

PC 1/13/11
#9

FOOTHILL PARTNERS
REAL ESTATE AND URBAN ECONOMICS

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January 12, 2011

Mr. Lou Rain, Chairman
County of El Dorado Planning Commission
2850 Fairlane Court
Placerville, California 95667

Re: **Syers Properties III LLC Appeal**
Item 9, Planning Commission Agenda – Hearing of January 13, 2011

11 JAN 12 PM 2:54
RECEIVED
PLANNING DEPARTMENT

Dear Chairman Rain:

I write regarding the Syers Properties III LLC appeal of the Determination of Consistency made in connection with El Dorado County Planning Department Pre-application PA09-0011. I write in support of the Development Services Director's Determination of Consistency/Determination of Similar Use, and encourage the Planning Commission to support the Director's determinations and deny the appeal.

By way of introduction, I have been a part of the development team of Town Centers East and West since 1996. And I served as a real estate broker for El Dorado Hills Investors in the sale of the land in question to the developer/buyer of the intended drug store. In my opinion the matter before you is a landlord/tenant dispute, not a land use issue; in my opinion the land use appeal is a foil being used to frustrate the legitimate business purposes of CVS Drugs.

As noted in the staff report for this item, the 1995 Town Center West Design Guidelines and Development Standards provides at Section 1.4 for up to 60,000 square feet of **service and retail uses which are ancillary to and in support of uses within Town Center West**, and at Figure 2 that the majority of these uses (35,000 sf) would be located on the parcel in question. Section 1.4 includes a list of fourteen uses¹ given as examples of such allowed uses. The Design Guidelines additionally provides at Section 1.5 that "additional uses may be permitted when, by determination of the Director of Planning, such uses are found to be **similar in nature** to those established within the Town Center West Planned Development."

Section 1.5 of the Design Guidelines is an essential part of the Design Guidelines. Section 1.4's fourteen listed uses do not total up to 60,000 square feet of uses, and additional uses must be envisioned: if fourteen uses were envisioned to total the entire 60,000 square feet, then the average store size of each use would be nearly 4,300 square feet each! Who has ever seen a 4,300 square foot shoe repair store? Or a 4,300 square foot barber shop? Even allowing for a third of the allowed floor area to an office supply store (for instance, a Staples or Office Max, one of which properly belongs in El Dorado Hills) would suggest that the average size of the remaining uses would be in excess of 3,000 sf. This cannot be the intent of the document.

¹ The list also provides for a 15th allowed use, a hotel. The allowed 250-room hotel use is in addition to the 60,000 sf limitation on retail and service uses, as set forth in Figure 2 of the Design Guidelines.

One concludes then that the Design Guidelines compel as a matter of common sense that the Director of Planning (now the Director of Development Services) will of necessity be making determinations of other allowed uses. The question then is whether or not a drug store use is similar in nature to the listed allowed uses. More succinctly stated, is a drug store use a "service and retail use which is ancillary to and in support of uses within Town Center West".

A contemporary drug store, of course, has long been much more than a pharmacy. And in the past twenty years the prototype national or regional chain drug store size has fallen from approximately 25,000 square feet to approximately 15,000 square feet, the store formats have evolved to include drive-up windows for the convenience of the ill and the elderly, and the location criteria for these stores has moved from in-line tenancies to free-standing corner locations. Drug stores are evolving from general merchandise stores into convenience stores with pharmacy counters.

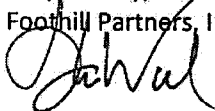
As a consequence of this evolution, and while it may be hard to accept, the premises at Town Center East currently occupied by CVS has become functionally obsolete for a drug store use in the ten years since the Longs/CVS lease was signed.

And as an additional consequence of that evolution, many of the PD's listed allowed uses are uses now contained within what we commonly know of as a drug store – newsstand, office supplies, boxing, shipping, delicatessen foods, shoe supplies, hair care, copying and printing, stationery, etc. Many new drug stores are now operating medical clinics within their stores – again an explicitly allowed use within Town Center West. One is hard pressed to argue that the Director of Development Services erred in making a finding of consistency – most of the PD's listed allowed uses are uses integral to the operation of a contemporary drug store. And each of the uses which comprise a drug store are uses which "are ancillary to and in support of uses within Town Center West". If fast food restaurants and gas stations are listed as uses which are "ancillary to and in support of" (and they are), then how could one not make a similar determination as to a drug store?

It may be of interest to the Planning Commission to know that the negotiations between El Dorado Hills Investors and CVS significantly pre-date CVS's acquisition of Longs in 2008. CVS hoped to locate on this property whether or not Longs remained in occupancy in Town Center East. It would be inappropriate for the County to attempt to compel CVS to remain in occupancy in a building which has become functionally obsolete for that use – especially in a building as well located for other uses as is the current CVS building. From my perspective of being responsible for leasing Town Center since 1996, I have every confidence that other uses will find that building highly desirable, and that it will quickly be re-tenanted with a new and vibrant use.

I encourage the Planning Commission to deny the Syers appeal. It is without merit.

Respectfully,
Foothill Partners, Inc.



Douglas Wiele
President and Founding Partner

PC 1/13/11
#9

TODD A. WILLIAMS
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January 11, 2011

VIA E-MAIL, FACSIMILE AND FEDERAL EXPRESS

Planning Commission
c/o County of El Dorado Planning Services
2850 Fairlane Court, Building C
Placerville, CA 95667

Re: January 13, 2011 Planning Commission Meeting,
Item No. 9: Appeal of Determination on Pre-application
PA09-0011 within Town Center West
Our File No. 10093-001

RECEIVED
PLANNING DEPARTMENT
JAN 12 PM 2:57

Dear Honorable Commissioners:

We submit this letter on behalf of the appellant Syers Properties III, LLC (“Syers”), owner of the Market Place at Town Center East (south of Hwy. 50 at Latrobe Road). Syers appeals a planning department determination that a 15,000 square foot, 24-hour drug store with a drive-thru and beer and wine sales is “similar in nature” to permitted uses in the Town Center West Development Plan (PD95-002). On January 4, 2011, the Board of Supervisors voted to allow this appeal to heard by the Planning Commission. This letter focuses on the reasons why the appeal should be granted.¹

I. Town Center West and East are “Distinct Yet Complimentary” Developments.

The Town Center West Development Plan (“TC West”) and the Town Center East Development Plan (“TC East”) each grew out of the El Dorado Hills Specific Plan, were processed concurrently, and were both approved 1995. (See Ex. 1, attached map of TC West and TC East.) Relevant excerpts of the TC West and TC East Design Guidelines and Development Standards are attached hereto as Exhibits 2 and 3, respectively.

¹ Although the Board decision was made in closed session, neither the appellant, nor the appeal itself nor documents submitted in support, threaten litigation.

As both plans make clear, “The Town Center consists of **two distinct yet complimentary components – Town Center East and Town Center West.**” (Ex. 2 at p. 1 (emphasis added), see also Ex. 3 at p. 1.) They explain:

Retail and service commercial uses are concentrated within Town Center East. It is here that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square – the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads. **Town Center West** is planned as an employment center of mid- and low-rise buildings within five planning areas. Ancillary uses which could be accommodated include a conference hotel facility and **support retail services.**

(Ex. 2 at p. 1 (emphasis added), see also, Ex. 3 at p. 1.)

Thus, TC West was approved as a business park. That plan approved 1,465,000 square feet of building space, 96 percent of which (1,405,000 sf) was designated for light manufacturing, research and development, and business and professional office use. (Ex. 2 at pp. 3-5.) The remaining 4 percent is to be **“uses of a service and retail nature ... limited to those which are ancillary to and in support of the primary uses within the development.”** (Ex. 2 at pp. 4-5.) The full list of permitted support retail uses are: “barber shop, boxing/shipping service, copy/printing service, delicatessen, dry cleaner, fast food restaurant, florist, hair salon, hotel, newsstand, office supplies, restaurant, service station, shoe repair and stationers.” (Ex. 2 at p. 5) “Drug store,” “supermarket,” and “department store” are not included.

By contrast, TC East was approved to be the “central ‘people gathering place’ for El Dorado Hills. It is planned as an urban commercial precinct to simultaneously address several retail markets thus maximizing the potential variety of functional shopping, dining and leisure time activities available to meet the needs of residents of El Dorado Hills and the surrounding communities.” (Ex. 3 at p. 2.) Rather than be limited to “ancillary” “support” retail, TC East includes a broad variety of permitted retail and commercial uses categorized as “Highway and Neighborhood Services,” “Town Square,” and “Major Retail.” (Ex. 3 at pp. 2-7.)

Expressly permitted “Major Retail” uses in TC East include **“Supermarket,” “Drug/Super Drug,” “Department Store,” and “Variety Store.”** (Ex. 3 at p. 6.)

These differing uses between the two plans demonstrate how they are to be “distinct yet complimentary,” with retail, including “Major Retail,” and service commercial uses contained in TC East, while business park uses and ancillary support retail uses are contained in TC West.

II. A 15,000 SF Drug Store is not “Similar in Nature” to Ancillary Support Retail Uses, but is a “Major Retail” Use.

The applicant proposes to place a 24-hour, 15,000 square foot drug store with a drive-thru, including beer and wine sales within TC West. Planning staff concluded that such a use, while not among those listed in TC West, was “similar in nature” to other uses established in the TC West development plan. (See appeal (attached as Ex. B to the 12/21/10 Staff Report, and Ex. 5 thereto). No evidentiary support was provided or cited for this conclusion.²

The Planning Director stated that in making this determination, staff did not consider the TC East Development Plan or take it into account. (See 12/14/10 appeal letter at p. 5.) Further, he indicated that staff would have found virtually any proposed retail use in compliance with the TC West Development Plan based on the location of the project site along a major street and not immediately adjacent to residences.

Staff’s determination, including its failure to consider the TC East Development Plan and that virtually any retail use would be allowed, is contrary to the approved plans, an abuse of discretion, unreasonable and unsupported by substantial evidence.

These two companion development plans are “distinct, yet complimentary” and were processed at the same time pursuant to the same specific plan. Clearly, each is relevant to the other when it comes to which uses may be permitted. Nothing in the TC West plan suggests that “Major Retail” uses such as a supermarket, drug store or variety store like the one being proposed, would be allowed or are “similar in nature” to the ancillary support retail uses that are permitted under that plan.

In fact, the opposite is true. Such uses are expressly permitted in Town Center East but not included in Town Center West suggesting a purposeful exclusion. The Planning Staff has reached this conclusion previously. “The Board of Supervisors made a distinct decision when developing the list of permitted uses within the Development Plan...” (Staff memo dated 5/3/05, attached as Exhibit 4.)

Both plans allow for the possibility of unspecified uses, but only when such uses are found to be “**similar in nature to those established**” within the applicable development. (Ex. 2 at p. 5, Ex. 3 at p. 8.) Here, no general merchandise, supermarket or drug store uses are included within the limited uses set forth in the TC West Development Plan, but are *expressly included* in the TC East plan.

Had such uses been intended for TC West as well, they could have and would have been included. The reason they are not is obvious: the two plans are to be “distinct yet

² Although the planning department determination was made in September 2009, no permits were applied for until June 2010 and none have been issued at the time this appeal was filed. No bases for vested rights exist regarding the project site.

complimentary.” Allowing major retail anchors like a drug store, supermarket or department store in TC West violates the fundamental concept behind the two plans. Rather than compliment the major retail component of TC East, placing such uses in TC West would put the two centers at cross-purposes and serve to cannibalize and draw customers away from the TC East retail center to its detriment, increasing the chance of vacancies and ultimately blight in what is supposed to be a central retail hub.

In addition, finding that a large drug store is “similar in nature” to the other uses would set a troubling precedent for other “Major Retail” uses such as a supermarket and department store, further pitting the two developments against each other and eroding the purpose behind these complimentary plans.³ That such stores may, for instance, sell flowers or pens does not make them “similar in nature” to the listed TC West retail uses like a florist or a stationary store. Instead, such major variety and department stores are – by their nature – dissimilar and qualitatively different from “ancillary” “support retail.” This is made clear by their classification as “Major Retail” in the TC East Development Plan.

III. The Applicant is Attempting to Amend the TC West Development Plan Without Public Scrutiny.

The applicant is seeking to approve a use in TC West that is clearly contrary to those permitted in the plan and fundamentally in conflict with the purpose behind the two complimentary plans. The proper procedure to make such a change would be to process an amendment to the development plan, allowing for a public process, including a noticed hearing, input from neighbors, affected merchants and owners, as well as compliance with CEQA.⁴

Here, in seeking a letter from the planning department that the proposed drug store use complied with the TC West development plan, the applicant did not identify that the proposal involved relocation of an existing CVS Drug Store from Town Center East to Town Center West. (Nor does staff’s determination mention CVS.) Further, the applicant’s request incorrectly represented to staff that the TC West plan allows for a “convenient store” and “drug stores.” (See 7/13/09 letter from Mansour Company at p. 1, attached hereto as Exhibit 5.) As noted above, such uses are not included in the TC West Development Plan, but are expressly included in the TC East plan.⁵

³ Further, no use “similar in nature” to a drug store has been “established” in TC West. Current uses include a large Blue Shield office complex and a manufacturing facility.

⁴ Though the planning department compliance review is designed to be ministerial, when an inconsistent use is approved it is akin to a discretionary determination made without the required environmental review. For instance, allowing a major retail anchor such as a large drug store would have far different traffic impacts than the support retail uses listed and studied in the environmental review performed in connection with adoption of the TC West Development Plan.

⁵ In addition, Syers has submitted preliminary plans for a 15,000 drug store location (including a drive-thru pharmacy) within the Town Center East Market Place, thereby accommodating the

This is not the first time the applicant has attempted to avoid public scrutiny and substantively amend the TC West Development Plan without processing an amendment. In 2005, the applicant sought a planning department finding – without any public notice or Planning Commission review – that (1) “warehouse type retail” was similar in nature to allowed TC West uses, (2) that there was no square footage limitation for any particular use within the allowed 1,465,000 square feet (i.e., that TC West could be entirely retail); and (3) permitting a large home improvement center in TC West. (See Exhibit 4 at p. 2 (and attached letter thereto).)

In that instance, staff, and ultimately the Planning Commission, correctly identified that a finding of consistency could not be made, that an amendment to the development plan was necessary in order to approve such a use since the Board of Supervisors had “made a distinct decision when developing the list of permitted uses,” and that the request was “beyond the scope of the original [TC West] Development Plan.” (Exhibit 4 at p. 3.)

The same is true here. Owners and merchants in TC East have made significant investments based on these approved planning documents and depend on the correct exercise of discretion when an unlisted use is proposed. This application and staff’s determination were made without any notice or chance to comment.

Any attempt to transform TC West from a business park with limited ancillary support retail, into a development with “Major Retail” uses requires the processing of an amendment to the plan. The approved TC West Development Plan does not allow anything remotely approaching a 24-hour, drug store with wine and beer sales and a drive-thru pharmacy.

IV. Conclusion

For the reasons stated herein, as well as those set forth in the appeal, we respectfully ask the Planning Commission to grant the appeal and find that the proposed drug store is not in compliance with the TC West Development Plan.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:st
Attachments

proposed project consistent with the TC East Development Plan. (See Exhibit 6 attached hereto [Market Place site plans].)

EXHIBIT 1



Imagery Date: Apr 7, 2010

38°38'53.54" N 121°04'09.17" W elev: 635 ft

©2010 Google

Eye alt: 4910 ft

EXHIBIT 2

**EL DORADO HILLS
TOWN CENTER**

**DESIGN GUIDELINES
and
DEVELOPMENT STANDARDS**

TOWN CENTER WEST

Approved
April 27, 1995
El Dorado County Planning Commission

Approved
May 9, 1995 (Development Plan)
May 23, 1995 (Master Signage Program)
El Dorado County Board of Supervisors

Prepared by:
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Purpose

The purpose of these Design Guidelines is to direct the orderly development of the El Dorado Hills Town Center consistent with the goals and policies of the El Dorado Hills Specific Plan. These Design Guidelines reflect those presented in the Specific Plan while providing additional development criteria to encourage innovative design and creative expression in meeting the needs and demands of the community.

It is intended that these Design Guidelines allow for the creation of a character at the Town Center appropriate to and in keeping with that of El Dorado County, its landscape and its historic building types. The intention is not to dictate a style of building but rather to encourage, within the context of modern materials and methods, an architectural style expressive of the simple forms found in the historic buildings of the area.

Introduction

In adopting the nearly 4,000 acre El Dorado Hills Specific Plan, the County of El Dorado approved a commercial site along U.S. Highway 50 at the El Dorado Hills Boulevard/Latrobe interchange designated in the Specific Plan as Villages T and U. Now known as the **El Dorado Hills Town Center**, these villages were **"intended to provide for commercial uses of greater variety and at a higher intensity than provided elsewhere in the Specific Plan area or in the greater El Dorado Hills/Cameron Park area."** The site is zoned General Commercial - Planned Development and the zoning is secured by a Development Agreement between the property owner and the County of El Dorado. The Town Center ultimately can be expected to be the **"hub of economic development in western El Dorado County"** and **"a major node of economic and retail activity on the eastern side of the Sacramento Metropolitan region."**

The Land Use element of the Specific Plan recognizes the pivotal role of the Town Center in the overall scheme of the community and refers to the area as the **"major commercial area."** Use of the broad category CG - General Commercial zoning enables the Town Center to respond to rapidly re-defining and evolving markets and to take advantage of the demands of new technologies for quality business settings within a well-planned and definitively regulated environment. The use of the Planned Development Overlay Zone provides the County a "level of review" to ensure consistency with the Design Guidelines and Standards set forth within the Specific Plan.

The Town Center consists of two distinct yet complimentary components - **Town Center East** and **Town Center West**. Retail and service commercial uses are concentrated within **Town Center East**. It is here that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square - the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads. **Town Center West** is planned as an employment center of mid- and low-rise buildings within five planning areas. Ancillary uses which could be accommodated include a conference hotel facility and support retail services.

Uses stated and depicted within the Specific Plan for Town Center West included hotel/convention center, restaurants, medical facilities, highway commercial, office parks, retail, business, professional and research development. The Specific Plan explicitly states that the types of uses to be allowed at Town Center West "include but are not necessarily limited to" those listed. Uses allowed within the CG - General Commercial zoning include a wide variety of "sales, storage, distribution and light manufacturing businesses of the type which do not ordinarily cause more than a minimal amount of noise, odor, smoke, dust or other factors tending to disturb the peaceful enjoyment of adjacent residential or agricultural land uses" (El Dorado County Code Chapter 17.32.170). Light manufacturing is also allowed in the C - Commercial land use category under the 1981 El Dorado County Long Range Plan in effect at the time of adoption of the Specific Plan and the Development Agreement for Town Center West in 1989.

TOWN CENTER WEST

Town Center West consists of approximately 130 acres along U.S. Highway 50 at the El Dorado Hills Boulevard/Latrobe interchange. Access to Town Center West is provided from Latrobe Road via Town Center Boulevard, a landscape enhanced, divided parkway, and from White Rock Road at D Street. Limited and/or restricted driveway access from White Rock Road may also be provided. Pedestrian and bicycle access is provided by means of sidewalks and bicycle lanes within the right-of-way for both Latrobe and White Rock Roads.

The **Town Center West** Planned Development provides for an employment center of five planning areas briefly described below and summarized in Figure 1.

Planning Area A is located in the southeast quadrant of Town Center West with access provided by Town Center Boulevard. Planning Area A consists of approximately 36 acres. Planned building square footage is 477,000 square feet.

Planning Area B is located in the northwest quadrant of the Town Center West adjacent to U.S. Highway 50 with access provided by D Street. Planning Area B consists of approximately 30 acres. Planned building square footage is 347,000 square feet.

Planning Area C is located in the northeast quadrant of Town Center West with access provided by Town Center Boulevard. Planning Area C consists of approximately 24 acres. Planned building square footage is 237,000 square feet.

Planning Area D is located along the eastern boundary of Town Center West with access provided by D Street. Planning Area D consists of approximately 23 acres. Planned building square footage is 344,000 square feet.

Planning Area E is located at the southern boundary of Town Center West and is separated from the northern planning areas by White Rock Road. Access is provided by driveways from White Rock Road and Latrobe Road. Planning Area E consists of approximately 7 acres. Planned building square footage is 60,000 square feet.

Figure 1: Planning Areas and Planned Building Square Footage

	Area Acreage	Planned Building Square Footage
Planning Area A	36.3	477,000
Planning Area B	29.7	347,000
Planning Area C	24.4	237,000
Planning Area D	22.7	344,000
Planning Area E	7.1	60,000
Roads	10.9	
Totals	131.1	1,465,000

1. The Land Uses

Proposed by the Town Center West Planned Development are those uses consistent with the El Dorado Hills Specific Plan and the CG - General Commercial zoning granted at the time of adoption of the Specific Plan and the approval of the Development Agreement vesting the development rights. While the uses described below are intended to create a quality environment of complementary and compatible uses, it is recognized that not all appropriate and viable uses can be "listed" at any given time. Within the regulatory framework of the Design Guidelines and Development Standards, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development. Types of uses proposed are described below and tabulated in Figure 2.

1.1 "LM" - Uses of a light manufacturing and assembling nature including the warehousing and distribution of such goods when fully enclosed within the building and of a type which do not ordinarily cause more than a minimal amount of dust, smoke, odor, air or water pollutants, noise or electrical interference or other factors tending to disturb the peaceful enjoyment of the adjacent residential use will be permitted in those Planning Areas having the LM designation. Permitted uses include:

Data Processing Technologies	Plastics Molding Processes and Assembly
Digital Information Components Assembly and Manufacturing	Precision Instruments Assembly and Manufacturing
Electronics Component Assembly and Manufacturing	Printing and Publishing Plants

Ancillary and support uses such as restaurants and retail sales may be approved from time to time

in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.2 "RD" - Uses of a service, research or product development nature when fully enclosed within the building of a type which do not ordinarily cause more than a minimal amount of dust, smoke, odor, air or water pollutants, noise or electrical interference or other factors tending to disturb the peaceful enjoyment of the adjacent residential use and which cannot be accommodated within traditional office buildings will be permitted in those Planning Areas having the RD designation. Also permitted are uses of a light manufacturing nature which may generate a greater number of trip ends than those assumed for areas designated LM. Permitted uses include:

Blueprint Services	Information Systems Research
Computer Technologies	Laboratories - scientific, research and testing
Data Processing	Materials Research
Digital Information Transfer Processes	Photocopying and Printing Services
Electronics Component Assembly and Manufacturing	Precision Instruments Assembly and Manufacturing

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.3 "BPO" - Uses of a business and professional nature which can be accommodated within traditional office settings including administrative and governmental offices and corporate offices of businesses not otherwise allowed within the Town Center West Planned Development such as construction and engineering firms will be permitted in those Planning Areas having the BPO designation. These uses shall provide a transition and buffer zone between the adjacent residential use and the more intense uses within the Town Center West Planned Development. Permitted uses include:

Accountant	Financial Brokerage	Land Planner
Architect	Financial Institution	Medical/Dental
Attorney	Graphic Designer	Professional Associations
Engineer	Investment Brokerage	Surveyor

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.4 "C" - Uses of a service and retail nature will be limited to those which are ancillary to

and in support of the primary uses within the development and will not exceed 60,000 square feet in total. Permitted uses include:

- | | | |
|-------------------------|----------------------|-----------------|
| Barber Shop | Fast Food Restaurant | Office Supplies |
| Boxing/Shipping Service | Florist | Restaurant |
| Copy/Printing Service | Hair Salon | Service Station |
| Delicatessen | Hotel | Shoe Repair |
| Dry Cleaner | Newsstand | Stationers |

Figure 2: Planned Square Footage by Use and Planning Area

	LM	RD	BPO	C	Total
Planning Area A	250,000	200,000	27,000	10,000 ¹	477,000
Planning Area B	300,000	47,000			347,000
Planning Area C			237,000	250rm Hotel	237,000
Planning Area D		150,000	194,000	15,000 ¹	344,000
Planning Area E				35,000 ¹	60,000 ¹
Total	550,000	397,000	458,000	60,000¹	1,465,000

Note 1. The total Planned Square Footage of Category C use shall not exceed 60,000 square feet. When allocated to a Planning Area other than Planning Area E, the number of square feet of Category C uses allocated shall be deducted from Category BPO.

1.5 Uses Not Specified

Additional uses may be permitted when, by determination of the Director of Planning, such uses are found to be similar in nature to those established within the Town Center West Planned Development. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.6 Planned Square Footage

The Total Planned Square Footage for any Planning Area is shown in Figure 2. Total Planned Square Footage, whether by Use or Planning Area, may be exceeded provided any project proposing such adheres to all other development standards of the Town Center West Planned Development and the impacts of such a proposed project do not preclude the development of the Planned Square Footage of the remaining Uses or Planning Areas as determined by the Director of Planning. Should the Director of Planning be unable to make such a determination, the

Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.7 Allocation of Uses

Upon request of any project proponent, the Director of Planning may determine, based on the information requested and submitted through the Planned Development Site Plan Process, that a re-allocation of uses within or between any Planning Area(s) is appropriate. In no event shall the Allowed Square Footage of Category C uses exceed 60,000 square feet. See Figure 2. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.8 Approval Process

Site specific project approvals shall be a ministerial act of the Director of Planning. Prior to submitting a building permit application to the County, site specific projects shall be approved by the Design Review Committee as defined in the Covenants, Conditions and Restrictions for the El Dorado Hills Town Center West. Prior to issuance of a building permit, County staff shall find the proposed site specific project has received approval from the Design Review Committee and is consistent with the Development Plan, the Development Standards and other conditions of approval of the Town Center West Planned Development.

2. The Development Standards

(Refer to the Improvements Phasing Plan for Planning sub-Areas.)

2.1 Planning Area A

2.1.1 Building Height - Buildings situated in Planning sub-Area A1 and A2 shall be limited to 35 feet in height whereas buildings in Planning sub-Area A3 shall have a maximum height of 65 feet.

2.1.2 Minimum Front Setbacks - shall be applicable to all lots having frontage on any public or private street adjacent to and within Town Center West. See Appendix 1 - Street Cross Section criteria.

EXHIBIT 3

EL DORADO HILLS TOWN CENTER

DESIGN GUIDELINES and DEVELOPMENT STANDARDS

TOWN CENTER EAST

Revised
July 10, 1995

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 - 3.a Area One - Highway and Neighborhood Services
 - 3.b Area Two - Town Square
 - 3.c Area Three - Major Retail

Appendices

- Appendix 1 - Street Cross Section Criteria
- Appendix 2 - Approved Hardscape Elements
- Appendix 3 - Specific Landscape Criteria
- Appendix 4 - Specific Lighting Criteria
- Appendix 5 - Master Signage Program

Exhibits

- Exhibit A - Town Center East Development Plan
- Exhibit B - Town Center East Planning Sub-Areas
- Exhibit C - Town Center East Landscape Concept
- Exhibit D - Town Center East Grading Concept

Town Center East
Design Guidelines and Development Standards
adopted _____; revised _____

Purpose

The purpose of these Design Guidelines is to direct the orderly development of the El Dorado Hills Town Center consistent with the goals and policies of the El Dorado Hills Specific Plan. These Design Guidelines reflect those presented in the Specific Plan while providing additional development criteria to encourage innovative design and creative expression in meeting the needs and demands of the community.

It is intended that these Design Guidelines allow for the creation of a character at the Town Center appropriate to and in keeping with that of El Dorado County, its landscape and its historic building types. The intention is not to dictate a style of building but rather to encourage, within the context of modern materials and methods, an architectural style expressive of the simple forms found in the historic buildings of the area.

Introduction

In adopting the nearly 4,000 acre El Dorado Hills Specific Plan, the County of El Dorado approved a commercial site along U.S. Highway 50 at the El Dorado Hills Boulevard/Latrobe interchange designated in the Specific Plan as Villages T and U. Now known as the **El Dorado Hills Town Center**, these villages were **"intended to provide for commercial uses of greater variety and at a higher intensity than provided elsewhere in the Specific Plan area or in the greater El Dorado Hills/Cameron Park area."** The site is zoned General Commercial - Planned Development and the zoning is secured by a Development Agreement between the property owner and the County of El Dorado. The Town Center ultimately can be expected to be the **"hub of economic development in western El Dorado County"** and **"a major node of economic and retail activity on the eastern side of the Sacramento Metropolitan region."**

The Land Use element of the Specific Plan recognizes the pivotal role of the Town Center in the overall scheme of the community and refers to the area as the **"major commercial area."** Use of the broad category CG - General Commercial zoning enables the Town Center to respond to rapidly re-defining and evolving markets and to take advantage of the demands of new technologies for quality business settings within a well-planned and definitively regulated environment. The use of the Planned Development Overlay Zone provides the County a "level of review" to ensure consistency with the Design Guidelines and Standards set forth within the Specific Plan.

The Town Center consists of two distinct yet complimentary components - **Town Center East** and **Town Center West**. Town Center West is planned as an employment center of mid- and low-rise buildings within a campus setting. Ancillary uses which could be accommodated include a conference hotel facility and support retail services. Retail and service commercial uses are concentrated within Town Center East. It is here that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square - the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads.

TOWN CENTER EAST

Town Center East consists of approximately 130 acres with nearly one-half mile of frontage along U.S. Highway 50. Approximately 100 acres are addressed in the current Development Plan. The remaining 30 acres will be addressed at a future time. Access to Town Center East is provided from Latrobe Road via Town Center Boulevard, a landscape enhanced, divided parkway, and from White Rock Road at B Street. Driveway access(es) from White Rock Road is(are) also provided. Pedestrian and bicycle access is provided by means of sidewalks and bicycle lanes within the right-of-way of Latrobe Road, White Rock Road, Town Center Boulevard, B Street and C Street. In addition, a recreational trail is provided within the existing 102' Pacific Gas and Electric Company easement along the north side of White Rock Road and within the central creek corridor.

Town Center East is envisioned to be the central "people gathering place" for El Dorado Hills. It is planned as an urban commercial precinct to simultaneously address several retail markets thus maximizing the potential variety of functional shopping, dining and leisure time activities available to meet the needs of the residents of El Dorado Hills and the surrounding communities. The **Town Center East** Development Plan defines a commercial center of three planning areas described below and summarized in Figure 1.1.

Figure 1.1 Approximate Acreage and Planned Building Square Footage

	Approximate Acres	Planned Building Square Footage
Planning Area One	23.6	(plus 150 rm hotel) 143,000
Planning Area Two	18.8	211,000
Planning Area Three	46.3	571,000
Central Creek Corridor	4.4	
Roads	7.6	
Total	100.7	925,000

1. The Development Standards

1.1 Planning Area One - Highway and Neighborhood Services - is located in the western portion of Town Center East and is bounded by Latrobe Road, White Rock Road, B Street and U.S. Highway 50. The Highway and Neighborhood Services area is planned to address the needs of highway oriented users, independent retail users and community facilities that benefit from convenient arterial access and direct highway and arterial road visibility. Located within Planning Area One is a site for the County Multi Modal Transportation Facility and a future United States Post Office. Planning Area One consists of approximately 23.6 acres. Planned building square footage is 143,000 square feet. Also allowed is a 150 room hotel. Lots may

range from as little as 3,000 square feet to over 1 acre and will have access from B Street and/or internal access easements.

Planning Area One - Permitted Uses

Auto Care

- Auto Parts
- Auto Repair
- Auto Speciality
- Auto wash and detail
- Lube & Tune

Highway Commercial

- Fast food restaurant
- Sit-down restaurant
- Service station
- Mini-mart
- Hotel/Motel

Retail

- Book store
- Newsstand/magazine shop
- Speciality gifts
- Stationers
- Video Store
- Office supplies/ equipment

Financial Services

- Bank
- Savings & Loan
- Finance company
- Brokerage
- Title company

Foods

- Bakery
- Candy shop
- Delicatessan
- Ice Cream/Yogurt
- Speciality foods

Personal Services

- Barber
- Cleaners/Laundry
- Hair Salon
- Florist
- Tailor/Alterations
- Travel Agent

Offices

- Medical
- Dental
- Optometric

- Legal
- Accounting
- Professional services

- Insurance
- Real Estate
- Government Services

Drive-thru facilities are allowed as a component of all permitted uses.

1.1.1 Building Height - 35 feet except that within Planning sub-Area G, building height shall be limited to 50 feet.

1.1.2 Minimum Front Setbacks - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area One

	Building		Parking	
	from ROW	from toe/top of slope	from ROW	from toe/top of slope
Latrobe Road	25'	30'	25'	5'
Town Center Boulevard	15'	5'	10'	5'
B Street	15'	5'	7'	5'
Private Roads	10'	5'	5'	5'

1.1.3 Minimum Side lot and Rear lot Setback - When not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet setback shall be allowed upon approval of the Design Review Committee, the El Dorado Hills Fire Department and when in conformance with county building codes. For every building or portion of a building of which an exterior wall of the first floor is located more than 150 feet from a fire access roadway, as measured by an approved route around the exterior of the building, an approved fire access roadway shall be provided.

1.1.4 Maximum Impervious Surface - eighty-five percent.

1.1.5 Minimum Lot Area - 3,000 square feet.

1.1.6 Minimum Lot Width - 50 feet.

1.1.7 PG&E Easement - a 102 foot PG&E easement affects the southern boundary of Planning Area One. Uses within the easement are limited to roadways, driveways, walkways, bikeways, parking and landscape and are subject to approval by PG&E.

1.2 Planning Area Two - Town Square - is located at the heart of Town Center East and is bounded by B Street and the Major Retail Area. A central feature of the Town Square is the Central Creek Corridor, an area of open space with pedestrian access. Town Square is the focal point of Town Center East with a traditional "Main Street" element, oriented along Town Center Boulevard to connect the Town Square with the Highway and Neighborhood Services Area and the Major Retail Area. The uses permitted at Town Square are intended to take full advantage of the pedestrian orientation of the planning area. Outdoor eating and display areas, plazas and courtyards will be oriented to the Central Creek Corridor as well as storefronts and entry areas. Buildings at Town Square may be multiple stories; professional offices may be located over retail uses. Planning Area Two consists of approximately 18.8 acres. Planned building square footage is 211,000 square feet. Building pads in this area will have a broad range of sizes due to the variety of uses allowed and the probability of both user ownership and leased space. Access shall occur from Town Center Boulevard, B Street and C Street.

Planning Area Two - Permitted Uses

Financial Services

- Bank
- Savings & Loan
- Finance company
- Brokerage
- Title company

Offices

- Medical
- Dental
- Optometric

Foods

- Bakery
- Candy
- Delicatessen
- Ice Cream/Yogurt
- Specialty foods

- Legal
- Accounting
- Professional services

Liquor/wine/cheese

- Restaurants
- Recreation/Entertainment**
- Cinema
- Sports club
- Arcade

- Insurance
- Real Estate
- Government Services

Sports/Hobby/Special Interest

- | | | |
|--------------------|------------------|----------------|
| Camera/Photography | Toys/Games | Bicycle shop |
| Coins/Cards | Pet/pet supplies | Outfitters |
| Collectibles | Arts/Crafts | Ski shop |
| | Fabrics | Sporting goods |

Retail

- | | | |
|------------------------------|-------------------------------------|---------------------------|
| Clothing | Book store | Stationers |
| Shoes/Athletic footwear | Box/packing store | Video store |
| Fashion Accessories | Copying/Printing services | Office supplies/equipment |
| Jewelry & Cosmetics | Newstand/magazine shop | Gifts/Specialty |
| Home furnishings/accessories | China/glassware/crystal/
cutlery | Art Gallery |
| Interior design | Gourmet cookware | Luggage/leather |
| Floor coverings | | Imports |
| Drapes/blinds | | |
| Bath Shop | | |

Personal Services

- | | | |
|------------------|--------------------|---------------------|
| Barber shop | Formalwear rental | Travel agent |
| Cleaners/Laundry | Shoe repair | Photography studio |
| Hair Salon | Tailor/Alterations | Key shop |
| Florist | | Eyeglasses/optician |

Drive-thru facilities may be permitted as a component of all permitted uses upon review and approval of the Design Review Committee.

1.2.1 Building Height - 50 feet.

1.2.2 Minimum Front Setback - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area Two

	Buldings		Parking	
	from ROW	from toe/top of slope	from ROW	from toe/top of slope
Town Center Boulevard	0'	NA	10'	5'
B Street	15'	5'	7'	5'
C Street	7'	5'	7'	5'
Private Streets	7'	5'	7'	5'
Central Creek Corridor	25' (from edge of corridor)		15' (from edge of corridor)	

1.2.3 Minimum Side lot and Rear lot Setback - when not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet setback shall be allowed upon approval of the Design Review Committee and when in conformance with county building codes. When abutting the Central Creek Corridor, building and parking setback shall be 25 feet from the nearest edge of the Corridor. For every building or portion of a building of which an exterior wall of the first floor is located more than 150 feet from a fire access roadway, as measured by an approved route around the exterior of the building, an approved fire access roadway shall be provided.

1.2.4 Maximum Impervious Surface - eighty-five percent.

1.2.5 Minimum Lot Area - 2,500 square feet.

1.2.6 Minimum Lot Width - 50 feet.

1.3 Planning Area Three - Major Retail - is located in the eastern portion of Town Center east and is bounded by Highway 50 on the north, White Rock Road on the south, Town Square on the west and the limits of the property to the east. The Major Retail Area is suited to large users and provides the opportunity for regional-type uses to serve the greater area. Planning Area Three consists of approximately 46.3 acres. Planned building square footage is 571,000 square feet. Access shall occur from Town Center Boulevard and from two or more driveways/access points along White Rock Road as shown on the Development Plan or as approved by the Director of the Department of Transportation. Buildings within the Major Retail Area may be multiple stories; professional offices may be located over retail uses.

Planning Area Three - Permitted Uses

Supermarket	General Merchandise	Home Improvement
Drug/Super Drug	Department store	Building Materials
Liquor	Jr. department store	Paint/Wallpaper
Restaurant	Variety store	Hardware
Fast Food restaurant	Discount department store	Nursery
Service Station	Recreation	Offices
Auto Care	Bowling center	Medical
Auto Parts	Skating center	Dental
Auto Repair	Arcade	Optometric
Auto Speciality	Cinema	Legal
Auto wash and detail	Sports/Exercise Club	Accounting
Lube & Tune		Professional services
		Insurance
		Real Estate
		Government Services

Sports/Hobby/Special Interest

- | | | |
|--------------------|------------------|----------------|
| Camera/Photography | Toys/Games | Bicycle shop |
| Coins/Cards | Pet/pet supplies | Outfitters |
| Collectibles | Arts/Crafts | Ski shop |
| | Fabrics | Sporting goods |

Retail

- | | | |
|------------------------------|-------------------------------------|---------------------------|
| Clothing | Book store | Stationers |
| Shoes/Athletic footwear | Box/packing store | Video store |
| Fashion Accessories | Copying/Printing services | Office supplies/equipment |
| Jewelry & Cosmetics | Newstand/magazine shop | Gifts/Specialty |
| Home furnishings/accessories | China/glassware/crystal/
cutlery | Art Gallery |
| Interior design | Gourmet cookware | Luggage/leather |
| Floor coverings | | Imports |
| Drapes/blinds | | |
| Bath Shop | | |

Personal Services

- | | | |
|------------------|--------------------|---------------------|
| Barber shop | Formalwear rental | Travel agent |
| Cleaners/Laundry | Shoe repair | Photography studio |
| Hair Salon | Tailor/Alterations | Key shop |
| Florist | | Eyeglasses/optician |

Drive-thru facilities may be permitted as a component of all permitted uses upon review and approval of the Design Review Committee.

1.3.1 Building Height - 50 feet.

1.3.2 Minimum Front Setback - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area Three

	Buildings		Parking	
	from ROW	from top/toe of slope	from ROW	from top/toe of slope
White Rock Road	N/A (0' from PG&E easement)	5'	30'	5'
U.S. Highway 50	50'	5'	20'	5'
Private Street	0'	5'	7'	5'

1.3.3 Minimum Side lot and Rear lot Setback - when not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet

setback shall be allowed upon approval of the Design Review Committee and when in conformance with county building codes. When abutting the Central Creek Corridor, building and parking setback shall be 25 feet from the nearest edge of the Corridor.

1.3.4 Maximum Impervious Surface - eighty-five percent.

1.3.5 Minimum Lot Area - 2,500 square feet.

1.3.6 Minimum Lot Width - 50 feet.

1.3.7 PG&E Easement - a 102 foot PG&E easement affects the southern boundary of Planning Area Three. Uses within the easement are limited to roadways, driveways, walkways, bikeways, parking and landscape and are subject to approval by PG&E.

1.4 Uses Not Specified

Additional uses may be permitted when, by determination of the Director of Planning, such uses are found to be similar in nature to those established within the Town Center East Planned Development. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process pursuant to El Dorado County Zoning Ordinance Section 17.32.220 and, by resolution of record, set forth its findings and its interpretations.

1.5 Approval Process

Site specific project approvals shall be a ministerial act of the Director of Planning. Prior to submitting a building permit application to the County, site specific projects shall be approved by the Design Review Committee as defined in the Covenants, Conditions and Restrictions for the El Dorado Hills Town Center East. Prior to issuance of a building permit, County staff shall find the proposed site specific project has received approval from the Design Review Committee and is consistent with the Development Plan, the Development Standards and other conditions of approval of the Town Center East Planned Development.

2. The Overall Development Guidelines

Note: Throughout this document, Italics are used to present statements, policies and guidelines expressed in the EL Dorado Hills Specific Plan.

In keeping with the Commercial Design Guidelines presented in the Specific Plan, it is intended that Town Center East "create an aesthetically pleasing environment" while providing for "commercial uses of a greater variety and at a higher intensity" than elsewhere in the community or greater area. The following Overall Development Guidelines are intended to foster

EXHIBIT 4



EL DORADO COUNTY PLANNING SERVICES

2850 Fairlane Court
Placerville, CA 95667

<http://www.co.el-dorado.ca.us/planning>

Phone: (530) 621-5355
Fax: (530) 642-0508

MEMORANDUM

DATE: May 3, 2005

TO: Chair and Planning Commission

FROM: Gina Hunter, Senior Planner

SUBJECT: Finding of Consistency to allow a Warehouse Home Improvement Center/Design Center and Nursery within the Town Center West Planned Development. The Town Center West is governed by Planned Development Permit PD 95-02 and the Design Guidelines and Development Standards for Town Center West.

BACKGROUND

The Town Center West site is located within the El Dorado Hills Specific Plan area (Exhibit A). The Board of Supervisors approved the Development Plan and "Design Guidelines and Development Standards" for the Town Center West site on May 23, 1995. The zoning of the site is General Commercial (CG), with the Planned Development further differentiating the site with four distinct land use categories, Light Manufacturing (LM), Research and Development (RD), Business and Professional (BP) and Commercial Service and Retail (C). The site has been divided into five distinct Planning Areas, A through E.

The Development Plan allocates the planned square footage for the site by use and Planning Area, with the total square footage for the development to be 1,465,000 square feet. Condition No. 4 states that, "The identified planned floor area within any one of the five Planning Areas and the total for the Development Plan may be exceeded as long as all of the other requirements of the Development Plan are satisfied". Although the Planning Director or Planning Commission may re-allocate the uses and square footages from one Planning Area to another, the planned square footage of Category C (service and retail nature) cannot exceed 60,000 square feet throughout the development.

The Board of Supervisors found that many of the uses permitted by right in the CG zone district were to have substantially more objectionable operational characteristics than the research development and light manufacturing uses and were excluded from the list of uses permitted within the Development Plan. The research and development and light manufacturing uses proposed within the Development Plan were limited to uses that are fully enclosed and emit minimal amounts of dust, smoke, odor, air or water

pollutants, noise and electrical interference. The uses permitted with the Development Plan are attached in Exhibit B.

The site is currently developed with a Blue Shield office complex in Planning Area C and a manufacturing facility in Planning Area A. The development in Planning Area C includes a commercial office development encompassing 243,308 square feet, with an additional 9,000 square feet of restaurant/cafeteria use. The Development Plan originally allocated 237,000 square feet of BPO uses within Planning Area C. As permitted by the conditions of approval, the square footage allotted could be exceeded provided that the other requirements of the development plan had been satisfied. The development in Planning Area A includes a building originally constructed for Atlanta Precision Molding, which encompassed 89,470 square feet of warehouse. Atlanta Precision Molding has vacated the building, and it remains vacant at this time.

FINDING OF CONSISTENCY REQUEST

The Mansour Company submitted a Finding of Consistency request on April 19, 2005 (Exhibit C). The applicant has requested that the Planning Commission make three (3) findings to allow the future development of a warehouse home improvement retail center development within the Town Center West. These findings include the following:

1. Adding an additional allowable use within Town Center West of "Warehouse Type Retail" by determining such use is found to be similar in nature to those already established within PD95-02; and
2. Determining that there is no square foot limitation on the amount of "Light Manufacturing (LM);, Research Development (RD), Business and Professional (BPO) and Commercial uses that may be constructed within any of the a Planning Areas (A through E) identified in PD95-02, provided that the total square of footage of development within Town Center does not exceed 1,465,000 square feet; and
3. Permitting the home improvement center; home design center and nursery within Town Center West.

The applicant has stated that the proposed home improvement center will be a mixture of commercial and light manufacturing uses within the same building, totaling approximately 120,000 square feet. Of the 120,000 square feet, 60,000 square feet will be commercial retail and the balance of the project would be design center, wholesale warehousing and distribution of such goods. The architectural character and design of this project would be developed in a manner that is consistent with the Town Center West Design Guidelines and Development Standards.

In addition, the applicant has requested an overall clarification regarding the uses that are permitted within the Town Center, or more specifically would like the restriction of uses to be removed. The applicant has requested that there be no specific limitation on the amount of retail and other general commercial uses that can be developed within Town Center West, provided that the total square footage of Town Center West does not exceed 1,465,000 square feet.

RECOMMENDATION

The Board of Supervisors made a distinct decision when developing the list of permitted uses within the Development Plan, stating that many of the uses permitted by right in the CG district have substantially more objectionable operational characteristics than the research development and light manufacturing uses proposed and are thereby excluded from the list of uses permitted within the Development Plan. The Development Plan does allow for additional uses to be permitted when, it can be determined that such uses are found to be similar in nature as those established within the Town Center West Planned Development. However, after reviewing the uses permitted by right within the Town Center West Planned Development and that proposed by the applicant, it has been determined that the home improvement warehouse development/design center is not similar in nature to those uses established on the permitted uses list.

It can be recognized that building materials, including storage and sales, and greenhouse/nursery uses are allowed by right within the CG zoning district according to Section 17.32.190.A of the County Code (Exhibit D). However, the Conditions of Approval were clear on the use limitations within the Development Plan, and these uses were considered to have more objectionable operational characteristics which would require additional review. It is believed that an amendment to the Development Plan is required to consider the home improvement warehouse development/design center use and that a Finding of Consistency cannot be made.

The applicant has also requested a generalized request to remove the limitation on uses within the Development Plan area. An important factor to consider when reviewing this request is that the project is located adjacent to residential development. The neighboring property owners understood the uses that would be located adjacent to their properties and the protection that would be afforded them through the "Design Guidelines and Development Standards". It is believed that this request is beyond the scope of the original Development Plan and that a revision to the Development Plan would be warranted.

SUPPORT INFORMATION

Attachments to Staff Report:

- Exhibit A..... Vicinity Map
- Exhibit B..... Uses Permitted Within Development Plan
- Exhibit C Finding of Consistency request dated 4/19/05
- Exhibit D General Commercial (CG) District Regulations

EXHIBIT B

USES PERMITTED WITHIN DEVELOPMENT PLAN

Research Development Uses

Blueprint services
Data Processing
Information Systems Research
Materials research
Ancillary and support uses such as restaurants and retail sales
Electronics component manufacture and assembly
Precision instruments assembly and manufacturing
Computer technologies
Digital Information Transfer Processes
Laboratories-scientific, research and testing
Photocopying and Printing Services

Light Manufacturing Uses

Data Processing technologies
Digital information components manufacture and assembly
Electronics components manufacture and assembly
Plastics molding processes and assembly
Precision instruments assembly and manufacturing
Printing and publishing plants
Ancillary and support uses such as restaurants and retail sales

Business and Professional Offices

Accountant
Engineer
Graphic Designer
Medical/Dental
Ancillary and support uses such as restaurants and retail sales
Architect
Financial Brokerage
Investment Brokerage
Professional Associations
Attorney
Financial Institution
Land Planner
Surveyor

Commercial Uses

Barber Shop
Office Supplies
Dry Cleaner
Shoe Repair
Hair Salon
Office Supplies
Shoe Repair
Hotel
Newsstand
Delicatessen
Service Station
Florist
Copy Printing Service
Restaurant
Stationers
Conference Centers
Boxing/Shipping Service
Restaurant
Fast Food Restaurant
Stationers
Newsstand
Service Station
Copy Printing Service



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05 APR 20 PM 12:53
 RECEIVED
 PLANNING DEPARTMENT

April 19, 2005

Mr. Peter Maurer
 El Dorado County Planning Department
 2850 Fairlane Court
 Placerville, CA 95667

Subject: Town Center West PD 95-02

Dear Peter:

As a follow up on recent meetings with the County's Planning Department Staff and on prior correspondence with the County's Planning Director regarding use of remaining undeveloped land at Town Center West.

Please accept this letter advising the Planning Department of an upcoming home improvement center development project within Town Center West, and to request that the Planning Department or the Planning Commission make the following three (3) "Findings of Consistency."

1. Adding an additional allowable use within Town Center West of "Warehouse Type Retail" by determining such use is found to be similar in nature to those already established within PD95-02; and
2. Determining that there is no square foot limitation on the amount of "Light Manufacturing (LM)", Research Development (RD), Business and Professional (BPO) and Commercial (C) uses that may be constructed within any of the Planning Areas (A through E) identified in PD95-02, provided that the total square of development within Town Center does not exceed 1,465,000 square feet; and
3. Permitting the home improvement center; home design center and nursery within Town Center West.

Background Information

The Town Center West Development is regulated by Town Center West Planned Development Ordinance PD95-02 and by its underlying documents: the El Dorado Hills

Specific Plan (County Resolution 226-88), and by the property's General Commercial (CG) zoning granted at the time of adoption of the Specific Plan and approval of the 1989 El Dorado County/El Dorado Hills Investors Development Agreement vesting development rights.

As stated under Section 1 "The Land Uses" of the Design Guidelines and Development Standards: "The land uses proposed by the Town Center West (TCW) Planned Development (PD95-02) are those consistent with the El Dorado Hills Specific Plan and the General Commercial (CG) zoning granted at the time of adoption of the Specific Plan and the approval of the Development Agreement vesting the development rights. While the uses described are intended to create a quality environment of complementary and compatible uses, it is recognized that not all appropriate and viable uses can be "listed" at any given time. Within the regulatory framework of the Design Guidelines and Development Standard, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development." See Attachment 1.

The approved TCW PD95-02 provides for a total of approximately 1.5 million square feet of floor area to be developed. The total square footage is divided into five separate planning area (A through E), each has its own planned square footage by Use as shown in Figure 1 "Planning Areas and Planned Building Square Footage" within Section 1 of the TCW Design Guidelines and Developments Standards. Figure 2 "Planned Square Footage by Use and Planning Area" within Section 1 of the TCW Design Guidelines and Development Standards specifically defines a total of 1,465,000 square feet of development within Town Center West; of that total 60,000 square feet is defined as commercial. See Attachment 1. (NOT Attached)

According to Section 1.6 "Planned Square Footage" within the TCW Design Guidelines and Developments Standards the total Planned Square Footage for any planning area within Figure 2, Total Planned Square Footage whether by Use or Planning Area may be exceeded provided any project proposing such adheres to the other development standards of PD95-the Town Center West Planned Development and the impacts of such proposed project do not preclude the development of the Planned Square Footage of the remaining Uses or Planning Areas as determined by the Director of Planning. See Attachment 1.

In Conrad B. Montgomery, then El Dorado County's Planning Director, letter dated July 16, 2001, the County offered clarification of PD95-02 and its underlying documents, as follows. See Attachment 2 for the full letter:

- that Town Center West's can be developed with "up to 1,465,000 square feet of business and professional uses (research and development uses, light manufacturing uses and commercial uses) throughout Town Center West's Plan Areas A through E," and

- "... that there are no square foot limitations on the amount of business and professional office uses that may be constructed within each of the five Planning Areas (A through E) identified in PD95-02, provided that the total square footage of development within Town Center West does not exceed 1,465,000 square feet."

Mr. Montgomery's 2001 clarification was made based on the provisions of PD95-02 which note that while the uses described in PD95-02 are intended to create a quality environment of complementary and compatible uses, not all appropriate and viable specific uses can be listed at any given time, and that within the regulatory framework of the TCW PD's Design Guidelines and Development Standard, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development.

Home Improvement Center Project

The proposed project will be a mixture of Commercial and Light Manufacturing uses within the same building, totaling approximately 120,000 square feet. Of the 120,000 square feet, 60,000 square feet will be commercial retail and the balance of the project would be design center, wholesale warehousing and distribution of such goods, as defined in the Design Guidelines and Development Standards.

In that light, we write to advise that we intend shortly to submit to the Town Center West Owner's Association Design Review Committee, and subsequently to the El Dorado County Building Department, plans for an approximately 120,000 square foot home improvement center, home design center and nursery to be located within Town Center West. The project will be a mixture of Commercial and Light Manufacturing (retail, wholesale warehouse, planning/design, distribution) uses within one single building on an approximately thirteen-acre site.

The proposed project is planned to be developed within Planning Area D. See attachment 3. Planning Area D as defined within the PD95-02 is located on the easterly side of the development between the future extension of Town Center Blvd (Street D) and an adjacent residential project, starting at White Rock Road and stretching northerly up towards Highway 50. The architectural character and design of this project would be developed in a manner that is consistent with the TCW Design Guidelines and Development Standards. A landscape buffer shall be provided along the western boundary adjacent to the neighboring residential project. The landscape buffer shall be 20 feet in width where the adjacent residential project is required to provide a 10-foot buffer and 30 feet in width where no buffer is required of the adjacent residential project. The landscape buffer shall incorporate elements of height such as berms and hedges and may include decorative and security fencing. Access to this project would be provided solely from the planned extension of Town Center Boulevard

from its current terminus to White Rock Road at the White Rock Road/Windfield Way Intersection.


The addition of this project to TCW will continue in keeping with PD95-02's vision of creating an aesthetically pleasing environment while providing for commercial uses of greater variety and at a higher intensity than elsewhere in the El Dorado Hills community.

Additional Findings of Consistency

We also write to request a more overall clarification, a "Findings of Consistency" of the provisions of TCW PD95-02 and its underlying documents, that there is no specific limitation on the amount of retail and other general commercial uses that can be developed within Town Center West, provided that the total square footage of Town Center West does not exceed 1,465,000 square feet and, of course, that all of the other regulating provisions of PD95-02 (e.g. as to height limitations, setbacks, parking ratios, etc.) are observed.

Should you have any questions or need additional information on the forgoing, please feel free to contact Tulen Emery of my staff at (916) 933-3013.

Sincerely,
El Dorado Hills Investors
By: The Mansour Company, Its General Partner


Louis Mansour
President

LM/te

EXHIBIT 5



4364 Town Center Blvd., Suite 213
El Dorado Hills, CA
95762-7101
Telephone
(916) 933-3013
Facsimile
(916) 933-3018

07 JUL 13 PM 4:36
RECEIVED
PLANNING DEPARTMENT

July 13, 2009

Roger Trout, Director
EDC Development Services
2850 Fairlane Court
Placerville, CA 95667

**Subject: Town Center West PD 95-02 Letter of Consistency Request
Planning Area E – Retail Use**

Dear Roger:

Per our conversation, please find the enclosed completed pre-application and conceptual review process application, accompanying documents and a check in the amount of \$365.00. This packet is being submitted based on our conversation to enable El Dorado Planning Department to complete their review regarding the development Planning Area E of El Dorado Hills Town Center West Planned Development 95-02 (PD95-02).

As discussed, we are not requesting the approval of a site plan at this time, only a letter of consistency that the proposed development is consistent to PD95-02 Exhibit B – Development Plan. Building envelopes as shown on the enclosed plan are conceptual only and indicate the area where building massing may be located. The purpose of gaining the letter of consistency is to obtain site improvement funding and to secure users; by ensuring that all the discretionary approvals and entitlements have been obtained for commercial use on Planning E.

PD95-02 and the Design Guidelines & Development Standard, Planning Area E allow 60,000 square feet of commercial uses such as fast food establishments, convenient store, drug stores and service stations. Section 1 – Land Uses on page 3 of the Design Guidelines & Development Standards states, "While the uses approved are intended to create a quality environment of complementary and compatible uses, it is recognized that not all appropriate and viable uses can be "listed" at any given time." A copy of this page is enclosed for your review and use.

PA 09-0011

Roger Trout - Town Center West PD 95-02 Letter of Consistency Request
July 13, 2009
Page 2

Also enclosed are previous correspondences to you from Tulen and a letter issued by Gina Hunter to Panattoni. This letter is similar to the letter we are current requesting for Planning Area E.

Thank you for your time and attention to our request. I look forward in receiving your response. Should you have any questions please feel free to contact myself or Tulen Emery.

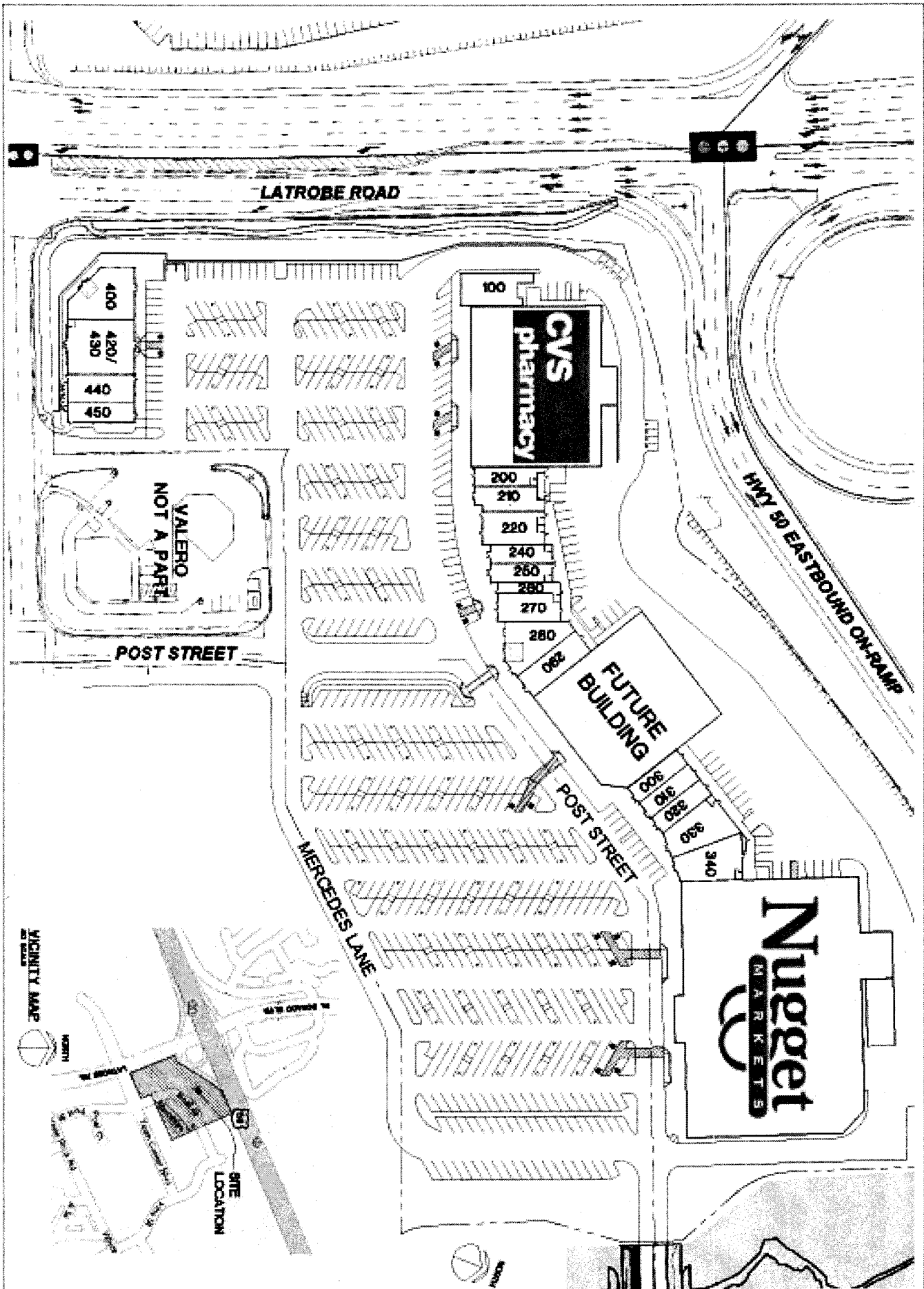
Sincerely,
El Dorado Hills Investors, Ltd.
By: The Mansour Company, Its General Partner

Anthony Mansour by: Tulen Emery
Anthony Mansour, CEO

enclosures

RECEIVED
PLANNING DEPARTMENT
20 JUL 13 PM 4:30

EXHIBIT 6

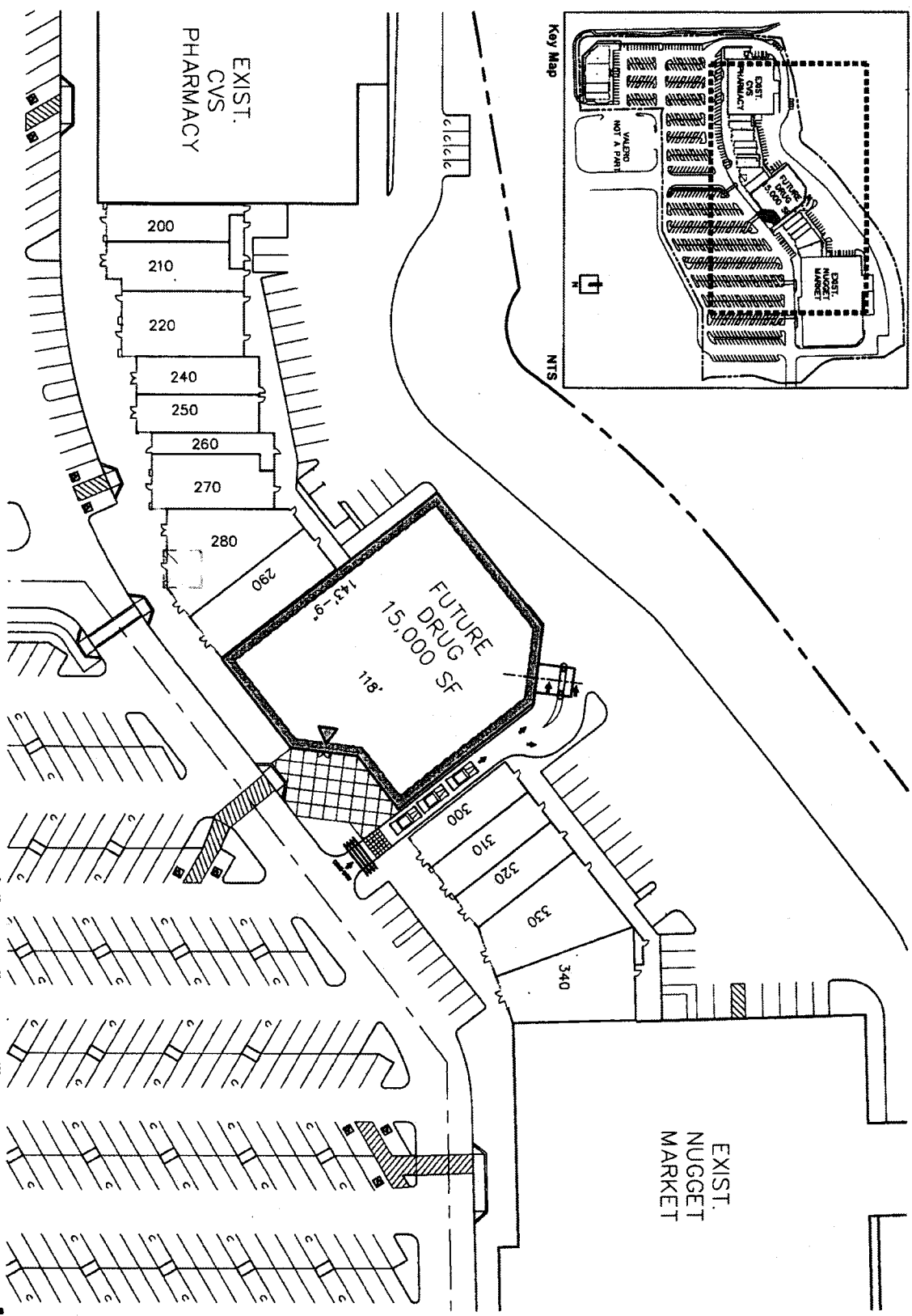
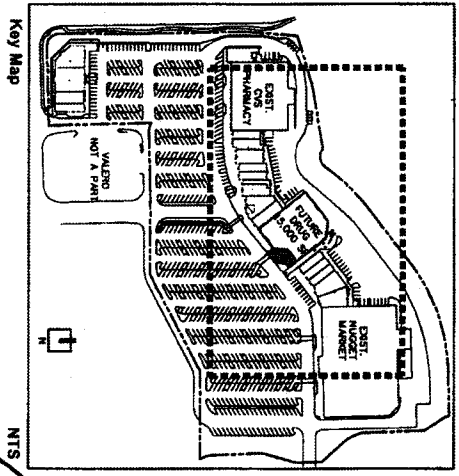


EXISTING SITE PLAN

MarketPlace
El Dorado Hills, CA.

PUBLIC COMMENT

11-0155.G.42



Town Center Marketplace

NEC Latrobe Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
Town Center Marketplace

Developer:
Town Center Holdings
120 Village Square Blvd
Oakland, CA 94612

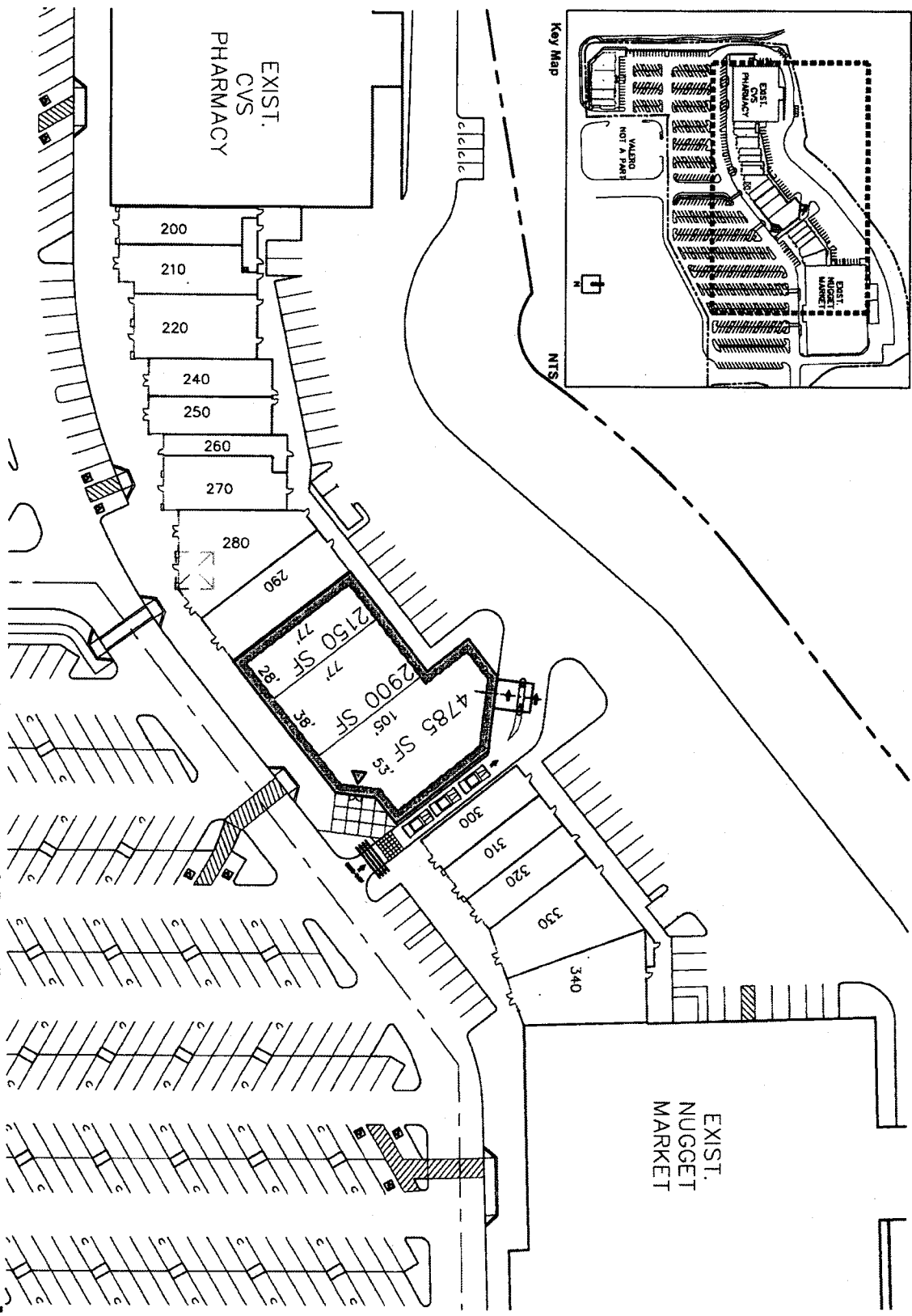
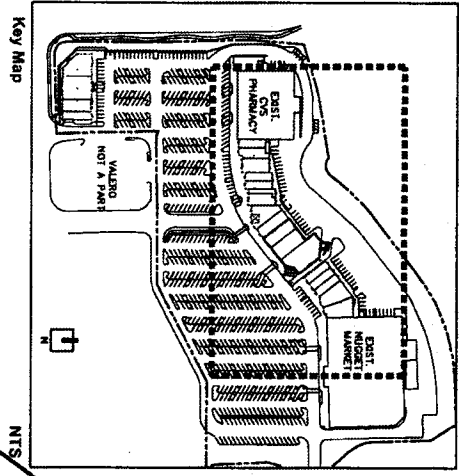
Site Plan - Option 1

Drawn By: [Signature]
Checked: [Signature]
Approved: [Signature]

SP.01

NAUSCHENBACH MAUNTELL BECKER
architects

3077 West Broadway, Suite 100, Sacramento, CA 95822
916-442-8200 • 1734-44th Street • sacramento.nab.com



Town Center Marketplace ■ NEC Latrobe Road and Town Center Boulevard
 El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
 Town Center Marketplace

Developer:
 Town Center Marketplace
 1201 West Street #100
 Oxnard, CA 93025

Site Plan - Option 2

Job Number: A10-112
Drawn By: [Blank]
Checked By: [Blank]
Scale: [Blank]

Sheet: SP.01

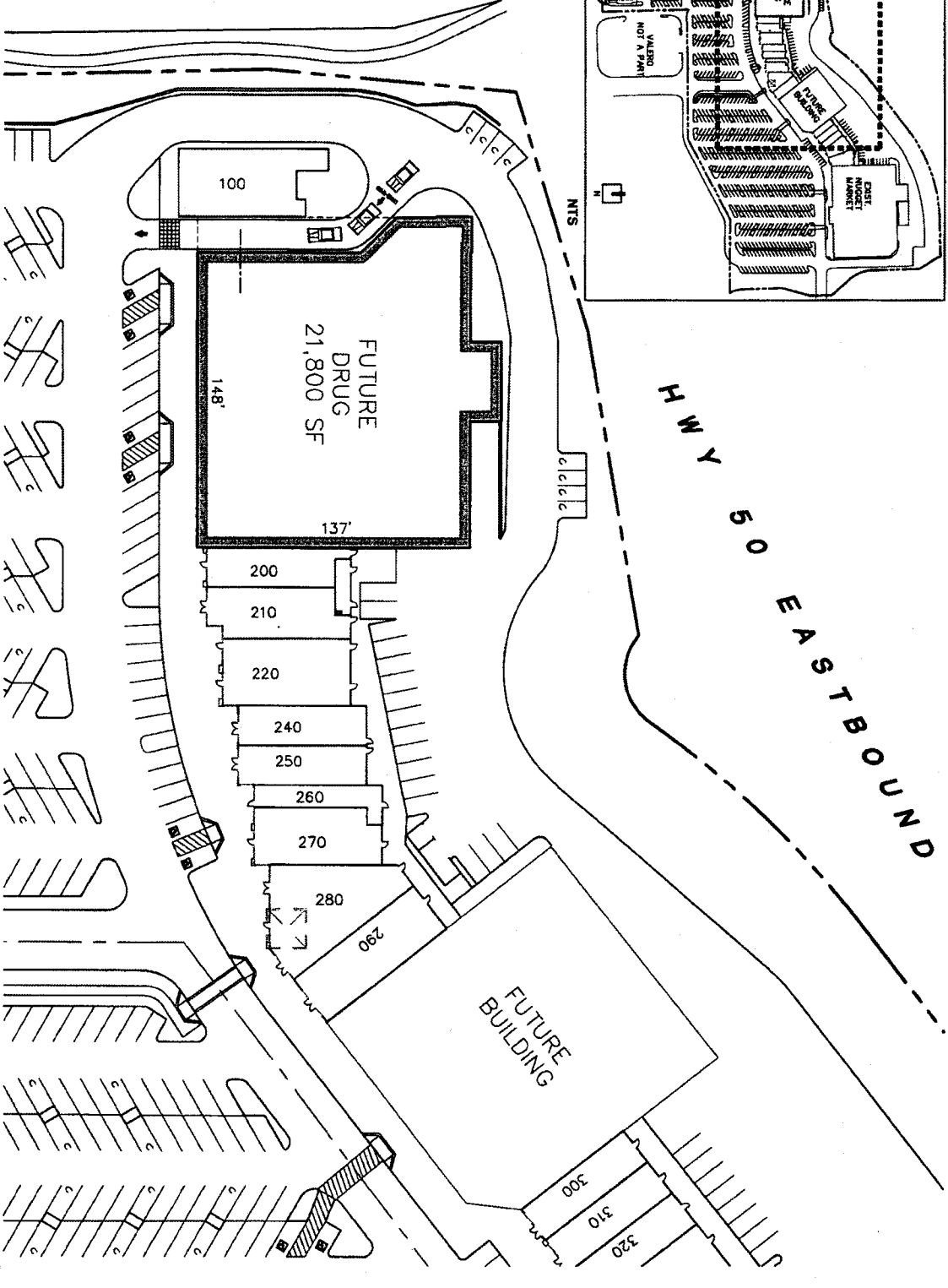
RAUSCHENBACH MANVELLI BECKER
 architects

2277 West Avenue - Second Floor - Redwood City, CA 94063
 415-948-0000 / 415-948-0001 / 415-948-0002 / 415-948-0003

Town Center Marketplace

NEC Latrobe Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Project:
Town Center Marketplace
Marketplace
NEC Latrobe Road and Town Center Blvd.
El Dorado Hills, California

Developer:
Town Center Marketplace
120 Village Square #100
Orinda, CA 94563

Site Plan - Option 3

Architect:
Date: _____
Drawn By: _____
Reviewed: _____
Direct: _____

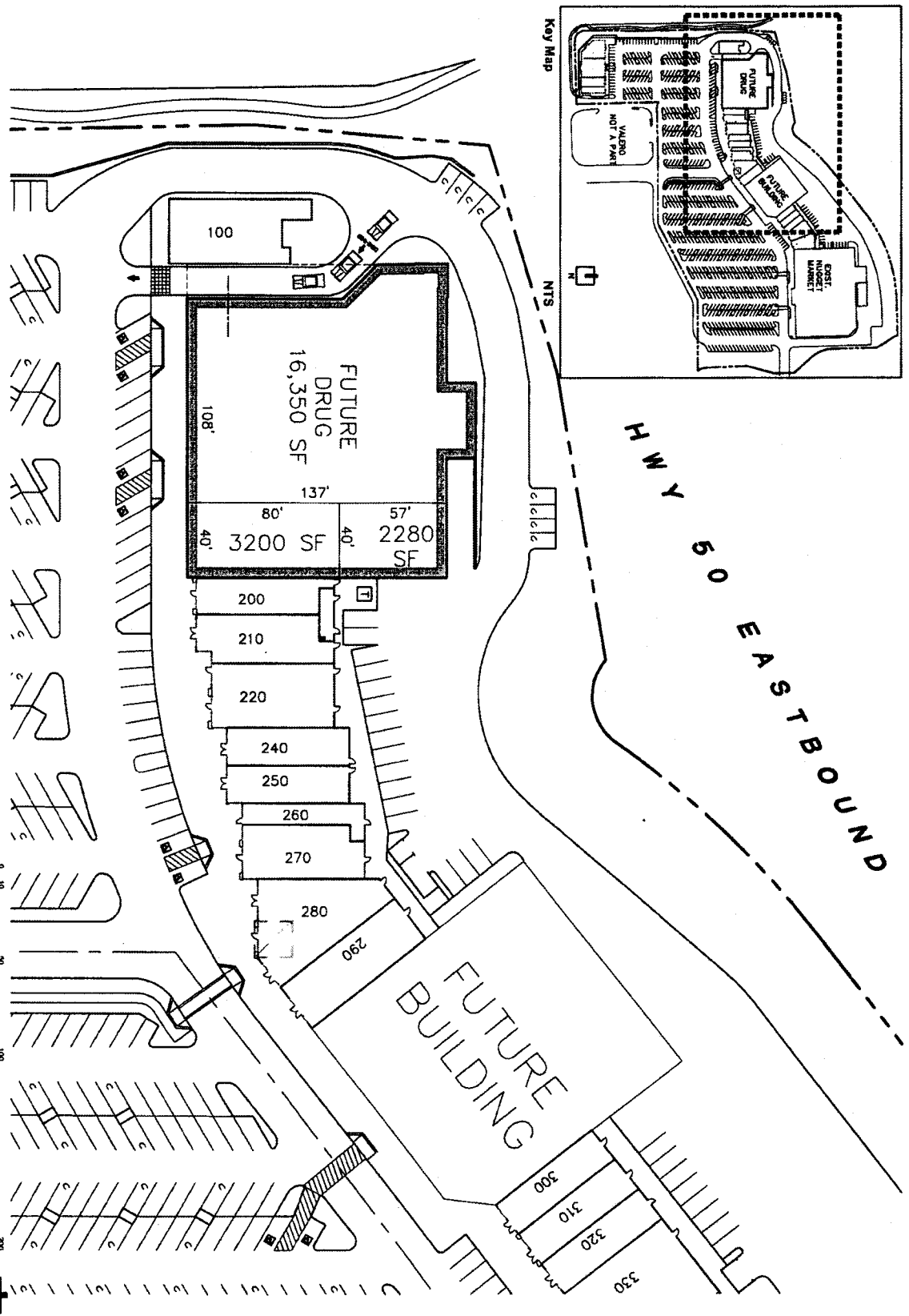
SP.01

MAUSCHENBACH MARVELLI BECKER
ARCHITECTS
1877 West Avenue, Second Floor, San Francisco, CA 94115
Tel: 415.774.1000 Fax: 415.774.1001
www.mauschenbach-marvelli-becker.com

Town Center Marketplace

NEC Larrobe Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Product:
Town Center Marketplace

Client:
El Dorado Hills, California

Developer:
Town Center Marketplace
1201 Town Center Blvd
Oroville, CA 95965

Site Plan - Option 4

Job Number: A10-01
Drawn By: [Redacted]
Reviewed: [Redacted]
Sheet: SP.01

MAUSCHENBACH MANVELLI BECKER
architects

2877 West Broadway, Suite 1000 • Sacramento, CA • 95833
P: 916.441.1000 • F: 916.441.1001 • www.mmba.com



1375 Exposition Blvd.
Suite 101
Sacramento, CA 95818
www.armstrongdev.com
916.643.9610
916.643.9613 fax

PC 1/13/11
#9

January 11, 2011

U.S. Mail
Via E-Mail (pierre.rivas@edcgov.us)

Pierre Rivas
Principal Planner
Planning Services
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

RECEIVED
PLANNING DEPARTMENT
JAN 12 11:51

Re: Appeal of Consistency Determination regarding the proposed CVS Drug Store in Town Center West to be heard by the Planning Commission on January 13, 2011.

Dear Mr. Rivas:

Armstrong Development Properties, Inc. is the developer for the proposed CVS Drug Store located in Planning Area E of the County of El Dorado Town Center West Development Plan (TCW Development Plan). Syers Properties III, LLC recently filed an appeal and request for a hearing before the Planning Commission to contest the County's September 28, 2009 decision that the proposed CVS Drug Store is consistent with the TCW Development Plan. That appeal will be heard by the Planning Commission on January 13, 2011. Armstrong submits this letter in support of the County's consistency decision for the proposed CVS Drug Store.

Armstrong agrees with the County's September 28, 2009 determination that the proposed CVS Drug Store is consistent with the TCW Development Plan. The allocation for commercial service and retail uses in Planning Area E of the TCW Development Plan includes, among other uses, office supplies, newsstands, delicatessens, fast food restaurants, and florists. The proposed CVS Drug Store will include consistent commercial uses such as the sale of office supplies, newspapers, magazines, food, and flowers.

The TCW Development Plan recognizes the need for flexibility in determining permitted uses to respond to changing markets. Moreover, the TCW Development Plan also provides that uses stated in the Specific Plan for Town Center West are not necessarily limited to those listed. A drug store use is not precluded from Town Center West. In fact, the TCW Development Plan discusses uses allowed within the County's General Commercial (CG) zoning district, which includes a drug store use allowed by right. Nothing in the TCW Development Plan or the Town Center East Development Plan provides for allowing certain land uses in one town center while precluding the same use in the other town center. Since the TCW Development Plan was approved in 1995, the County has issued several consistency determinations broadly interpreting non-listed uses to be similar in nature to those listed in the TCW Development Plan. The proposed CVS Drug Store contains commercial uses similar in nature to those

listed in the TCW Development Plan and none of the County's documents or policies preclude a drug store use in Town Center West.

Armstrong has been pursuing its entitlements and the County has been processing them since the September 2009 consistency decision. On June 15, 2010, the Board of Supervisors adopted Resolution No. 074-2010 vacating a portion of Old White Rock Road, removing such portion from the public roadway to facilitate the development of the subject property. In June 2010, in an effort to diligently work toward development of the proposed CVS Drug Store, Armstrong submitted an application for Design Review approval to the Town Center West Design Review Committee and received preliminary approval on June 23, 2010. These approved plans were submitted to the County with applications for a letter of Public Convenience or Necessity for liquor sales and a building permit. Two months later, in August 2010, the County recorded a Parcel Map for the subject property. Finally, in September 2010, the TWC Design Review Committee sent a letter to Armstrong approving the site plan, elevations, and improvement drawings for the proposed CVS Drug Store. As such, Armstrong believes the County's consistency decision has been supported and enforced through its subsequent actions and approvals as well as those of the TWC Design Review Committee.

The proposed CVS Drug Store will also provide several benefits to the County. The development of the CVS Drug Store will bring needed construction jobs to the area and the increased visibility of the store will increase sales. In addition, the drive through facility will provide a needed convenience to CVS customers, specifically customers who are injured, ill, elderly or parents with young children. Finally, the proposed CVS Drug Store, in the relatively undeveloped Town Center West area, will help the County attract additional development to Town Center West.

Armstrong strongly believes that the County's September 28, 2009 consistency determination was appropriate and that the proposed CVS Drug Store will benefit the County. Armstrong respectfully requests that the Planning Commission deny Syers' appeal and find that the County's consistency determination was appropriate.

Armstrong thanks the County for its attention to this matter. Please contact the undersigned at 916-643-9610 if you have any questions.

Sincerely yours,



Josh Eisenhut
Armstrong Development

cc: Kristine Donabedian, Esq., CVS
Bill Berger, CVS
Craig Sandberg, Esq., Law Offices of Craig M. Sandberg, counsel for Mansour
Tony Mansour, El Dorado Hills Investors, Ltd., The Mansour Company
Amanda Monchamp, Esq., Holland & Knight, counsel for Armstrong Development

PC 1/13/11
#9



January 10, 2011

El Dorado Planning Commission
c/o County of El Dorado Planning Services
2850 Fairlane Court
Placerville, CA 95667

Subject: January 13, 2011 Planning Commission Meeting, Agenda Item No. 9:
Appeal of Determination of Consistency

Dear Planning Commissioners:

I am the official representative of the Market Place at Town Center shopping center to the Town Center Merchants' Association. I, along with my husband, Ken own and operate Bark Avenue – a store within the Market Place offering pet supplies and grooming services. I understand that the Planning Commission will consider the appeal filed by Syers Properties (owner of the Market Place) at its January 13, 2011 meeting. The appeal is over a planning department decision that a large 24-hour drug store with a drive-thru pharmacy and beer and wine sales (a new CVS) is consistent with permitted uses set out in the Town Center West Development Plan.

I'm writing to express my strong support, along with that of several other members of the merchants association, in favor of the appeal and in opposition to the planning department determination. A majority of the merchants in the Market Place (located in Town Center East) have likewise expressed support for this appeal and includes the following:

- Eric Stille – Nugget
- Dennis Lindsay – Nugget
- Ken Mizell – Bark Avenue
- John Budd – Roundtable Pizza
- Laurie Vaqueiro – Massage Envy
- Marvin Frace - Marketplace Vet
- Hannah Han – Fresh Cleaners
- Mike James – Supercuts
- Emmy Farrand – Golden 1 Credit Union
- Sandy Nguyen – Luxury Nails
- Leslie Bethancourt – Salon Capelli

11 JAN 12 PM 12:11
RECEIVED
PLANNING DEPARTMENT

When locating businesses in Town Center East, merchants such as myself, especially smaller merchants, rely on the presence of general retail anchor stores such as Nugget and CVS to drive foot traffic to the shopping center. In locating



here, we relied on the fact that Town Center East was approved as a retail shopping center with a range of general retail uses including large major retail anchor stores.

A CVS exists in the Market Place. I object to the idea of placing a new CVS (or large drug store, or supermarket-type major retail use) in Town Center West. That type of major general retail use was not listed in the development plan approved for Town Center West, but was specifically included and exists in Town Center East.

The approved retail in Town Center West is limited to ancillary "support retail" for the office and manufacturing uses that are the focus of that development. I strongly disagree with the planning department's conclusion that a 15,000 square foot, 24-hour drug store with a drive thru – which is clearly "major retail" – is "similar in nature" to the listed uses for Town Center West such as a barber shop, shipping service, copy center, deli, dry cleaner, restaurant, office supply store or stationers. Those uses are clearly "support retail" for an employment center like Town Center West, whereas a 24-hour drug store including beer and wine sales like a CVS is clearly a general "major retail" use of the type expressly approved and intended for Town Center East.

Town Center West and East were approved as distinct and complimentary developments. Putting a large major retail drug store like CVS in Town Center West conflicts with the development plan adopted by the County. Relocating CVS out of Town Center East and into Town Center West, would draw customers away from Town Center East merchants. There is space to accommodate such a store within Town Center East in keeping with the Town Center East approvals and promoting its vitality. Placing it in Town Center West conflicts with that development plan and undermines the planned general retail center that is Town Center East.

For these reasons, I and the above-listed merchants, ask that you grant the appeal.

Sincerely,

A handwritten signature in cursive script that reads "Robin Mizell".

Robin Mizell
Market Place at Town Center representative to the Town Center East Merchants' Association



Morgan Miller Blair
A LAW CORPORATION

1331 NORTH CALIFORNIA BOULEVARD, SUITE 200 WALNUT CREEK, CALIFORNIA 94596-4544
925.937.3600 925.943.1106 FAX www.mmblaw.com

PC 1/13/11
#9

TODD A. WILLIAMS
(925) 979-3352
twilliams@mmblaw.com

December 30, 2010

VIA E-MAIL, FACSIMILE AND FEDERAL EXPRESS

Board of Supervisors
c/o Clerk of the Board of Supervisors
County of El Dorado, Government Center
330 Fair Lane
Placerville, CA 95667

Re: January 4, 2011 Board of Supervisors Meeting, Closed
Session Agenda Item re Appeal of Determination of
Consistency with Town Center West Development Plan
Our File No. 10093-001

Dear Honorable Supervisors:

We submit this letter on behalf of Syers Properties III, LLC ("Syers"), owner of the MarketPlace at Town Center East (south of Hwy. 50 at Latrobe Road). Earlier this month, Syers appealed a decision made by the planning department in connection with the Town Center West Development Plan.

Typically this appeal would go to the Planning Commission; however, under County Counsel's direction, an item has first been put on your January 4, 2011 closed session agenda to decide whether to allow this appeal to be heard by the Planning Commission at its January 13, 2011 meeting.¹

We understand Syers' full appeal letter will be placed in your agenda packet. The purpose of this letter is to focus on the narrow question of why the appeal should be allowed to go forward and be heard. (Attached hereto are bullet points that summarize the issues involved.)

Background: The Town Center West Development Plan ("TC West") was approved in 1995 (along with a TC East Development Plan). (See attached map of TC West and TC East.)

¹ Although this is a closed session item, neither the appeal, nor the documents submitted in support of it, threaten litigation. They simply, as required, raise the grounds upon which the appeal is based.

TC West was approved as a business park with limited "support" retail services such as a barber shop, nail salon, copy center, dry cleaners, gas station, deli, etc. However, drug store and supermarket were not among the included uses. TC East, on the other hand, was approved as a retail center, specifically listed drug store and supermarket among numerous other allowed retail uses, and in fact contains a drug store and supermarket. (See attached TC East and MarketPlace site plans.)

Under the TC West Development Plan, an applicant can request a determination that a proposed use is in compliance with the plan. An applicant proposed a 15,000 square foot drug store in TC West, and the planning department ultimately found that the use, while not included in the TC West approval documents, was "similar in nature" to those listed and found that it complied. However, no permits have been issued for this proposed use to actually be constructed.

The planning department determination was made in September 2009. In June 2005, Syers lodged a written request for notice of any planning department action or requested action concerning TC East and TC West. Although this notice request was received, the planning department did not notify Syers of its decision concerning the drug store application or that a compliance finding was requested.

Syers recently became aware of the project and inquired whether a compliance finding had been made, believing that the proposed use was inconsistent with the TC West approvals. The planning department indicated that the determination was "preliminary" and that he would have an opportunity to object. However, when Syers' representatives met with the planning director on December 10, 2010, they learned that the compliance finding was not preliminary and that the only avenue to object was through an appeal. An appeal was then filed on December 15, 2010, challenging the basis of the compliance finding.

Why the Appeal Should Go Forward: Syers is concerned about its property interests as well as those of the TC East merchants that may be impacted by nearby TC West developments, including installation of a large drug store. As stated, Syers has had a request for notice on file in the planning department regarding decisions such as the one at issue. The planning department acknowledged it received this request, but no notice was provided. Once Syers learned the determination had been made – and was not preliminary – it immediately filed an appeal.

The TC West Development Plan allows for Planning Commission consideration regarding compliance determinations made by the planning department. It does not specify a deadline to request such consideration. As noted, Syers filed the appeal as soon as it was definitively informed that a compliance finding had been made (after earlier being told that there would be an opportunity to object).

No permits have been issued for the project about which the compliance finding was requested, and no other basis exists that would provide vested rights. Approximately 10

MarketPlace merchants have already indicated their support for the appeal to Syers and ask that it be heard.²

Land use decisions which substantially affect the property rights of owners of neighboring parcels may constitute deprivations of property within the context of procedural due process. Notice must occur sufficiently prior to a final decision to permit a meaningful pre-deprivation hearing to affected landowners. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612; *Scott v. City of Indian Wells* (1972) 541, 548-549.) Such notice was not given to anyone despite Syers' clear request.

In summary, there are several compelling reasons to allow the Planning Commission to hear the appeal as it raises legitimate concerns that were timely raised under the circumstances, including a the failure to provide the requested notice so affected parties could voice their concerns. As such, we ask that you allow the appeal to move forward.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

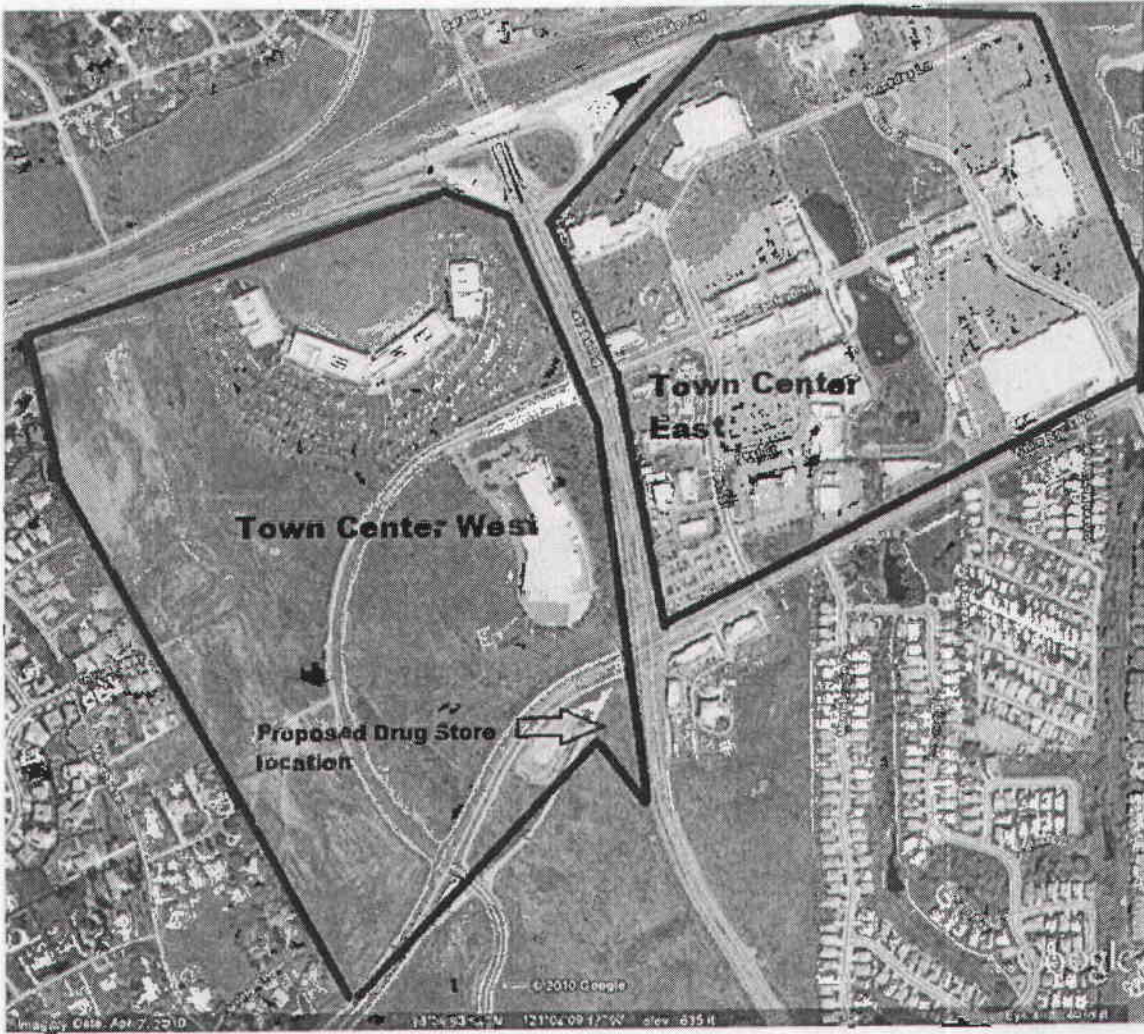
TAW:st
Attachment

cc: Paula Frantz, Esq., Deputy County Counsel
Client

² In addition, Syers has submitted preliminary plans for a 15,000 drug store location (including a drive-thru pharmacy) within MarketPlace, thereby accommodating the proposed project (new CVS drug store) within TC East as envisioned by the development approvals. (See attached preliminary site plans.)

Bullet Points for Supervisors re Appeal

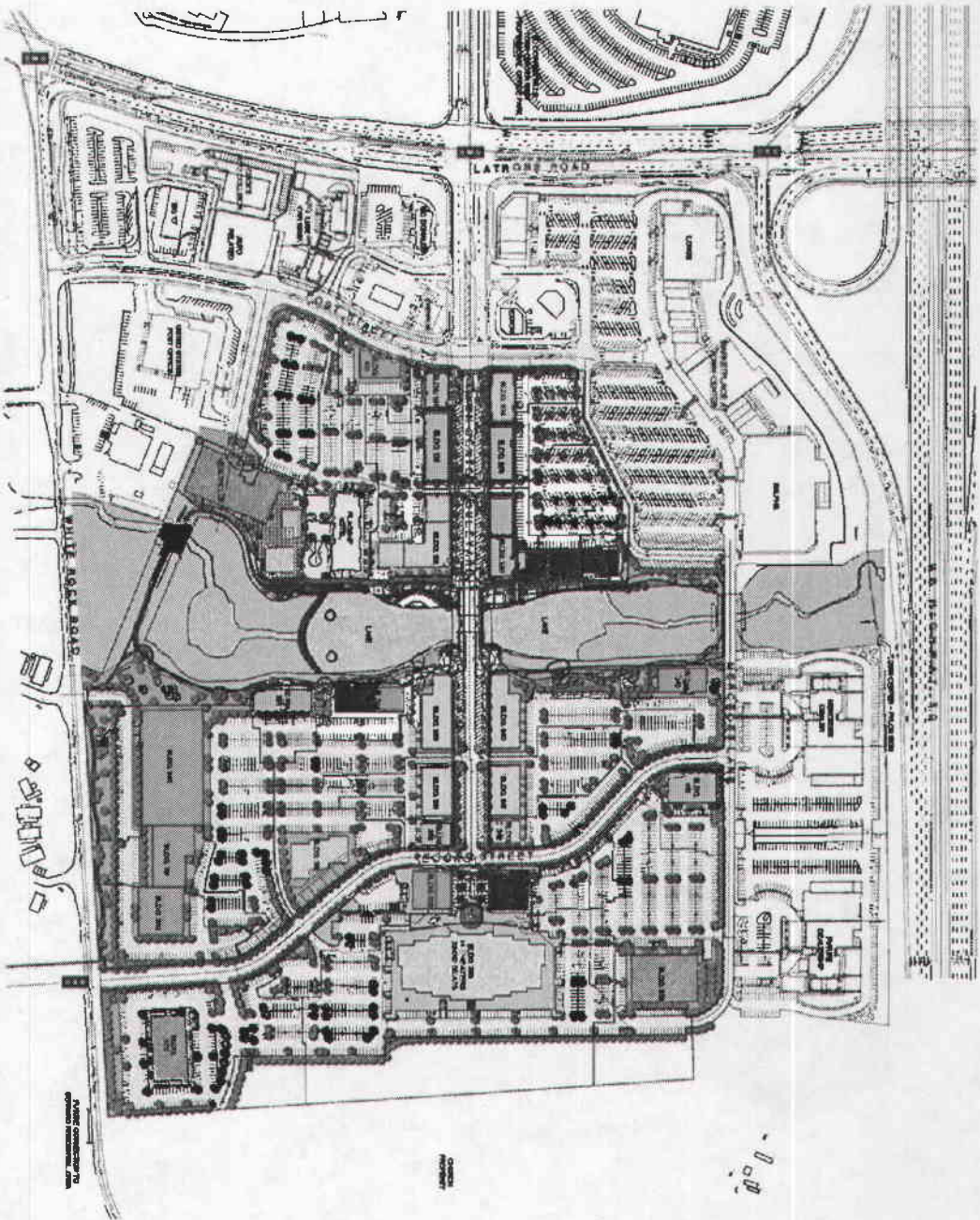
- Owners and tenants in Town Center East ("TC East") invested based on planning documents. Planning documents for Town Center West ("TC West") allow for very limited "support retail services" uses, and do not include anything remotely approaching a 24-hour, drug store with wine and beer sales and a drive-thru pharmacy.
 - TC East (as approved by Board) approved for "general retail and service commercial uses;" specifically included "drug store," "pharmacy" and "market"
 - TC West (as approved by Board) planned and approved as an employment center with ancillary and limited "support retail services" including, "barber shop, boxing/shipping service, copy/printing service, delicatessen, dry cleaner, fast food restaurant, florist, hair salon, hotel, newsstand, office supplies, restaurant, service station, shoe repair and stationers."
 - TC East purposefully includes larger-scale retail. Board's inclusion of large-scale multi-department retail like "drug store" and "market" in TC East - but not TC West - shows an intent that such uses don't belong in TC West.
- Planning staff found that while drug store was not specifically permitted, it was "similar in nature" to uses established for Town Center West. No support for this conclusion as it is contrary to, and inconsistent with what is in TC West and TC East approvals.
- This determination is a major concern to Town Center East owners and businesses and was made without any notice or chance to comment as we requested.
- This is not a landlord-tenant issue. Objection is about drug store being found consistent, not about CVS. We would make the same objection if it were Walgreens, Rite-Aid, etc.
- Syers has tried to stay on top of this and asked for notice, but didn't receive any. Once we found that a compliance finding had been made, we acted as quickly as possible.
 - Standing request for notice in 2005, staff acknowledged it was in the file, but no explanation why it wasn't acted upon;
 - Got differing info this fall when we followed up, i.e. that compliance determination was preliminary and that we'd have an opportunity to object, then told it was final
- Not our intent to delay anyone. No permits issued yet. We just want a chance to voice our concerns that a drug store is not within the type of contemplated uses in TC West.
- We have not threatened litigation, just pointed out what we believe were errors by planning department in making finding of compliance.
- Owners and tenants deserve the opportunity to be heard on this, and have acted responsibly in promptly requesting a hearing once informed a determination was made.



EL DORADO HILLS TOWN CENTER

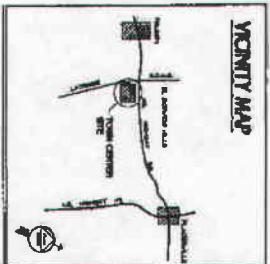
El Dorado Hills, California

CONCEPTUAL SITE PLAN



LEGEND

- RETAIL/RESTAURANT SPACE
- ▨ MIXED USE RETAIL AT FIRST FLOOR
- HOTEL
- ▤ OFFICE / OTHER
- ▥ THEATRE
- ▧ PROSPECTIVE
- ▩ DESTROYING TOWN CENTER DEVELOPMENT
- SIGNAL LIGHT

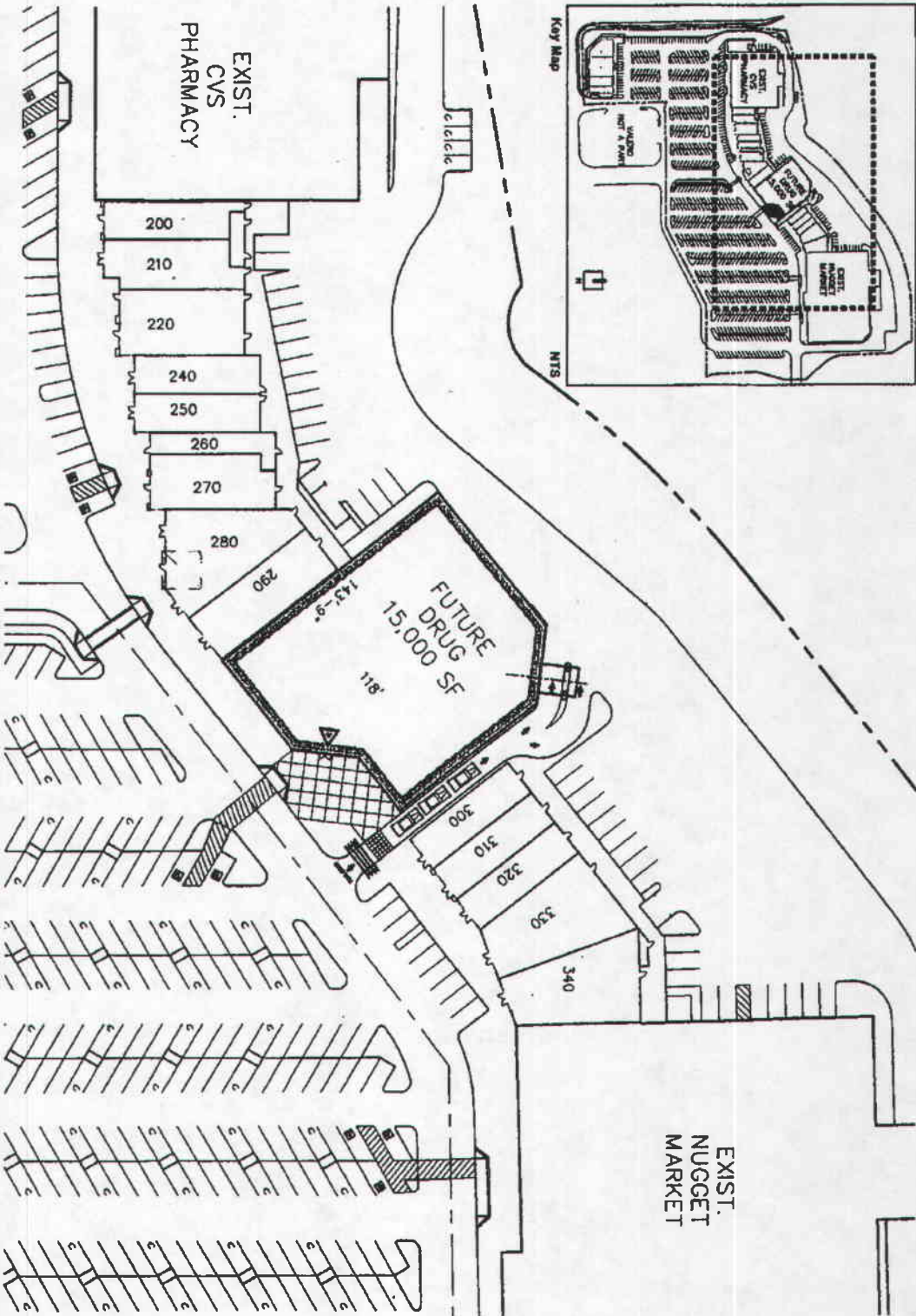
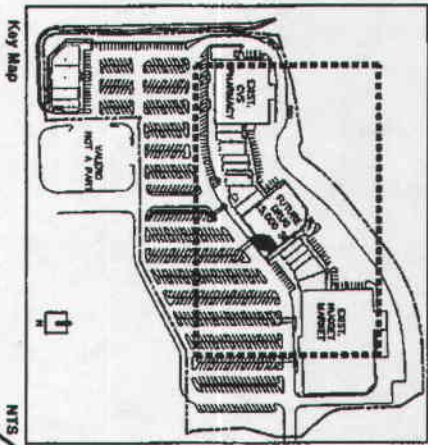


THE INFORMATION CONTAINED HEREIN IS PRESENTED AS A CONCEPTUAL SITE PLAN AND IS NOT TO BE CONSIDERED A FINAL DESIGN. THE INFORMATION IS FOR GENERAL INFORMATION ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSE.



12.085
3 October, 2009





Town Center Marketplace

NEC Lathrop Road and Town Center Boulevard
 El Dorado Hills, California

Scale: 1" = 50'-0"



KAUSCHERBACH MARTELLI BECKER
 ARCHITECTS
 2017 Lathrop Road, Suite 100, El Dorado Hills, CA 95762
 916-938-2222 | www.kauscherbachmartelli.com

Product:
 Town Center Marketplace

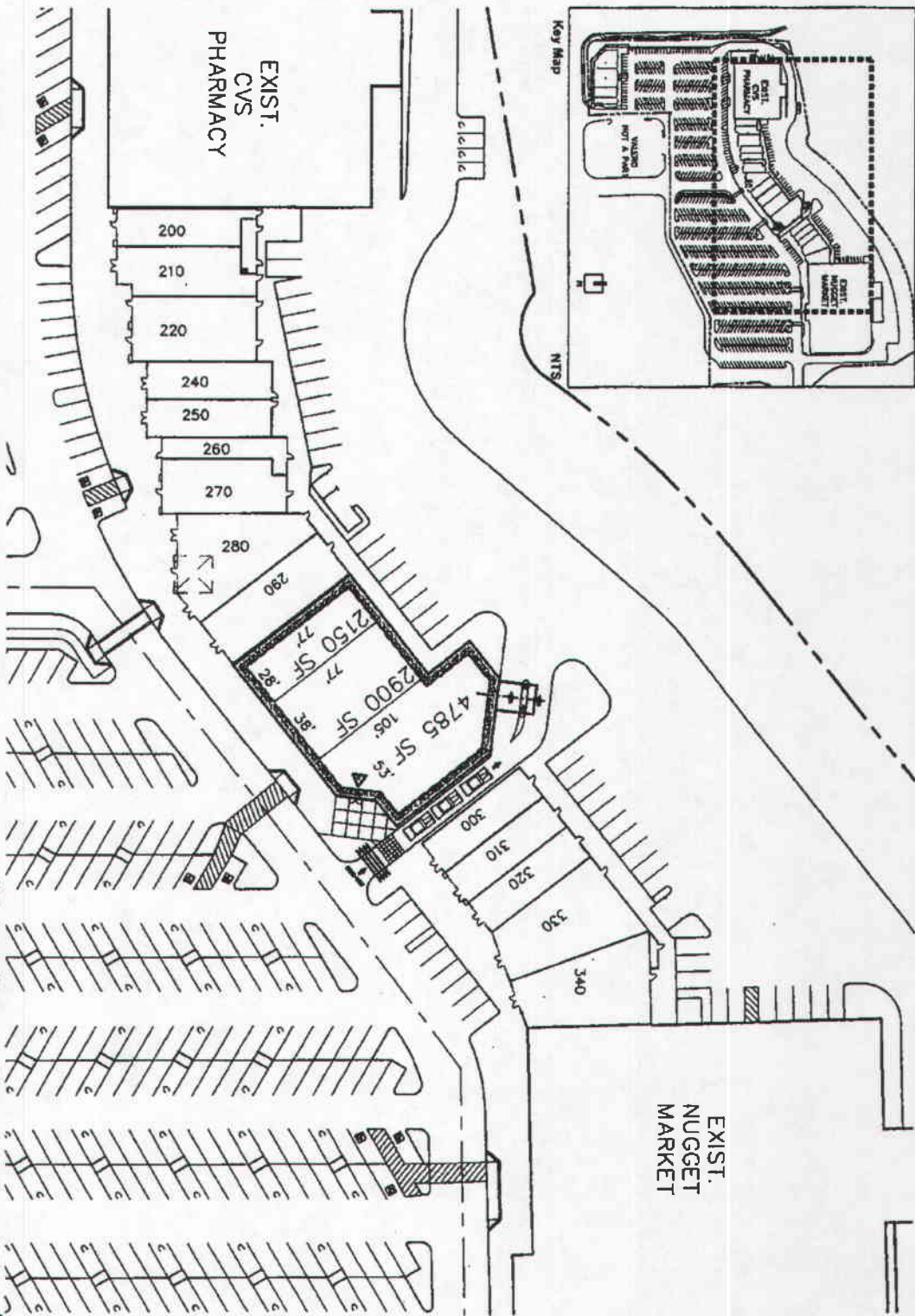
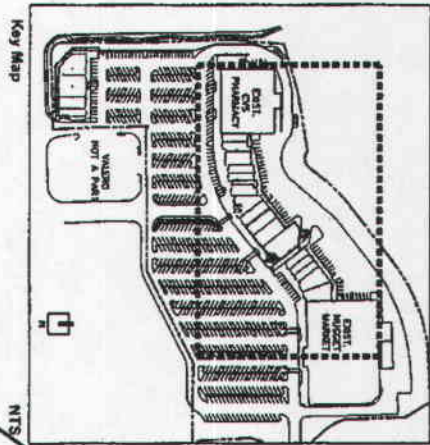
Developer:
 Town Center Marketplace
 120 Village Square Blvd
 Orange, CA 92667

Architect:
 KAUSCHERBACH MARTELLI BECKER
 2017 Lathrop Road, Suite 100
 El Dorado Hills, CA 95762

Site Plan - Option 1

Date: 05/18/11
 Drawn By: JTB/SLB
 Checked By: JTB/SLB
 Scale: AS

SP.01



Town Center Marketplace ■ NEG Lathrobe Road and Town Center Boulevard ■ El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
Town Center Marketplace

Designer:
Town Center Marketplace
120 Village Square Drive
Chico, CA 95926

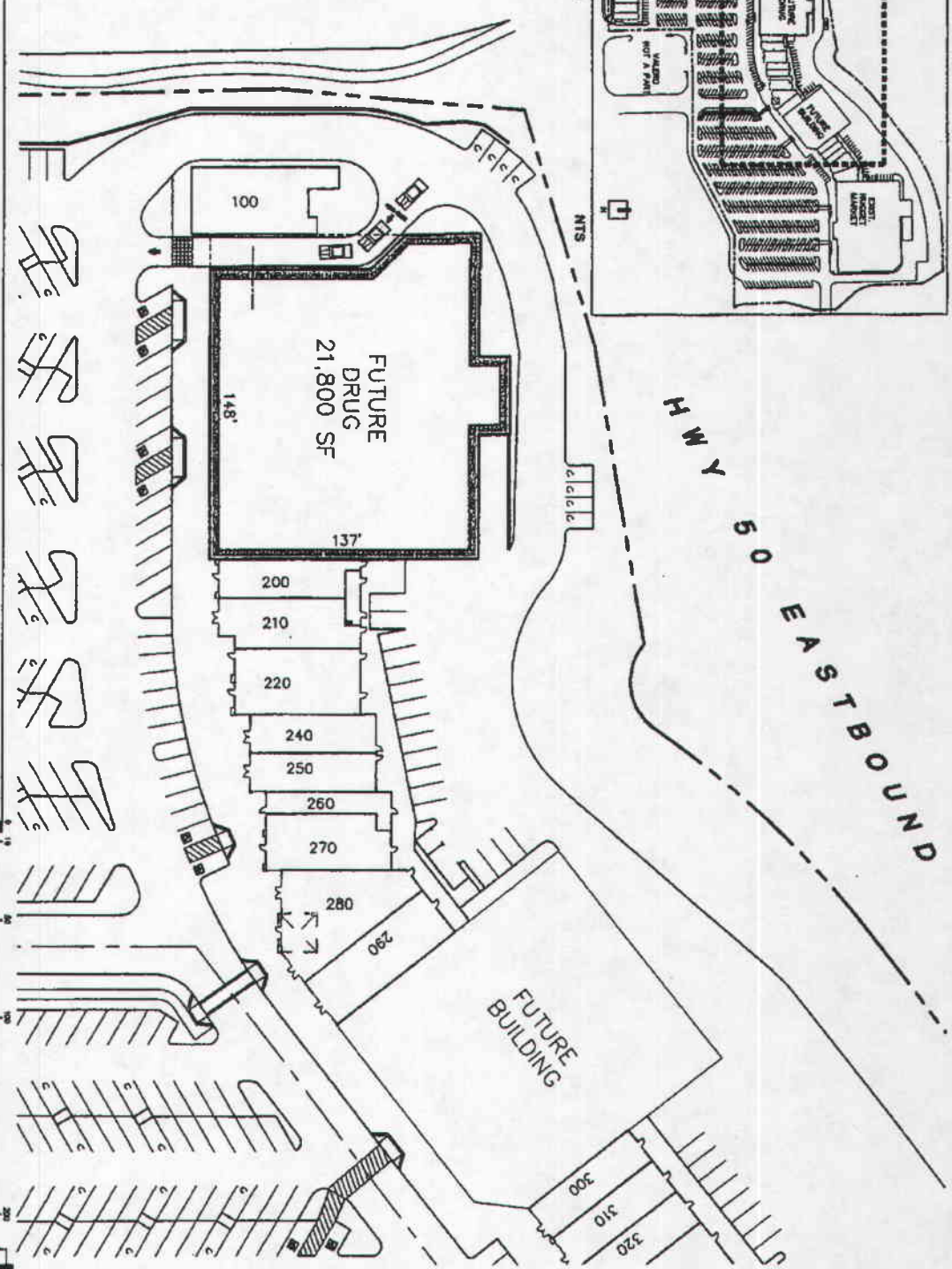
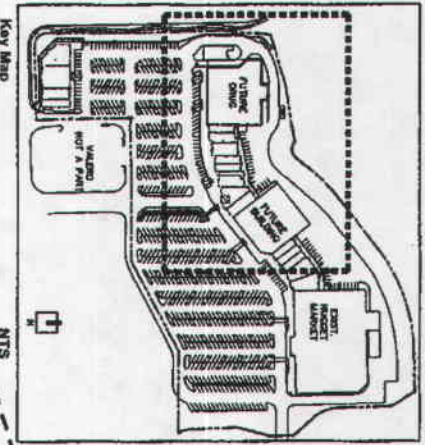
Site Plan - Option 2

Job Number: 100112
Drawn By: TML/MS
Checked By: [Signature]

Date: SP.01

RAUSCHENBACH MANNING & ASSOCIATES
ARCHITECTS

5075 Rockwood Avenue, Suite 100, Sacramento, CA 95820
Tel: (916) 486-1000 Fax: (916) 486-1001



Town Center Marketplace ■ NEC Llaneta Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
Town Center Marketplace

Client:
Town Center Marketplace
120 Village Square Park
El Dorado Hills, California

Architect:
BAUDERHIMMICH MANTHELL BECKER ARCHITECTS

Site Plan - Option 3

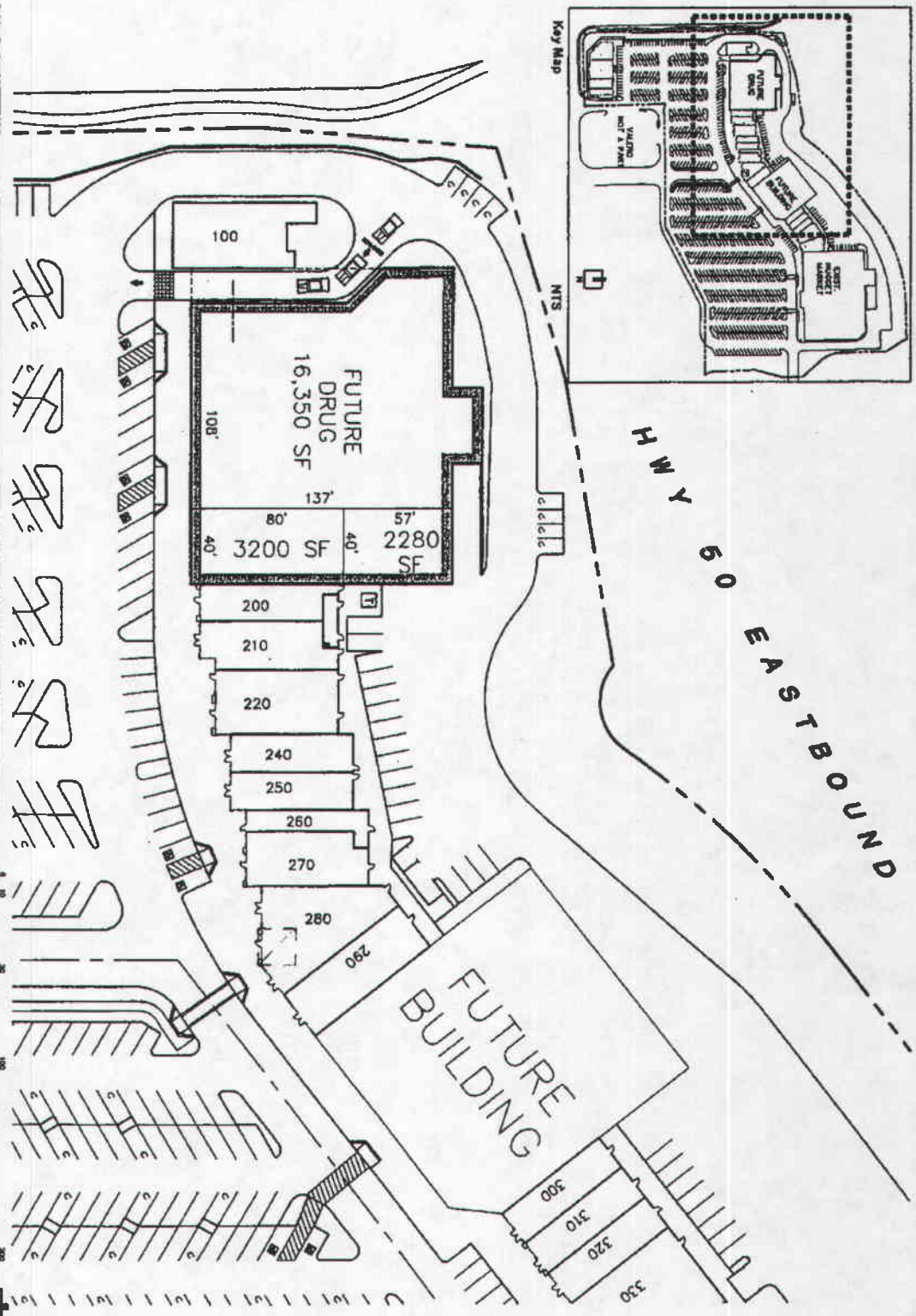
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Date: 05/13/10
Scale: 1" = 50'-0"

SP.01

Town Center Marketplace

NEC Lindero Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Project:
Town Center Marketplace

Developer:
Town Center Marketplace
327 Village Square #100
El Dorado Hills, California

Site Plan - Option 4

Job Number:	AS-107
Drawn By:	SEAN
Checked By:	SK
Date:	02/01/07

SP.01

MAUSCHERBACH MARSHALL ASSOCIATES

10000 Rockwood Drive, Suite 200, El Dorado Hills, CA 95762
Tel: 916.437.1000 Fax: 916.437.1001
www.mauscherbach-marshall.com

PC 1/13/11
#9

Holland & Knight

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December 29, 2010

U.S. Mail
Via E-mail (pierre.rivas@edcgov.us)

Pierre Rivas
Principal Planner
Planning Services
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

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RECEIVED
PLANNING DEPARTMENT

Re: Response to Appeal of County's Determination of Consistency (PA09-0011) with
Town Center West Development Plan (PD95-0002): Proposed CVS Drug Store
(Permit Nos. 197682 & 197684 and Assessor's Parcel No. 117-180-12)

Dear Mr. Rivas:

We represent Armstrong Development Properties, Inc. ("Armstrong"), the developer for the proposed CVS Drug Store located in Planning Area E of the County of El Dorado Town Center West Development Plan ("TCW Development Plan"). Planning Area E is allocated for up to 35,000 square feet of commercial services and retail uses.

As you know, on December 14, 2010, Syers Properties III, LLC ("Syers"), owners of the Market Place at Town Center East, filed an appeal and request for a hearing before the Planning Commission to contest the County's September 28, 2009 decision finding of consistency with the TCW Development Plan in connection with the permit applications (Nos. 197682 and 197684) filed by Armstrong to construct a CVS Drug Store in Town Center West.

According to your December 17, 2010 letter to Josh Eisenhut of Armstrong Development, the Board of Supervisors (the "Board") is scheduled to consider the legal issues surrounding the appeal in closed session on January 4, 2011. This letter explains why the Board should find that the appeal is untimely and should not be heard by the Planning Commission. The letter also addresses other claims raised in the many letters Syers sent the County over the last few months.

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PUBLIC COMMENT
11-0155.G.62

I. The Appeal is Untimely and the County was Not Required to Provide Syers with Notice of the Consistency Determination.

Syers' December 14, 2010 appeal should not be heard by the Planning Commission. According to your December 17, 2010 letter to Josh Eisenhut, County Code Section 17.22.220 provides a ten working day appeal period. The appeal period for the County's September 28, 2009 decision, finding that the proposed CVS Drug Store is consistent with and permitted within the TCW Development Plan, expired on October 12, 2009. On December 14, 2010, over a year later, Syers filed an appeal.

Syers claims that the appeal period did not run due to lack of notice. However, the County did not have to provide Syers with notice of the County's consistency decision. First, Syers' main contention is that they requested to receive notice by letter dated June 3, 2005. However, that letter did not include notice of the County's September 28, 2009 consistency finding. Syers' request to receive notice provides that Syers' counsel would like to:

be added to the mailing list to receive notifications of any public meetings or hearings relating to Town Center West and/or Town Center East *and to receive notifications* of any project documents or documents generated in accordance with the California Environmental Quality Act (i.e., NOPs; scoping meeting notices; availability of negative declarations, DEIRs, FEIRs or exemptions) or any other documents relating to a project within these Centers. (June 3, 2005 letter from Patricia Curtin to Gina Hunter regarding request to receive notice) [emphasis added].

By its own terms, Syers' letter only requested to be included on the mailing list to receive notifications regarding hearings and documents requiring notification. Here, the TCW Development Plan does not require that a consistency determination be noticed to surrounding property owners or the public. (TCW Development Plan at 5).

This five-year old request does not ask for copies of all documents related to the Town Center West project ever generated by the County. Moreover, a request to receive all documents generated related to Town Center West, whether required to be publicly noticed or not, would have been unduly burdensome on the County. The County could not possibly read requests for notice so broadly as to require providing all documentation for any project to any person who asks to receive notifications and such an interpretation would be impossible for the County to manage.

If Syers wanted all copies of all documents placed in the Town Center West file that do not require notice, Syers would have to make Public Records Act requests to obtain copies of County documents then in the possession of the County. The California Public Records Act governs the disclosure of "public records" which include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency. . . ." (Cal. Gov't. Code §6252(e)). However, the public records that are requested

must be in the possession of the County when the Public Records Act request is made. Upon a request for documents that "reasonably describes an *identifiable* record or records," the agency shall determine whether the request "seeks copies of disclosable public records *in the possession of the agency*." (Cal. Gov't Code §6253(b)(c)) [emphasis added]. This is the only available course to obtain all documents related to a project from a public agency. We have no indication that Syers filed a Public Records Act request either before or after the consistency determination.

Second, the County's appeal procedure provides that an appeal must be filed within ten working days *from the approving authority's decision*. (County Code §17.22.220) [emphasis added]. The procedure does not provide that the ten working day period may be tolled until the objecting party receives notice. Moreover, even accepting Syers argument that it had to be noticed, despite its invalidity, according to the letter from Syers' counsel dated December 14, 2010, Syers received notice of the consistency determination sometime during the fall of 2010. Even if the characterization that Syers now attempts to make is that at some point they were informed the determination was "preliminary," Syers' December 1, 2010 letter was far more than 10 days after they became aware of the County's determination.

Third, the County was under no obligation to provide Syers with notice under California law or the County's governing documents. The California Government Code, the County Code, and TCW Development Plan do not require notice or a public hearing for the consistency determination. However, even under the California Government Code and County Code that govern notice for public hearings, Syers would not receive notice. The California Government Code requires notice for subdivision hearings to be mailed or delivered to owners of real property within 300 feet of the real property that is the subject of the hearing. (Cal. Gov't Code §65091(a)(4)). In the context of Planning Commission public hearings regarding subdivisions, the County Code requires notice to surrounding landowners within 500 feet of the property which is the subject of the Planning Commission public hearing. (County Code §16.24.085(A)(1)). The property proposed for the CVS development is at least 1,500 feet from the Syers property. Thus, even when notice to surrounding landowners is required, it does not extend beyond 500 feet to the Syers' property located 1,500 feet away.

Fourth, the TCW Development Plan sets forth a ministerial process for project approvals in Town Center West. For example, the TCW Development Plan specifically states that "[s]ite specific project approvals shall be a *ministerial act* of the Director of Planning." (TCW Development Plan at 6) [emphasis added]. Moreover, the TCW Development Plan explicitly notes that "not all appropriate and viable [land] uses can be 'listed' at any given time" and "additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development." (TCW Development Plan at 3). If the additional use is similar to those established in the TCW Development Plan, the County should allow the additional use. (TCW Development Plan at 5). Thus, the consistency determination is a ministerial decision. Consequently, notice requirements under the California Environmental Quality Act ("CEQA") are not triggered by this ministerial action because CEQA only applies to discretionary actions. (Cal. Code Regs. §15002(i)).

In addition to the lack of obligation to provide Syers with notice, public policy supports the enforcement of statutes of limitations. "Among the purposes of statutes of limitations are to prevent stale claims, give stability to transactions, protect settled expectations, promote diligence, encourage the prompt enforcement of substantive law, and reduce the volume of litigation." (*Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal.4th 481, 499 (2010)). In this situation, when the ten working day statute of limitations period expired, in addition to all of the purposes listed above, it specifically gave stability to the purchase and sale transaction for the subject property and protected CVS' settled expectations to be able to build a CVS Drug Store on the property. Furthermore, a ten working day statute of limitation period for challenging a land use decision is not unusual. The statutes of limitations for challenging land use planning decisions are generally short to "ensure finality and predictability." (*Ibid*).

For all of these reasons, the County was under no obligation to provide Syers with notice and the December 14, 2010 appeal is untimely and should not be heard.

II. The County's Consistency Determination is Appropriate.

Regardless of the procedural issues raised by Syers, the County's September 28, 2009 decision that the proposed CVS Drug Store is consistent with and permitted within the TCW Development Plan is appropriate. The proposed 15,000 square foot CVS Drug Store will include commercial uses such as the sale of newspapers, magazines, office supplies, food, and flowers. These uses are consistent with the TCW Development Plan's allocation for commercial service and retail in Planning Area E. (TCW Development Plan at 5). The commercial service and retail uses (also known as TCW Development Plan "Category C" uses) include, among other uses, office supplies, newsstands, delicatessens, fast food restaurants, and florists. The CVS Drug Store will include similar retail uses as those listed above. Furthermore, the 15,000 square foot store will easily fall within the 35,000 square foot cap on Category C uses in Planning Area E of the TCW Development Plan.

None of the guidelines or standards in the TCW Development Plan preclude a drug store use in the Town Center West development. The fact that drug store uses are specifically permitted in one of the Town Center East Planning areas does not prevent a consistency finding that drug store uses are permitted in Town Center West. The Town Center East Development Plan ("TCE Development Plan") does not reference Town Center West. The TCW Development Plan notes that Town Center East and Town Center West are "two *distinct* yet complimentary components" of Town Center. (TCW Development Plan at 1) [emphasis added]. However, there is no discussion in either the TCW Development Plan or TCE Development Plan regarding allowing certain land uses in one town center and precluding that same land use in the other town center. This is consistent with our understanding that the TCW Development Plan and TCE Development Plan were created separately and were not meant to function as related documents.

The TCW Development Plan also provides that uses stated in the Specific Plan for Town Center West include, *but are not necessarily limited to those listed*. (TCW Development Plan at

2) [emphasis added]. The TCW Development Plan then goes on to discuss uses allowed within the General Commercial (CG) zoning district, which include a wide variety of sales and other uses. (TCW Development Plan at 2). Consequently, the TCW Development Plan is anticipating that General Commercial (CG) uses not expressly listed in the Specific Plan may be allowed in Town Center West. In fact, the County's Zoning Code provides that a ***Drug Store is a use allowed by right*** within the General Commercial (CG) district. (County Code §17.32.180(A)(35)) [emphasis added]. Therefore, as a permitted General Commercial (CG) use, a CVS Drug Store should be allowed in Town Center West.

The TCW Development Plan explicitly acknowledges the need for flexibility in permitted uses. The Town Center is zoned General Commercial (CG) to enable the "Town Center to respond to rapidly re-defining and evolving markets." (TCW Development Plan at 1). Furthermore, the County likely expected the Category C uses in Planning Area E to be read broadly because 35,000 square feet is a large amount of space for newsstands, florists, delicatessens, and the other specific uses described as Category C uses. (TCW Development Plan at 5).

It is important to note that there have been several consistency determinations over the life of the TCW Development Plan and the County has broadly determined uses to be similar in nature. Given this history, and the provisions in the Specific Plan, TCW Development Plan, and County Zoning Code, a CVS Drug Store would easily be consistent with the uses in Category C of the TCW Development Plan.

III. The September 28, 2009 Consistency Decision was a Final Decision.

Syers' counsel indicates that, based on conversations with various County staff members, the consistency decision may or may not be final.

The County's September 28, 2009 consistency decision was a final decision. The September 28, 2009 letter provided affirmation by the County that the CVS Drug Store is similar in nature to other Category C uses established within the TCW Development Plan and that such use is a permitted Category C use. The letter did not state that this determination was subject to further review. Additionally, the County was aware that CVS would be relying on the letter in its decision to purchase the subject property.

Moreover, the TCW Development Plan does not provide a multi-step process for consistency decisions. The TCW Development Plan provides that "[a]dditional uses may be permitted when, by determination of the Director of Planning, such uses are found to be similar in nature to those established in the Town Center West Planned Development." (TCW Development Plan at 5). Consequently, there is no requirement for any further action beyond the County's determination to make the consistency decision final.

IV. Syers' Due Process Claim Lacks Merit.

The notice and hearing requirements of due process "are triggered only by governmental action which results [or will result] in 'significant' or 'substantial' deprivations of property." (*Calvert v. County of Yuba*, 145 Cal.App. 4th 613, 628 (2007), citing *Horn v. County of Ventura*, 24 Cal.3d 605, 616 (1979)). Furthermore, due process claims do not generally apply to local government agencies' ministerial land use actions. (*Id.* at 622-623). Here, regardless of the general rule exempting ministerial actions from due process requirements, the consistency determination does not cause Syers any significant or substantial deprivation of property rights.

Courts have found a significant or substantial deprivation of property rights when there is a potential physical impact on the petitioner's property. (*Calvert*, *supra*, 145 Cal.App. at 627, citing *Horn*, *supra*, 24 Cal.3d at 615). Here, the consistency determination does not cause Syers any significant or substantial deprivation of property rights. Syers has not asserted any potential physical or environmental impacts on its property resulting from the proposed CVS Drug Store.

Syers' arguments essentially claim a unilateral expectation that a drug store use would not be allowed in Town Center West, but this is not enough to trigger a significant or substantial deprivation of property. A significant property interest "requires more than a unilateral expectation" in a benefit. (*Conservatorship of Key v. McDonald*, 134 Cal.App.4th 254, 260 (2005), citing *Shultz v. Regents of University of California*, 160 Cal.App.3d 768, 775 (1984)). The person claiming the property interest subject to constitutional protection must have a "legitimate claim of entitlement to it." (*Ibid.*). Syers' objection to the consistency determination simply appears to be based on a fear of competition, not on any anticipated impacts on Syers' property rights. There is no anti-competition agreement or other restriction - either in the County's codes or plans or any private agreement - on use between Town Center West and Town Center East. Without such agreement or restriction, Syers has no property interest or benefit subject to protection.

In determining whether due process has been satisfied, courts look at three competing interests: (i) the private interest at stake; (ii) the risk of an erroneous deprivation of that interest and the probable value of additional or substitute procedural safeguards; and (iii) the government's interest in the function involved and the fiscal and administrative burden additional procedural requirements would entail. (*Mathews v. Eldridge*, 424 US 319, 335 (1976)). Here, due process has been satisfied because (i) Syers property interest is not at risk of physical damage, (ii) the risk of an erroneous deprivation is low because the proposed use is consistent with the TCW Development Plan, and (iii) the government's interest in providing stability, finality and predictability in the area of land use is great and the fiscal and administrative burden of providing notice and a hearing to landowners outside of 500 feet of a property for every determination made on an unrelated project simply because they ask to be added to the list of notifications would be crippling to the County.

Even if the due process notice requirement was triggered, Syers would not be entitled to notice under the California Government Code because the Syers property is greater than 300 feet from the proposed CVS property. (Cal. Gov't Code §65091(a)(4)).

V. Armstrong Relied on the County's Consistency Determination.

In June 2010, Armstrong applied for a design review permit, a letter of Public Convenience or Necessity for liquor sales, and a building permit for the subject property. In mid-September 2010, CVS purchased the subject property from El Dorado Hills Investors, Ltd./The Mansour Company. As the County anticipated, CVS relied on the September 28, 2009 letter providing the consistency determination when it purchased the subject property with the expectation that it would construct the proposed CVS Drug Store on the property. On September 30, 2010, the County issued a letter to Armstrong indicating that the plan check process had been completed and that the building permit would be issued upon the payment of applicable fees, recordation of a few easements, and completion of seller's work.

The September 28, 2009 letter was a final action and CVS has relied on it in pursuing its planned development of a new retail space in Town Center West. If this untimely appeal is allowed to be heard, it severely harms CVS' investment in El Dorado and sets a problematic precedent for all other development in the County.

Thank you in advance for your consideration of this letter. We respectfully request that the Board find that notice was not required and that the appeal is untimely and should not be heard by the Planning Commission. In the meantime, feel free to contact the undersigned if you have any questions.

Sincerely yours,

HOLLAND & KNIGHT LLP



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cc: Josh Eisenhut, Armstrong Development
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