association"), the homeowners association for Phase Three of Country Club Estates, which is the residential neighborhood served by Canal Street adjacent to the proposed Bohemia Retail Project ("Project") near Auburn, California. As demonstrated by the Final Environmental Impact Report ("Final EIR") for the proposed Project, and explained further below, the Planning Commission should approve the No Canal Street Access Alternative because the environmental impacts associated with this alternative would be less than the proposed Project and access from State Route 49 would adequately serve the proposed Project.

On June 16, 2010, the County released the Final EIR. In response to concerns raised at the public hearing for the Draft EIR, the Final EIR includes additional evaluation of the No Canal Street Access Alternative, a project alternative that would prohibit public access from Canal Street and continue to allow emergency access from Canal Street to the proposed Project site. (Final EIR, § 1.4, p. 1-6.) The initial evaluation showed that the No Canal Street Access Alternative would result in fewer land use and noise impacts by eliminating the incompatibility between heavy traffic congestion on Canal Street and the adjacent residential neighborhood. (Final EIR, § 1.4, pp. 1-9, 1-14 to 1-15.) Additionally, the developer of the proposed Project has agreed to implement the No Canal Street Access Alternative if the County agrees to this alternative and access on State Route 49 can successfully operate. (Attachment 1, Auburn Journal, April 2, 2010, Paid Advertisement from Steve Cavolt, Column 3, ¶ 2.)

With regard to traffic impacts, the Final EIR concludes that choosing the No Canal Street Access Alternative would not result in any significant traffic impacts to State Route 49 and "impacts related to transportation and circulation under this alternative would be similar to the proposed project." (Final EIR, § 1.4, p. 1-12.) In fact, prohibiting a secondary access approach on Canal Street would

actually result in fewer traffic impacts. As noted by both the Draft and Final EIRs, the first CEQA significance criterion for traffic impacts is:

An increase in traffic which may be substantial in relation to the existing and/or planned future year traffic load and capacity of the roadway system (**i.e. result in a substantial increase in either the number of vehicle trips**, the volume to capacity ratio on roads, or congestion at intersections).

(Draft EIR, § 8.3, p. 8-22, emphasis added; *see also* Final EIR, § 1.4, pp. 1-10 to 1-12; CEQA Guidelines Appendix G.) Under the discount club store option, there would be **904 new daily vehicle trips on Canal Street**. Under the discount superstore option, there would be **1100 new daily vehicle trips on Canal Street**. The No Canal Street Access Alternative would eliminate the negative traffic impacts that this substantial increase in daily vehicle trips would have on current users of Canal Street and the adjacent residential neighborhood served by Canal Street. In light of this additional evaluation, the Association urges the Planning Commission to approve the No Canal Street Access Alternative.

With regard to air quality impacts, the Final EIR concludes that choosing the No Canal Street Access Alternative would result in slightly greater air quality impacts due to a slight increase in carbon monoxide ("CO") emissions, but CO emissions would still remain at a less than significant level. (Final EIR, § 1.4, p. 1-13.) However, no support is provided for the conclusion that CO emissions would slightly increase due to increased congestion on State Route 49 under the No Canal Street Access Alternative. Instead, increased CO emissions from increased congestion on State Route 49 would be balanced out by a decrease in congestion at the Luther Road/Canal Street intersection under the No Canal Street Access Alternative. Further, the No Canal Street Access Alternative would reduce exposure of the adjacent residential neighborhood to air pollutants being emitted by Project-related traffic on Canal Street.

In conclusion, the Planning Commission should approve the No Canal Street Access Alternative because the No Canal Street Access Alternative has fewer environmental impacts than the proposed Project.

Very truly yours,

DOWNEY BRAND LLP



Patrick G. Mitchell

1084225.1

cc: Supervisor Holmes  
Supervisor Weygandt  
Dick McClellan (Mountain Shadows Homeowners Association)

**Attachment 1**

THIS IS A PAID ADVERTISEMENT

# Bohemia Retail Project:

## Let's get the facts straight!

There have been plenty of articles written in the Auburn Journal and letters to the editor from both sides. The developer of his own accord had a town hall-style information meeting for the neighbors. And yet there is still plenty of misinformation and all kinds of false statements being made about this project. So I am going to state the "facts" for all to see.

### History of the Site

The current site was operated as the Bohemia Lumber Mill. Tip saws and wood chippers ran 24 hours a day for many years until 1984. In 1984 when the lumber mill closed and the property was acquired, it was rezoned for commercial shopping center use. The Fidler Green and other residential subdivisions in the area were started in 1976 while the Bohemia Lumber Mill was in full operation. Eddler Green and the other subdivisions were mostly built out by 1984. The Bohemia property has been zoned commercial shopping center use for 26 years. The developer, Jim Conlay, acquired the property 23 years ago in 1987 with the current shopping center zoning.

There has been zoning for retail use for 28 years and has been identified and zoned for retail use in every Placer County Land Use Plan that affects this property. The land-use plans are the Placer County General Plan, the Auburn-Bowman Community Plan and the Auburn-Bowman Redevelopment Agency Plan. All of these plans had dozens of public hearings that discussed the use and zoning of the Bohemia Property.

The Auburn-Bowman Plan was adopted in 1984 and had many public hearings that went on for years. During all of these public hearings there was never any opposition on the part of the neighbors or the neighborhood associations to change the zoning; the use of the Bohemia property or the access to Canal Street.

### Neighborhood / Personal Responsibility

A number of years ago I was looking at buying a house in Rocklin; there was a large vacant lot behind the house that I was going to buy. I asked my realtor what was going to happen with that vacant property and she wasn't sure, so I took it upon myself to go to the city and find out. The city said it was zoned commercial shopping center and that a fast-food chain was also looking at one of the lots. I had a choice to make, do I go ahead and buy the house knowing that there could be a shopping center built behind me or do I find something else. I made the choice to buy the house and it then became my issue if something got built. It did get built and I sold the house a few years later and made a profit.

The point being, the Bohemia property has been zoned commercial shopping center use for 26 years! It had dozens of public-land use hearings and is 18.7 acres of vacant land that fronts Canal Street with Highway 49 on the opposite side. Personal responsibility is at the forefront of this issue. If you are buying a house next to a large vacant piece of property such as this, it is your responsibility to investigate what could be developed there, if you already live next to a piece of property such as this and you feel strongly about the use and how it could affect you then it is your responsibility to voice your concerns at the public hearings on the land use plans during the public hearing process. The neighbors did not voice their concerns!

The developer's responsibility was to make sure the property he was buying had the correct zoning for the intended use and it did. Therefore he did his job of taking personal responsibility!

### Land Use & Private Property Rights

Private property rights are the basic and essential freedoms bestowed to all Americans by the Constitution of the United States. What this means is that each private property owner, whether it be the neighbors or the developer of the commercial property, has a right to their individual property and the use thereof which is determined by the specific zoning given to each parcel by the planning commission and board of supervisors.

Jim Conlay, the developer, is a private property owner and he purchased the Bohemia property 23 years ago with the shopping center zoning. Mr. Conlay's property went through numerous public-land use plans over the last 26 years and not once did the zoning ever change from shopping center type of use. His private property rights are no different nor better or worse than any other private property owner in the neighboring area. Therefore

according to the zoning, land-use plans and Constitution, he has every right to develop his property just like you or I would.

Land-use plans are designed and created to manage growth in a unified way for the greater good of all in the community. The Bohemia project has the endorsement of the Placer County Contractors Association board members and thousands of people in the surrounding area. The Redevelopment Agency, the Planning Commission and Board of Supervisors over the last 26 years have created a general plan and community plan for this area which encompasses the Bohemia project. The real question now becomes do we follow the guidelines of these public policy land-use plans or do we allow land-use planning to be taken over (as proposed by some) by "mob rule" and dictate to the Planning Commission and Board of Supervisor's land-use decisions? I think we all know the answer to that question. "Mob rule" has never been the answer. Again, the zoning and land-use guidelines for this property must prevail according to the general plan, community plan and redevelopment agency plan as set forth by the Planning Commission, Board of Supervisors and private property rights as stated in the Constitution.

### Neighbors say that retail should not be next to or interact with Residential Property

According to industry sources it is estimated that more than 70% of shopping centers in the U.S. do not or have direct interaction with the surrounding residential neighborhoods. A few examples are the Bird Cage Marketplace and Sunrise Mall in Citrus Heights, Arden Fair Mall in Sacramento - all sprawling, multi-story centers. Our own Staples in Auburn abuts residential property and has direct access into a residential area. Each of these and the vast majority of centers abut residential property and in many cases have direct street access to the surrounding neighborhoods. History has proven that these relationships work very well. The portion of the Auburn Bowman Community Plan (of which the Bohemia project is part of) shows that zoned commercial property abuts residential property in every case. (see Bohemia EIR regarding land use on page 4-4, figure 4-1).

Neighbors say that this project is in a purely residential neighborhood and that is entirely false! The fact is approximately 74% of the Bohemia project is surrounded by industrial property, commercial property, railroad tracks and Canal Street (see Auburn Bowman Community Plan). The actual number of homes that abut Bohemia is 10 and 2 of those just barely.

### Neighbors say that the impacts of this project are too much for the area

We heard many of those same arguments when Target and Home Depot came to town. Many neighbors showed up at the hearings on those projects extremely upset and visibly - sometimes violently - opposed to those projects. The Auburn Home Depot is one of the company's most successful stores. And all the doomsday predictions of traffic gridlock, accidents, death, destruction of the community and destruction of small businesses never happened!

Some have raised concerns over noise. The front of the building faces Highway 49, the back fronts Canal Street and one side faces the subdivision. There will be 6'- and 8'-foot architectural sound walls with an abundance of landscaping to buffer any noise from the street. Additionally, the developer has required that delivery trucks will not be allowed to sit and idle their engines while they load or unload merchandise.

### Neighborhood Traffic Issues - They want Canal Street access closed and no signal at Canal and Luther

One of the first things that the developer did for the neighbors was to agree to a condition that no commercial truck traffic would be allowed onto Canal Street for any reason whatsoever in regards to this project. Other false information being talked and written about is the amount of additional vehicle traffic onto Canal Street which needs clarification as well. Under the discount membership club

scenario of the Bohemia EIR table 8.7 it states that 904 new vehicle trips on Canal Street would be created to and from the shopping center. These trips include the immediate neighbors' trips and trips from neighborhoods up Luther Road.

Another thing that the developer did was to include a traffic signal at Canal and Luther Streets even though the traffic study indicated it was not necessary. He agreed to do it because that's what the neighbors wanted at the time. Now it appears they don't want it, so the developer has agreed not to do it.

The biggest issue or seemingly the issue that has sparked the most controversy seems to be the vehicle access onto Canal Street. The question I have is; if the access onto Canal Street was such a major issue, why then was there not any involvement by the neighbors in all the public hearings that addressed all the issues: zoning, land use and access onto Canal Street? Again, a total lack of personal responsibility in the public hearing process. This is seemingly the biggest issue between the developer and the neighbors. Canal Street is a public street owned and maintained by Placer County. The neighbors don't own it, neither does PG&E, and like it or not, the developer has the same rights to Canal Street as the neighbors and PG&E. The neighbors drive their cars and trucks on Canal Street and so does PG&E, and that includes tractors and other large commercial vehicles. Conversely, the developer would consider the closing of Canal Street if the access on Highway 49 can operate successfully, and if Placer County agrees.

### Bohemia Project - Benefits to the Community

One of the greatest benefits to the Auburn community especially in this economic climate is the creation of jobs and more jobs to local residents. According to Costco, one of the proposed users, 350 full- and part-time jobs will be created. And just like when Home Depot opened, hundreds of people will be standing in line waiting to apply for these jobs. And hundreds of construction and related jobs will also be created with the development of the Bohemia project.

The Bohemia Retail Project is a \$25-30 million dollar construction project which this community certainly needs. Why, again jobs and it keeps money in the community, stops sales tax leakage to other communities and generates over \$1.1 million dollars annually in tax revenue for Placer County. It also creates more affordable shopping opportunities thereby stretching the value of your dollar.

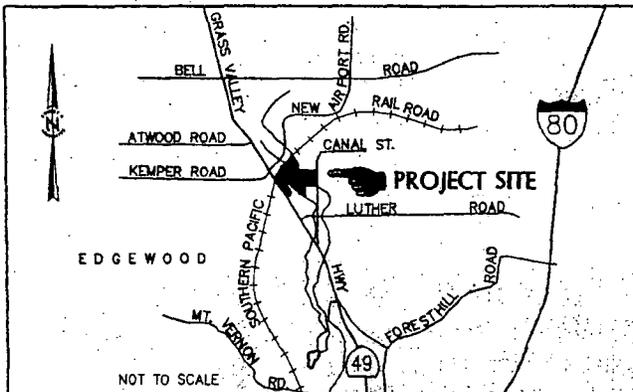
There are many communities, including Auburn, that have marketing efforts that say "Think Local First". Several reasons to shop local are: "re-circulate more money in the local community" and "shopping local saves consumers money on fuel costs". This project does that and more, it will reduce the environmental impact by reducing the number of vehicles that travel down to Roseville and Rocklin thereby saving fuel and reducing emissions, which save the consumer time and money.

Another benefit to the community is that people will travel from other communities such as; Grass Valley, Nevada City, Colfax, Weimar, Lake of the Pines and other surrounding areas to shop at the Bohemia Retail Center and spend money in our community. And once they are here they will end up doing more shopping in our community; filling their gas tanks at local gas stations and staying for lunch or dinner creating more business for the local restaurants.

The other benefit in getting the Bohemia Retail Center built is that it will act as an "anchor tenant" to help get the mostly vacant Auburn Plaza next door leased. And as Dr. Bill Kirby, Auburn City Council member, said in an online comment on 2-09-10 "And don't think that Trader Joe's is off the table either" and I totally agree with Dr. Kirby. Trader Joe's had looked at the Auburn Plaza last year, but there was no anchor tenant. Therefore, with the Bohemia project, it is entirely possible that we could see Trader Joe's and other tenants taking another look at the Auburn Plaza. Obviously that would be another great benefit for local consumers and the local economy as well!

The bottom line is that the Bohemia Retail Project is rock solid in the benefits that it brings to the Auburn community! And the developer according to the zoning, land-use plans and Constitution, has every right to develop his property just like you or I would if we owned the property!

If you have questions or comments, please email me at the address shown below.



THIS AD PAID FOR BY:  
Steve Cavolt  
Project Coordinator  
Bohemia Properties, LLC  
scavolt@gmail.com

294

ALLIANCE for the PROTECTION of the AUBURN COMMUNITY ENVIRONMENT  
P.O. BOX 4951 AUBURN, CALIFORNIA 95604-4951 www.APACE2010.org

*Duplicate  
out w/ signature*

Date: June 25, 2010

RECEIVED  
JUN 24 2010

CLERK OF THE  
BOARD OF SUPERVISORS

To: Rick Helman, Chief  
Office of Transportation Planning -- East  
Department of Transportation

Subj.: Bohemia Retail Project

Dear Sir:

I read your March 4 letter to the Planning Commission. You raised the same issues that troubled me. I am sure that you are now examining the Final EIR of the subject project, as am I.

I note that Placer County has denied the use of the Canal Street Secondary Access to the project. Therefore, a 15% increase in traffic will occur at the Primary Access: SR 49 / Hulbert Way intersection. As you know, a casual observer can attest that the intersection SR 49 / Luther Rd is problematic. A 15% increase in traffic at the already congested area of SR 49 will result in a new significant impact.

I am anxious to review your comments when they are submitted to the Planning Commission.

Thank you,

*Lee Lively*  
Lee Lively

DATE: *6/30/10* VIA Email  
 Board of Supervisors - 5  
 County Executive Office  
 County Counsel  
 Mike Boyle  
 Planning

CC: Placer County Board of Supervisors ✓

Placer County Planning Commission.

HAND DELIVERED

RECEIVED  
BOARD OF SUPERVISORS  
5 BOS Rec'd  MB  DW  
Other \_\_\_\_\_ TS \_\_\_\_\_ COB   
JUN 24 2010  
Sup D1 \_\_\_\_\_ Sup D1 \_\_\_\_\_ Aide D1 \_\_\_\_\_ Aide D1 \_\_\_\_\_  
Sup D2 \_\_\_\_\_ Sup D5 \_\_\_\_\_ Aide D2 \_\_\_\_\_ Aide D5 \_\_\_\_\_  
Sup D3 \_\_\_\_\_ Aide D3  \*

Mission Statement: To strengthen our community's economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

*295*

**ALLIANCE for the PROTECTION of the AUBURN COMMUNITY ENVIRONMENT**

**P.O. BOX 4951 AUBURN, CALIFORNIA 95604-4951 www.APACE2010.org**

Date: June 25, 2010  
To: Environmental Coordination Services  
Community Development Resource Agency  
Subj.: Bohemia Retail Project

- DATE: 6/23/10 (via email)
- Board of Supervisors - 5
  - County Executive Office
  - County Counsel
  - Mike Boyle
  - Planning

**RECEIVED**

**JUN 24 2010**

CLERK OF THE BOARD OF SUPERVISORS

The responses found in the FEIR reflect the same cavalier tactics found in the DEIR where every issue is deemed to be "less than significant." It is astonishing that our planning department would produce a document of such poor quality.

Although, the number and magnitude of the FEIR inadequacies are overwhelming; I comment upon only one of the failures of the FEIR.

**1.5 RECIRCULATION**

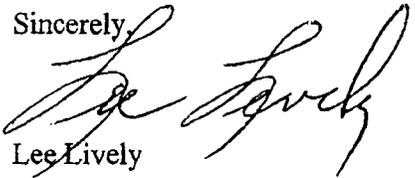
- A. The DEIR traffic studies for option 1 and 2 of the proposed project are bogus, as explained in comments designated as 150-13 thru 150-21 of the FEIR.
- B. 15% increase in traffic will occur at the Primary Access: SR 49 / Hubert Way intersection.
- C. A casual observer can attest that the intersection SR 49 / Luther Rd is a congested Disaster. Caltrans agrees.
- D. A 15% increase in traffic at the already congested area of SR 49 will result in a new significant impact.
- E. Text revisions of the FEIR do not provide the substantial evidence to support the claim that the 15% increase is not great enough to create significant impacts. The TIAR data presented in Appendix A of the FEIR is not sufficient information. Conclusions reached when unsupported by factual information will not suffice.
- F. The DEIR and FEIR deprive the public of a meaningful opportunity for informed comment upon a substantial adverse environmental effect of the project.

Therefore, in accordance with CEQA, the EIR is to be corrected and re-circulated.

The preceding comments are offered as a civic duty to assist in the preparation of a public document.

Now; I urge all Placer County officials, in accord with the trust placed on your office, to stand in unison in opposition to this Wal-Mart proposal. Wal-Mart is damned around the world for many good and sufficient reasons. The damage by Wal-Mart to our local economy can be predicted by the historical record of many communities similar to ours.

Do not be a part of the "unidentified occupant" pretense." Do not be deceived by the illusion of more jobs and greater revenue. Be a good neighbor.

Sincerely,  
  
Lee Lively

**HAND DELIVERED**

CC: North Auburn Municipal Advisory Council  
Placer County Board of Supervisors

<b>RECEIVED</b>			
BOARD OF SUPERVISORS			
5 BOS Rec'd	<input checked="" type="checkbox"/>	AMB	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	TS	<input checked="" type="checkbox"/>
JUN 24 2010			
Sup D1	<input type="checkbox"/>	Sup D4	<input type="checkbox"/>
Sup D2	<input type="checkbox"/>	Sup D5	<input type="checkbox"/>
Sup D3	<input type="checkbox"/>	Aide D1	<input type="checkbox"/>
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		Aide D4	<input checked="" type="checkbox"/>

Mission Statement: To strengthen our community's economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

296

**ALLIANCE for the PROTECTION of the AUBURN COMMUNITY ENVIRONMENT**  
**P.O. BOX 4951 AUBURN, CALIFORNIA 95604-4951 www.APACE2010.org**

Date: June 25, 2010

RECEIVED

To: Rick Helman, Chief  
Office of Transportation Planning – East  
Department of Transportation

JUN 24 2010

CDRA

Subj.: Bohemia Retail Project

Dear Sir:

I read your March 4 letter to the Planning Commission. You raised the same issues that troubled me. I am sure that you are now examining the Final EIR of the subject project, as am I.

I note that Placer County has denied the use of the Canal Street Secondary Access to the project. Therefore, a 15% increase in traffic will occur at the Primary Access: SR 49 / Hulbert Way intersection. As you know, a casual observer can attest that the intersection SR 49 / Luther Rd is problematic. A 15% increase in traffic at the already congested area of SR 49 will result in a new significant impact.

I am anxious to review your comments when they are submitted to the Planning Commission.

Thank you,

Lee Lively

CC: Placer County Board of Supervisors

Placer County Planning Commission. 

Alfa Omega Associates

Management Consulting • Public Relations • Publicity

P.O. Box 7171 • Auburn, CA 95604-7171  
Tel/Fax: 530-888-1523 • Cell: 530-308-2689  
E-mail: drdalesmith@aoaconsult.net  
*Dr. Dale Smith, H.H.D., General Manager*

Tuesday, June 29, 2010

Michael Johnson, AICP - Email - MJohnson@placer.ca.gov and USPS  
Email - Supervisor Jim Holmes - [bos@placer.ca.gov](mailto:bos@placer.ca.gov) and USPS

**SUBJECT: CONDITIONAL USE PERMIT (PCPA 20080157)/MINOR USE PERMIT (PMPA 20100058) BOHEMIA RETAIL PROJECT AND OFF-SITE SIGN.  
FINAL ENVIRONMENTAL IMPACT REPORT (FEIR 20080235)/ CATEGORICAL EXEMPTION SUPERVISORIAL DISTRICT 3 (HOLMES)**

Notice is hereby given that the Placer County Planning Commission will conduct a public hearing, on the date and time noted above, to consider a request from Bohemia Properties LLC, for a Conditional Use Permit to allow for a 155,000 square-foot retail building and accessory nine-pump fueling station to be constructed on the site of the former Bohemia Lumber Company. The subject property, Assessor's Parcel Numbers 052-1 02-01 2, 052-1 02-01 3, 052-1 02-01 7, and 052-1 02-053, comprise 18.6 acres, are currently zoned CPD-Dc (Commercial Planned Development, combining Design Scenic Corridor)

The Planning Commission will also consider a request for a Minor Use Permit from the same applicant, for an off-site sign on Assessor's Parcel Number 052-102-056 which comprise 9.8 acres, is zoned CPD-Dc and is located on the east side of State Route 49 at its intersection with Hulbert Way. The off-site sign would direct State Route 49 traffic east onto Hulbert Way and up to the proposed Bohemia Project site. The Planning Commission will consider certification of a Final Environmental Impact Report for the Bohemia Retail project and a finding of a Categorical Exemption, Section 18.36.050, Class 3 - New construction or conversion of small structures - Placer County Environmental Review Ordinance (CEQA Guidelines Section 15303) for the off-site sign. The Planning Department contact for the above project

Alfa Omega Associates is unalterably opposed to the construction of this sign. This will set a precedent for all of Placer County on hundreds of locations on many roads and highways like Highway 49. In particular we object strenuously to the attempt by J.R. Conkey to sneak this into the process through this notice listed above **which was undated**. AOA does not believe that this sign project fits into a Categorical Exemption, which is a ready made legal case to move to set this whole project aside.

The granting of this sign will be a very special and extremely expensive give away by Placer County to a private business, and is certainly not in the best interest of all the businesses up and down Highway 49 that do not have such a special privilege. It should not be granted.

*/s/ Dale Smith*

Dale Smith, H.H.D. Alfa Omega Associates

298

**Kathi Heckert**

---

**From:** Nicole Hagmaier on behalf of Placer County Planning  
**Sent:** Wednesday, June 30, 2010 10:11 AM  
**To:** Gerry Haas; Michael Wells; Kathi Heckert  
**Subject:** FW: AOA OPPOSTION TO BOHEMIA SIGN ON HEY 49  
**Attachments:** AOA Email Filing on Bohema Sign & Cagegorical Exempt 6-29.10.doc

FYI

*Thank you,*  
*Nicole*  
*Ext. 3117*

---

**From:** Dr Dale Smith [mailto:drdalesmith@aoaconsult.net]  
**Sent:** Tuesday, June 29, 2010 4:06 PM  
**To:** Placer County Planning; Placer County Board of Supervisors  
**Subject:** AOA OPPOSTION TO BOHEMIA SIGN ON HEY 49

Attached is a letter addressed to both of you about this project.

This notice only reached me late yesterday and I have been out of my office most of the day.

This is one element of this horrible project that should be killed immediately, because as I said in my letter, it is tailor made for a successful legal case to kill the whole project, which, in my opinion would be far better for all the people of North Auburn and 20 milds in every direction.

**THINK 10,000 NEW TRIPS A DAY ON HIGHWAY 49**

**Dr. Dale Smith**

## Kathi Heckert

---

**From:** Shirlee Herrington  
**Sent:** Wednesday, June 30, 2010 3:13 PM  
**To:** Kathi Heckert  
**Subject:** RE: Bohemia Correspondence rcvd 063010

BT

*Thank you,*

*Shirlee*

---

Shirlee I. Herrington  
Executive Secretary  
Placer County Planning Department  
Community Development Resource Agency  
3091 County Center Drive, Suite #140  
Auburn, CA 95603  
(530) 745-3088 - PHN  
(530) 745-3080 - FAX  
[sherring@placer.ca.gov](mailto:sherring@placer.ca.gov)

**From:** Gina Fleming  
**Sent:** Wednesday, June 30, 2010 2:28 PM  
**To:** Ann Holman; Anthony La Bouff; Beverly Roberts; Brian Jagger; Cheryl Shakro; Gina Fleming; Jennifer Montgomery; Jennifer Pereira; Jim Holmes; Kirk Uhler; Linda Brown; Melinda Harrell; Michael Johnson; Mike Boyle; Pat Malberg; Robert Weygandt; Rocky Rockholm; Ruth Alves; Shirlee Herrington; Steve Kastan; Teri Sayad-Ivaldi; Tom Miller; Vicki Roush  
**Subject:** Bohemia Correspondence rcvd 063010

**From:** Dr Dale Smith [mailto:[drdalesmith@aoaconsult.net](mailto:drdalesmith@aoaconsult.net)]  
**Sent:** Wednesday, June 30, 2010 12:27 PM  
**To:** Placer County Planning; Placer County Board of Supervisors  
**Cc:** Placer County Board of Supervisors; Jennifer Montgomery  
**Subject:** A second, more detailed letter of the Bohemia Project  
**Importance:** High

Gentlemen, yesterday I sent out a letter in a very big hurry because the day was nearly over.

Today, I have spent a lot more time to write a more comprehensive document for the Administrative Record, and also to try to obtain some critical answers quickly, before the upcoming PC Planning Commission Hearing of July 8, 2010.

It is also my intention as the Cc: list shows to give this issue wider circulation in the Community, because I doubt that this proposed action by Placer County is correct, and I hope I have made that position clear in this letter.

By-in-large, I have not been very involved in the Bohemia project because other clients I have in other Counties keep me very busy right now.

However, do not think that I do not care, because if that project was wrong the first time and the Judges ruled that way, then it is a hundred times more wrong this time.

Just try to visualize 10,000 MORE TRIPS A DAY INTO THAT AREA OFF OF HIGHWAY 49. It was named Blood Alley MANY YEARS AGO, LONG BEFORE I MOVED TO AUBURN, and if it was then, what is it now?

Still is BLOOD ALLEY ONLY MORE BLOOD

It seems like it is a matter of who will have that blood on their hands.

Dale Smith

*Gina*  
Gina Fleming, Senior Board Clerk  
Placer County Clerk of the Board of Supervisors  
175 Fulweiler Ave Rm #101  
Auburn Ca 95603  
(530) 889-4020  
~~(530) 889-4099 FAX~~

Alfa Omega Associates

Management Consulting • Public Relations • Publicity

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Tel/Fax: 530-888-1523 • Cell: 530-308-2689

E-mail: drdalesmith@aoaconsult.net

*Dr. Dale Smith, H.H.D., General Manager*

Wednesday, June 30, 2010

**Michael Johnson, AICP - Email - [MJohnson@placer.ca.gov](mailto:MJohnson@placer.ca.gov) and USPS Confirmation Email - Supervisor Jim Holmes - [bos@placer.ca.gov](mailto:bos@placer.ca.gov) and USPS Confirmation**

**SUBJECT: CONDITIONAL USE PERMIT (PCPA 20080157) MINOR USE PERMIT (PMPA 20100058) BOHEMIA RETAIL PROJECT AND OFF-SITE SIGN. FINAL ENVIRONMENTAL IMPACT REPORT (FEIR 20080235)/ CATEGORICAL EXEMPTION. SUPERVISORIAL DISTRICT 3 (HOLMES)**

→ Further to my letter of 6-29-10 sent by email and also enclosed in the USPS letter, I wish to ask further questions about several items, seeking clarification on what was contained in that Notice which stated:

Notice is hereby given that the Placer County Planning Commission will conduct a public hearing, on the date and time noted above, to consider a request from Bohemia Properties LLC, for a Conditional Use Permit to allow for a 155,000 square-foot retail building and accessory nine-pump fueling station to be constructed on the site of the former Bohemia Lumber Company. The subject property, Assessor's Parcel Numbers 052-1 02-01 2, 052-1 02-01 3, 052-1 02-01 7, and 052-1 02-053, comprise 18.6 acres, are currently zoned CPD-Dc (Commercial Planned Development, combining Design Scenic Corridor)

While this obviously is a repeat of this issue which we have seen many times over, but what puzzles me is how at this very late date, can Placer County try to quietly sneak another very serious element into this process as found in the next paragraph.

The Planning Commission will also consider a request for a Minor Use Permit from the same applicant, **for an off-site sign on Assessor's Parcel Number 052-102-056** which comprise 9.8 acres, is zoned CPD-Dc and is located on the east side of State Route 49 at its intersection with Hulbert Way. The off-site sign would direct State Route 49 traffic east onto Hulbert Way and up to the proposed Bohemia Project site.

It has been my experience through a number of years representing various clients that Placer County is very careful about what signs it permits along roads and avenues such as Highway 49. Can you, Mr. Johnson, explain to me what has happened that this long standing policy which now seems to be thrown out the window for Mr. Conkey?

How will you justify this policy to the several hundred businesses up and down 49 that would love to have a County permit for a sign that would deliberately direct business to their location when it is not immediately on Highway 49? Especially those directly across from where this sign would be. A number of them have been fined through the years for even having an advertising sandwich board out in front of their property.

Alfa Omega Associates Letter to Michael J. Johnson - Conditional Use Permit  
(Pcpa 20080157)L - Minor Use Permit (Pmpa 20100058) Bohemia Retail Project  
And Off-Site Sign - A Major Placer County Policy Change - 6-30-10 - 2 of 2

How will you justify this to the Placer County Board of Supervisors, charged with the final decision on this Bohemia project, for as you surely know, this matter will go to the Board regardless of the outcome at the Planning Commission?

As a Citizen of North Auburn, one who is thoroughly familiar with the Bohemia Property and the MANY Different projects that Jim Conkey has tried to ramrod through the Planning Process through these many years, I am vitally concerned about this very serious challenge to long standing laws and precedence in Placer County.

What makes Jim Conkey so special that he would be granted such a sign? Why is Placer County seemingly giving special consideration where none belongs? Where is the authority from any department in Placer County to honor such a totally out of the norm proposal?

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The next paragraph of this Notice, which by the way does not have a date of issuance is the appearance, for as far as I know, in the process, the first time it has come forward at least on North Highway 49.

“The Planning Commission will consider certification of a Final Environmental Impact Report for the Bohemia Retail project **and a finding of a Categorical Exemption, Section 18.36.050, Class 3 - New construction or conversion of small structures - Placer County Environmental Review Ordinance (CEQA Guidelines Section 15303) for the off-site sign.** The Planning Department contact for the above project is Gerry Haas and can be reached at (530-745-3084.”

Please, Mr. Johnson, provide me with full details on what this “Categorical Exemption” statement means. Why is the County now asking for approval on a Categorical Exemption when the proponent has completed the Environmental Impact process, with both a DEIR and an FEIR? It seems somehow wrong that this should be put forward now outside of the public scrutiny which is exactly why the CEQA process takes place. This has the appearance of being disingenuous and dishonest, is it?

I repeat what I wrote in the letter yesterday. The granting of this sign will be a very special and extremely expensive give away by Placer County to a private business, and is certainly not in the best interest of all the businesses up and down Highway 49 that do not have such a special privilege. It should not be granted.

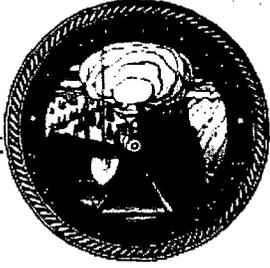
*/s/ Dale Smith*

Dale Smith, H.H.D. Alfa Omega Associates

Cc: Supervisors, Districts 1, 2, 4 & 5  
APACE  
North Auburn Businesses  
Area Media

A fully signed original is sent by USPS for insertion into the Bohemia Administrative Record.

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**COUNTY OF PLACER**  
Community Development Resource Agency

**ENVIRONMENTAL  
COORDINATION  
SERVICES**

Michael J. Johnson, AICP  
Agency Director

**MEMORANDUM**

**TO:** Kathi Heckert, Commission Clerk  
**FROM:** Maywan Krach, Community Development Technician  
**DATE:** June 30, 2010

**SUBJECT: Bohemia Retail Project (PEIR T20080235), Public Comments on FEIR**

Please forward the following FEIR comment letters received to date to the Commissioners.

Attachments:

1. Bartley, Robert (2 pages)
2. Connolly, Victoria, Alliance for the Protection of the Auburn Community Environment (15 pages)
3. Fielder, Janice L (2 pages)
4. Knedel, Lari L & Terre A Davis (1 page)
5. Lewis, Donald E (1 page)
6. Lewis, Ellen A (1 page)
7. Lively, Lee, Alliance for the Protection of the Auburn Community Environment (1 page)
8. Mitchell, Patrick, Downey Brand (representing Mountain Shadows Homeowners Association) (4 pages)
9. Peterson, Suzanne (2 pages)
10. Stallman, Gloria (1 page)

PLACER COUNTY  
DATE RECEIVED  
JUN 30 2010  
PLANNING  
COMMISSION

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Robert Bartley  
12856 Erin Drive  
Auburn, CA 95603

Environmental Coordination Services  
Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95602

June 25, 2010

By e-mail to: [cdraecs@placer.ca.gov](mailto:cdraecs@placer.ca.gov)

To Whom It May Concern:

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With respect to the Final Environmental Impact Report's response to my letter of February 18, 2010 (Letter 3), I find that the response to my comments, particularly the comments on the socioeconomic factors (Comment 3.6), represents a failure to perform due diligence on the part of the lead agency.

As my wife, Cari Dawson Bartley, elaborated in a letter entered in the Planning Commission record April 22 and read before that body on that date:

As stated on page 16-5, the projections of retail growth were based on trends established between the years 2000 and 2006. Our country has been in a recession since that time, and it seems likely that these trends are no longer valid. In fact, the trend may be downward instead of upward in some cases.

Furthermore, the projections of population growth from the California Department of Finance, is from a study published in July of 2007. It is likely that these projections are no longer valid given the change in the economy over the past several years because population growth is often tied to economic growth.

Beyond that, the rate of population growth cited is county-wide and not applicable to Auburn. Lincoln, Roseville and Rocklin saw enormous growth a few years ago while Auburn did not. The numbers are skewed in favor of the developer.

The study subtracts a small amount in the growth rate for Auburn, but the growth rate used in projections (1.8%) is still more than double the growth rate experienced between 2000 and 2010.

With all of these deficiencies, the rest of the studies involving supply and demand – and the ability of the local economy to recover from the impact of a superstore or club store – are overly optimistic and therefore invalid.

The county should perform its due diligence and demand a revision to all of the socio-economic data.

Yours truly,

Robert Bartley

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RECEIVED  
JUN 25 2010  
CDRA

June 25, 2010

**To: Placer County Planning Department**  
**From: Victoria Connolly (member of APACE-Alliance for the**  
**Protection of the Auburn Community Environment) 223 Dairy Rd.**  
**Auburn, CA 95603**  
**Re; Inadequacy of EIR for Bohemia Project**

This letter is to address the inadequacy of the EIR for the Bohemia Retail Project. There will be some attempt to discuss the technical aspects of the report, but by also considering issues from a common sense perspective, it may be useful to the decision makers.

Generally, it should be noted that the size of the EIR is over 2200 pages between the DEIR and FEIR documents. It needn't have been that large if the developer had proposed a mixed use development, which I (and APACE) support. Per the statements in the FEIR responses and elsewhere, mixed use has less significant environmental impacts. It is also the proposed use in the ABCP as informed by the ABCP EIR. The fact that the developer is attempting to fit a square peg into a round hole is the reason that such a voluminous aberrant (as in not according to norm) EIR had to be developed. It had to accommodate the vision of a supercenter or a discount club closely adjacent to residences on a difficult-to-develop lot. Environmental concerns still have not been adequately addressed and the many of the mitigations are inadequate.

The categories below will discuss why I believe the EIR to be inadequate per CEQA.

#### COMMENTS ADDRESSING EIR INADEQUACY

##### **TRAFFIC**

FEIR RESPONSE TO QUESTION #8 DEIR- The mitigations for the EIR completed for the ABC Plan are referred to, and note that it concludes that due to an increase in traffic, the impacts associated with traffic/circulation will be cumulatively significant and unmitigatable. However, it is noted just for the PLAN alone, and EIR mitigations for the ABCP (PAGE 3-31 of the EIR for the ABCP) indicates that as a mitigation, that they will attempt to mitigate traffic and circulation concerns for every project by for example creating a fee program...which is in fact the case. It seems a weak point to quote this as a response in the Bohemia EIR, to state that traffic concerns don't matter, when each EIR attempts to mitigate traffic individually.

Throughout the report many times it is stated that during the project construction phase and ongoing the additional number of trips of over 10000 D and E level traffic issues and will cause a significant impact at certain times of day, however, there will be no congestion. It states drivers find an easy flow. It is already congested at that intersection, and the conclusions that there will be no additional congestion at the intersection of Luther and 49, seems preposterous. Great concern is expressed over the impact on Bell

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and the New Airport area (appendix A FEIR), about which one can only wonder. At one point the average number of cars entering the site was said to be 138 per hour off 49 into the site. **I believe additional study would be required to verify no significant impact and thus the EIR for Bohemia is inadequate.**

## **SOCIAL/ECONOMIC/BLIGHT AND DECAY**

The FEIR notes that while physical impacts are the issues for CEQA, a tracing of the cause and effect chain of project to physical changes caused by social and economic consequences of a project can be analyzed to come to a conclusion about blight and decay.

While the response to the commenters concerns is that there would be closed businesses, it also states that the Auburn area hasn't traditionally suffered blight. Amazingly, the City of Auburn a few years ago commissioned a blight study and found many blighted areas. Are we to assume that the unincorporated part of Auburn does not have the same sort of degraded properties outside the city limits? In fact common sense and observation tells us it is worse.

While the EIR preparer notes figures for revenue have been revised to reflect 2010 figures, there is no change in the projection of the recovery period from the impact of closed businesses, it still being 5-10 years. The revenue for the county depending on Option 1 or Option 2 worst case scenario is approximately \$325,000, to \$550,000, dollars per year.

IT SHOULD BE OF GREAT CONCERN TO THE DECISION MAKERS THAT the highest sales tax revenue for the Sacramento Region for the year, reported in April 2010 was **Placerville. They did it with NO MALLS and NO BIG BOXES.** In addition the decision makers can take into account the issue of lowering of property values, and possible results of inverse condemnation lawsuits which have been passed onto the decision makers through the public comment process and their potential toll on county coffers, as well as the cost of defending a lawsuit should the project as proposed be approved.

**Option1- Range-\$453,000 if Discount Club if worst case scenario of siphoning off existing business**

**Option 2 Range: \$324,0000 if Super center if worst case scenario of siphoning off existing business.**

The drafters of the responses have ignored the point that Walmart/Sams operates in a vastly different manner than other stores. There is ample evidence which has been presented in the DEIR comments, DEIR appendix by Dr. Smith and by myself at an project agendaed meeting of the MAC and during public comment at the Planning

Commission, as well as studies given, pointing to the Wal-Mart effect and cost of doing business for a community that brings Wal-Mart to town. **The EIR is not adequate if it did not specifically analyze the socio economic effects of a Wal-Mart and loss of jobs, tax revenue and businesses, but merely analyzed an category.**

P 1-18 The FEIR writers conclude re Socio Economic issues that:

“The No Canal Street Access Alternative would not alter the proposed project’s conditions related to socio-economic impacts on the project site. Although the No Canal Street Access Alternative would impact existing businesses, the impacts would not result in urban decay. Urban decay is a compounding effect that can result from extended vacancy, deferred maintenance, and abandonment. The urban decay process generally takes several years to materialize fully and is reinforced by declining economic conditions in the broader market area. Urban Decay is generally not the result of a single property standing vacant for a short time in an otherwise vibrant market. The No Canal Street Access Alternative total retail sales would represent a fraction of the total Trade Area retail sales and up to 23 percent of the new retail demand in 2020. The new retail demand would exceed the retail sales volumes for all scenarios in all retail categories except Furnishings & Appliances and Building Materials and Farm Equipment. Existing retailers unable to compete with the No Canal Street Access Alternative would close, creating retail opportunities for new tenants that could compete for the unmet retail demand in other retail categories. Under the No Canal Street Access Alternative, construction of the proposed building would include the same square footage as the proposed project. Similar to the proposed project, the No Canal Street Access Alternative would not result in urban decay or other significant socio-economic impacts. Therefore, the No Canal Street Access Alternative would result in the same impact related to socio-economic impacts as compared to the proposed project. **THIS DOES NOT HAVE ANY BASIS IN A MARKET STUDY AND IS NOT BORNE OUT IN BY STUDIES ACROSS THE COUNTRY THAT CHRONICLE THE WAL-MART EFFECT AND THEIR PROPENSITY FOR LEAVING ONCE THEY HAVE DESTROYED A COMMUNITY LEAVING UPWARDS OF 300 EMPTY STORES ACROSS THE COUNTRY. EVIDENCE PRESENTED IN APX 3. and on the record by documentation.**

**Regarding the FEIR Response to Letter # 34 pages 3-125-131**

**Question and CONCLUSION FOR SOCIO Economic effects- For \$324, 000 in additional revenue a year (not taking into account the above other lost revenue), is it wise to make the most environmentally and financially impacting choice? It seems it is the most obvious solution to pick the Mixed use project with 35 percent less commercial space, lower environmental impacts, and not give into the greedy grab for money by the developer, but rather balance the needs of the community with the needs of the developer.**

## NOISE/EMISSIONS

Underscoring the fact that I have raised the issue of a need for a separate specific analysis in an on the record project agendaed meeting for a Walmart or Sams, as did other commenters to the DEIR, this fact is ignored. The EIR did not address the fact that many Wal-Mart's typically allow camping in their parking lots all night and also semi truckers, to camp all night. **Unless this is addressed and mitigated if necessary, the assessment of noise and emissions is not adequate.** See below re the noise barrier. APACE members and other members of the public, have pointed out that sound rises above a wall, especially when the terrain is shaped like an amphitheatre. Houses, buildings and walls are the barriers that are supposed to reduce the noise to the sensitive receptor areas which are only considered as back yards, not front yards, or inside a house with the windows opened. **THIS IS NOT AN ADEQUATE ANALYSIS OF NOISE IMPACT NOR ARE MITIGATIONS ADEQUATE.**

## VISUAL

The EIR for the ABCP deals with the **Bohemia site itself.** (p 4-33 to 4-35). Of note are the following statements **which are contradicted by this project.**

APCP EIR 4-34-“The Community Plan proposes a mix of land uses for this site including residential, industrial, commercial, office professional and open space.”

“Land Use Compatibility-Residential uses to the north and east are the key concerns relative to future land use conflicts. However residential uses and open space are provided at the residential interface except for a limited area of industrial storage which currently provides the PG & E Corporation yard access. Since the map of the site within the plan outlines the location of uses conceptually **only it will be important to maintain these buffering features to avoid land use compatibility impacts when development is proposed.**

Further projects proposed on the site will be reviewed for consistency with the Development Vision in the Plan. The Development Vision will assist in avoiding potential visual impacts to some degree by calling for the following features:

- “Parking at the rear or side of buildings” –**PROJECT DOES NOT DO THIS**
- “Preservation of open space and vegetation between Canal St and Fiddler Green Canal along the canal, at the corner of Luther Rd and Highway 49 and along the proposed entry road off of Canal St.” **PROJECT DOES NOT DO THIS**

ABCP EIR (cont)

Page 4-34-35 "Policy 18 of the Community Design section calls for:

Community Design Policies

(18) Projects within the Plan area will comply with the Placer County Landscape Guidelines and PCDG as amended by the specific design guidelines contained in this Plan. Major elements of the DG include but are not limited to:

(a) Commercial buildings should be designated to include the following desirable elements:

- Richness of surface and texture
- Significant wall articulation (inset, canopies, wing walls, etc.)
- Roof overhangs
- Articulated mass and bulk

(b) Height and scale of new development should be compatible with that of surrounding development (*NOTE this would be industrial and residential*)

(c) Resource conservation should be incorporated into project design. These measures include but are not limited to energy and water conservation measures.

In addition the Community Design section calls for:

-Limits on night lighting;

A concern not addressed in the Development Vision is the potential for visual impacts related to views of rooftops from the upper terrace”

The ABCP EIR concludes that if these features above are implemented there would be a less than significant impact visually and in terms of land use compatibility. **THE CURRENT BIG BOX PROPOSAL DOES LITTLE OF THIS AND DOES NOT CONFORM TO THE ABOVE ABCP as written and intended. IN ADDITION, THE PLAN proposed a mix of land uses and open space.**

The barrier is going to be 6-8 feet with loading from 6 am to 12 am. (Read noise). When writers #120 raised the question about how the ABCP indicates that there should not be freeway type walls to separate neighborhoods, the EIR responders went to great length to respond about the nice trees and vines, albeit clear cutting the existing 2 plus acres of oaks. Even if there are nice trees in 10 years, the fact still remains that this amounts to “putting lipstick on a pig,” and does not conform to the ABC plan which indicates it wants to preserve neighborhoods and prevent walling off.

Throughout the response, the EIR writer repeatedly refers to zoning and buffering, indicating there will be buffer between residential and industrial “albeit” commercial. Other types of businesses with the zoning designation could be manufacturing,

processing, auto sales storage service, heliports, transit stations and terminals The EIR writer cavalierly states a supercenter is more compatible. **This seems a matter of personal opinion.** When I've spoken to residents in the area, they would gladly take any of the other zoning options and note they moved there when it was a lumber mill and zoned industrial. (Maybe they wouldn't want a heliport, or processing plant however, the impact would likely be less frequent though more intense with those options and the others). The tree issue has been raised by Lari Knedel and she notes that PGE wires exist and PGE will not allow over 25 foot trees to grow. Indeed the photoshopped view of the future shows the trees growing right into the power lines. **THE EIR is inadequate, as it does not analyze other uses for the commercial property which could be more compatible, in an analytical manner, but rather makes a specific statement based on the writer's opinion.**

Within the greater Sacramento region, and generally everywhere else, **no supercenters or discount centers are built with such close proximity to residential neighborhoods.** (APACE has heard one in Connecticut). Attached are some satellite photos to illustrate the point, but any decision maker can check online by mapping a Walmart, Sams, Costco Lowes (which we are told by the EIR writers is unlikely) and looking at a satellite view. **The visual impact to the neighbors and the road travelers has not been adequately analyzed.**

## **CRIME**

**DEIR 13-6 states that according to the "will—serve letter" from the Placer County Sheriff's Dept, their ability to handle law enforcement needs generated by the proposed project would be dependent of on the BOS authorizing their funding needs.** Therefore, without the additional personnel and equipment impacts related to law enforcement services would be **potentially significant**". The mitigation reads, "*...prior to the approval of Improvement Plans the applicant shall provide the DRC with proof of notification in the form of a written notice or letter of the proposed project to the Placer County Sheriff's Office.*"

**Crime Question for Decision Makers.-** As any shoplifting incident or more serious crime involves at least one law enforcement responder, this impact would draw off resources which have already been indicated to be limited, and a potentially significant impact. **Is it all right just to inform the sheriff's office. Don't they have to respond and indicate they can cover additional crimes to truly assess the significance of the impact.** We have asked for a crime analysis between Roseville Costco and Wal-Mart's and are awaiting the response, this has been pending for 3 weeks, though promised. **It is anticipated that Wal-Mart has much higher crime events requiring a response than a Costco or Lowes etc.**

## **OTHER CONSIDERATIONS**

In the EIR, the decision makers have been notified of their obligations under CEQA. However, in addition, pursuant to 15094, ample statements, and facts from over 120

writers (including professional and public opinion), and many studies which are factual and done by experts that counter the conclusions reached in the EIR must be considered.

First and foremost the effects of a Wal-Mart development have been verified by many including The Labor Center at UC Berkeley and note the deleterious socio-economic effects caused by the company leading to store closures decay and blight. In addition, the decision makers are not bound entirely by CEQA but may take into account any facts and comment when making a decision about this project. For purposes of the record the decision makers will be notified on the record of the proofs in their possession which have been given to them either by hand, or during public comment at various meetings as well as during project agendized meetings. (Eg. May 26 2010 document by Victoria Connolly with attachments and Appendix 3 FEIR by Dr. Smith).

### CEQA sections 15094

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial. (NOT DONE THOROUGHLY FOR SOCIO ECONOMIC EFFECTS LEADING TO DECAY/BLIGHT TAKING INTO ACCOUNT AMPLE EVIDENCE IN THE RECORD. INADEQUATE EIR ANALYSIS).

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect. (AMPLE EVIDEDNCE WAS PROVIDED, FACTUAL IN NATURE, TO INDICATE THAT A HIGH LIKELIHOOD OF ENVIRONMENTAL IMPACTS WOULD ENSUE BASED ON THE CURRENT RECESSION, AND THE WALMART EFFECT ON COMMUNITES, as well as CHANGES TO THE NEIGHBORING RESIDENTS. INADEQUATE EIR ANALYSIS)

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared. (LEAD AGENCY DID NOT TAKE INTO ACCOUNT THE AMPLE RECORD EVIDENCE THAT SPECIFIC AND CUMULATIVE IMPACTS WOULD OCCUR-PARTICULARLY SOCIO-ECONOMIC EFFECTS AS ABOVE)

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (MANY FACTS WERE IGNORED BY THE LEAD AGENCY IN ANALYZING MANY OF THE SPECIFIC ENVIRONMENTAL EFFECTS, ESPECIALLY SOCIO-ECONOMIC LEADING TO PHYSICAL CHANGES IN THE ENVIRONMENT. IN ADDITION, EIR WRITER ASSUMED THAT OTHER TYPES OF PROJECTS ALLOWED BY ZONING WOULD BE LESS ACCEPTABLE TO NEIGHBORS OF THE PROJECT SITE WITHOUT PROVIDING A FACTUAL BASIS FOR THE CONCLUSION, ie PERSONAL OPINION)

**Conclusion: The EIR is inadequate pursuant to CEQA, and in addition it does not conform to the Auburn Bowman Community Plan.**

Cc: Members of North Auburn MAC  
Members of Placer County Planning Commission  
Members of Placer County Board of Supervisors

**Attachments:**

- 1, "Sales tax keeps Placerville financially solvent" Sac Bee May 15, 2010
2. Satellite views of Wal-Mart Supercenter-Antelope Sacramento, Costco Stanford Ranch Road Roseville; Walmart, Lead Hill Roseville; Sams/Wal-Mart Pleasant Grove Roseville
3. Facebook page showing fans against local WalMart in Auburn June 25, 2010