

**RESOLUTION NO. 73813**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE RESCINDING CITY COUNCIL RESOLUTION NO. 71860 ADOPTED ON DECEMBER 2, 2003 MAKING CERTAIN FINDINGS IN RELATION TO THAT CERTAIN FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE LOWES HOME IMPROVEMENT WAREHOUSE PROJECT, COTTLE ROAD, SOUTH SAN JOSE PLANNED DEVELOPMENT REZONING FILE NO. PDC02-086**

**WHEREAS**, the City Council of the City of San José at a duly noticed public hearing before the City Council on December 2, 2003 did uphold the certification of that certain Final Environmental Impact Report (SCH #2002122091) prepared for the Lowes Home Improvement Warehouse Project, Cottle Road, South San José, Planned Development Rezoning Project (PP File No. PDC02-086) (the “FEIR”); and

**WHEREAS**, on December 2, 2003 at that same duly notice public hearing, the City Council of the City of San José passed for publication of title that certain rezoning ordinance rezoning that certain real property located at the southeast corner of Blossom Hill Road and Cottle Road (5600 Cottle Road) to IP(PD) Planned Development Zoning District, which rezoning ordinance was finally adopted by the City on December 16, 2003 and became effective on January 16, 2004 (the, “Rezoning”); and

**WHEREAS**, in connection with the adoption of that Rezoning, the City Council, pursuant to the provisions of the California Environmental Quality Act of 1970, as amended, together with related state and local guidelines (collectively, “CEQA”), also adopted that certain Resolution No. 71860 making certain findings in connection with the FEIR, adopting a mitigation monitoring and reporting program, and setting forth a statement of overriding considerations in connection with certain significant and unavoidable impacts disclosed and described within the FEIR; and

**WHEREAS**, the Preservation Action Council of San José challenged the adequacy of the FEIR through that certain Petition for Writ of Mandamus filed in the Superior Court of the State of California, County of Santa Clara, Case No. 1-04-CV012829, before the Honorable Leslie Nichols; and

**WHEREAS**, through its order contained in that certain Judgment Granting Petition for Writ of Mandamus, executed on August 11, 2004 and entered on August 18, 2004 (the “Court Order”), the Court ordered City to set aside its certification of the FEIR and approval actions related to the project described within the FEIR; and

**WHEREAS**, the Court Order was subsequently appealed and upheld on appeal and the City now desires to rescind Resolution 71860, as directed and set forth in, and in compliance with, the Court Order.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

The City Council of the City of San José does hereby rescind in its entirety Resolution No. 71860, setting forth pursuant to the provisions of CEQA certain findings related to the FEIR, adopting a mitigation monitoring and reporting program, and setting forth a

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statement of overriding considerations in connection with certain significant and unavoidable impacts disclosed and described within the FEIR.

**ADOPTED** this 5<sup>th</sup> day of June, 2007, by the following vote:

AYES:	CHIRCO, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED
NOES:	CAMPOS
ABSENT:	NONE
DISQUALIFIED:	WILLIAMS
VACANT	DISTRICT 4

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk