

BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: June 19, 2018

Title: P18CA00001 PIMA COUNTY - REPEAL OF SPECIAL AREA POLICY S-35 PLAN AMENDMENT

Introduction/Background:

Pima County entered a Development Agreement in 2006 with developer of a regional shopping center at Ajo Highway and Kinney Road, for developer to contribute to transportation and other infrastructure improvements. The agreement placed the same improvement requirements on any comparable commercial development within a 4-mile radius of the proposed regional center - this was enacted as Comprehensive Plan Special Area Policy S-35, Retail Enhancement Contribution Areas.

Discussion:

Pima County and developer are seeking to annul the 2006 Development Agreement, which would render Special Area Policy S-35 void. Also, S-35 conflicts with economic development and community health goals approved in 2015 Comprehensive Plan update, and has thwarted meaningful commercial development in the region.

Conclusion:

Comprehensive Plan amendment would eliminate Special Area Policy S-35.

Recommendation:

Staff and Planning and Zoning Commission recommend approval of the Comprehensive Plan amendment.

Fiscal Impact:


n/a

Board of Supervisor District:

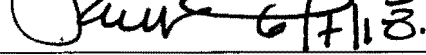
1 2 3 4 5 All

Department: Development Services, Planning Division Telephone: 724-8800

Contact: Mark Holden Telephone: 724-6619

Department Director Signature/Date:  6/5/18


Deputy County Administrator Signature/Date:  6/6/18

County Administrator Signature/Date:  6/7/18



PIMA COUNTY
DEVELOPMENT SERVICES

TO: Honorable Sharon Bronson, Supervisor, District 3
Honorable Richard Elias, Supervisor, District 5

FROM: Chris Poirier, Deputy Director
Public Works-Development Services Department-Planning Division 

DATE: June 1, 2018

SUBJECT: P18CA00001 PIMA COUNTY – REPEAL OF SPECIAL AREA POLICY S-35 PLAN AMENDMENT

The above referenced Comprehensive Plan Amendment is within your district and is scheduled for the Board of Supervisors' **TUESDAY, JUNE 19, 2018** hearing.

REQUEST: Pima County requests to amend the Pima County Comprehensive Plan to repeal Special Area Policy S-35, Retail Enhancement Contribution Areas. The policy covers an area within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road, in the Southwest and Tucson Mountains Planning Areas.

OWNERS: N/A

AGENT: N/A

DISTRICTS: 3 & 5

STAFF CONTACT: Mark Holden

PUBLIC COMMENT TO DATE: As of June 1, 2018, staff has received no comment from county departments or stakeholders.

PLANNING & ZONING COMMISSION RECOMMENDATION: APPROVAL (7-0; Commissioners Cook, Gungle and Matter were absent).

STAFF RECOMMENDATION: APPROVAL.

MAEVEEN MARIE BEHAN CONSERVATION LANDS SYSTEM DESIGNATIONS (MMBCLS):
There are about 2½ square miles of privately-owned MMBCLS-designated lands within the policy area but these are in the immediate vicinity of Pima County's Tucson Mountain Park, and likely to not be affected by repeal of the policy or rezoned for retail development.

TD/MH/ar
Attachments



PIMA COUNTY
DEVELOPMENT SERVICES

BOARD OF SUPERVISORS MEMORANDUM

Subject: P18CA00001

Page 1 of 2

FOR JUNE 19, 2018 MEETING OF THE BOARD OF SUPERVISORS

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Chris Poirier, Deputy Director *Tom Praragusa*
Public Works-Development Services Department-Planning Division

DATE: June 1, 2018

ADVERTISED ITEM FOR PUBLIC HEARING

COMPREHENSIVE PLAN AMENDMENT

P18CA00001 PIMA COUNTY – REPEAL OF SPECIAL AREA POLICY S-35 PLAN AMENDMENT

Request of Pima County to amend the Pima County Comprehensive Plan to repeal Special Area Policy S-35, Retail Enhancement Contribution Areas. The policy covers an area within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road, in the Southwest and Tucson Mountains Planning Areas. On motion, the Planning and Zoning Commission voted 7-0 to recommend **APPROVAL** (Commissioners Cook, Gungle and Matter were absent). Staff recommends **APPROVAL**.
(Districts 3 and 5)

Planning and Zoning Commission Public Hearing Summary (May30, 2018)

Staff presented information from the Comprehensive Plan amendment to repeal Special Area Policy S-35, Retail Enhancement Contribution Areas, to the commission. Staff stated that Pima County and the developer sought to terminate the original November 2006 development agreement, which would render the Special Area Policy void, and that the policy conflicts with economic development and community health policies approved in the 2015 plan update.

A commissioner noted that the commission had discussed Special Area Policy S-35 at a previous hearing in reference to a rezoning case located within the policy area.

A commissioner asked why existing businesses within the Special Area Policy area were not held to the requirements of the policy; staff responded that the policy only affects comparable commercial developments of 40,000 square feet and greater in store area, such as big box stores, of which there were none in the area when the policy was implemented.

No one was present to speak and the commission moved to open and close the public hearing.

Commissioner Bain made a motion to recommend **APPROVAL** of Comprehensive Plan amendment P18CA00001 to repeal Special Area Policy S-35; Commissioner Maese seconded.

Upon a voice vote, the motion to recommend **APPROVAL** passed (7-0; Commissioners Cook, Gungle and Matter were absent).

TD/MH/ar
Attachments

cc: Tom Drzazgowski, Chief Zoning Inspector
P18CA00001 File



2018 PLAN AMENDMENT PROGRAM

PLANNING AND ZONING COMMISSION
STAFF REPORT



| | |
|----------------------|---|
| HEARING DATE | May 30, 2018 |
| CASE | P18CA00001 Pima County – Repeal of Special Area Policy S-35 (Retail Enhancement Contribution Areas) Plan Amendment |
| PLANNING AREA | Southwest and Tucson Mountains |
| DISTRICT | 3 and 5 |
| LOCATION | Area within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road |
| REQUEST | Repeal Special Area Policy S-35 (Retail Enhancement Contribution Areas) for approx. 50-square-mile area |
| OWNERS | n/a |
| APPLICANT | Pima County |

APPLICANT’S STATED REASONS TO AMEND THE COMPREHENSIVE PLAN:

Pima County entered a Development Agreement in November 2006 with the developer of a regional shopping center at the Ajo Highway and Kinney Road intersection, for the developer to provide infrastructure improvements through direct and retail sales enhancement contributions.

The Development Agreement placed the same requirements on any similar proposed competing retail development within a 4-mile radius of the Ajo and Kinney intersection – these requirements were enacted as Special Area Policy S-35.

Pima County and the developer are seeking to terminate the Development Agreement, rendering the Special Area Policy void. Further, the policy conflicts with goals and policies enacted under the 2015 Comprehensive Plan update, *Pima Prospers*.

Staff proposes a Comprehensive Plan amendment to repeal Special Area Policy S-35 – plan amendments may be used to revise Comprehensive Plan goals, elements, or policies.

STAFF REPORT:

Staff recommends **APPROVAL** of the proposed Comprehensive Plan Amendment and adoption of the associated Resolution (attached) to repeal Special Area Policy S-35, Retail Enhancement Contribution Areas.

Special Area Policy S-35 states that for development of retail stores in excess of 40,000 square feet within the policy area, operating constraints and an enhancement contribution as outlined in the 2006 Development Agreement between Pima County and the Ajo and Kinney intersection retail developer shall be required as a condition of rezoning.

Staff recommends repealing Special Area Policy S-35 because:

- Pima County and the developer are seeking to terminate the 2006 Development Agreement, rendering the policy void – the regional shopping center originally planned for the Ajo and Kinney intersection is not built, and infrastructure improvements have occurred in the area in the intervening time
- Policy S-35 is not consistent with other policies enacted under the 2015 Comprehensive Plan update, *Pima Prospers* (e.g. Southwest Focused Development Investment Area regional growth designation, Food Access Element)
- Policy S-35 has effectively thwarted meaningful commercial development in the policy area and has likely contributed to conditions that have impacted community health (food deserts)

Background

The Pima County Board of Supervisors approved and entered into a Development Agreement on November 14, 2006 with Wal-Mart Stores and Donahue Schriber Realty Group regarding a proposed regional shopping center at the W. Ajo Highway and S. Kinney Road intersection. Under the agreement, the developer would advance funds for roadway and drainage improvements at Ajo and Kinney, pay the county an enhancement contribution of 2 percent of retail sales for 25 years for additional improvements in the area, and meet design and site security requirements.

The Development Agreement also requires the county to enforce the retail enhancement contribution and operating constraints on any proposed competing retail development of similar scale (in excess of 40,000 square feet) within a 4-mile radius of the Ajo and Kinney intersection which was enacted as Comprehensive Plan Special Area Policy S-35. The policy area extends to north to Gates Pass Road, east to Mission Road, south to W. Calle Torim, and west to the intersection of W. Bopp and S. San Joaquin Roads, and is about 50 square miles in area.

The Zoning Code permits submittal of non-major plan amendments to make non-major revisions to comprehensive plan goals, elements, or policies, to address oversights, inconsistencies, or land use related inequities in the plan, or to acknowledge significant changes in a particular area since the adoption of the plan or plan updates. Various criteria justify repealing of the Special Area Policy through Comprehensive Plan amendment, below.

Plan Amendment Criteria

Staff has reviewed this plan amendment request to determine if one or more of the following criteria have been adequately met:

1. The plan amendment would promote:
 - a. Implementation of the ***Growing Smarter Acts***, with particular emphasis given to the principles of smart growth, such as: (i) mixed use planning, (ii) compact development, (iii) multi-modal transportation opportunities, (iv) rational infrastructure expansion and improvements, (v) conservation of natural resources, and (vi) the growth area element (where applicable);
 - b. The implementation of other Comprehensive Plan Policies, Special Area Policies, and Rezoning Polices.
 - c. Compatibility with the ***Maeveen Marie Behan Conservation Lands System (MMBCLS)***;
2. Fulfillment of the purpose of the Annual Plan Amendment Program as stated in the Pima County Zoning Code, 18.89.040(B)(2):

The plan amendment program provides opportunities to address oversights, inconsistencies, or land use related inequities in the plan, or to acknowledge significant changes in a particular area since the adoption of the plan or plan updates.

1a. Growing Smarter Acts

The S-35 policy area is encompassed by the Southwest Focused Development Investment Area, a growth area designated in *Pima Prospers*, the 2015 update of the county Comprehensive Plan (see # 2, below).

1b. Comprehensive Plan Policies, Special Area Policies, and Rezoning Policies

Policy S-35 has not supported funding for infrastructure improvements through retail sales enhancement contributions; if anything, as the policy has impeded retail development in the region.

1c. Maeveen Marie Behan Conservation Lands System (MMBCLS)

There are about 2½ square miles of privately-owned MMBCLS-designated lands within the policy area but these are in the immediate vicinity of Pima County's Tucson Mountain Park, and likely to not be affected by repeal of the policy or rezoned for retail development.

2. Oversights, Inconsistencies, or Land Use Related Inequities/Changes

Pima County and the developer are seeking to terminate the original Development Agreement, which would also render the policy void. The planned regional shopping center at Ajo Highway and Kinney Road has not been built, and infrastructure improvements, especially ADOT's recent improvements to Ajo Highway (State Highway 86), have progressed without enhancement contributions.

Arizona statutes require counties to identify growth areas in their comprehensive plans and Pima Prospers designated the southwest region as a Focused Development Investment (growth) Area. While issuance of residential permits in the region has continued apace, Special Area Policy S-35 has hindered large-scale retail development in the southwest region, and conflicts with the plan's growth goals for the region.

The Pima Prospers Food Access Element includes policies to secure availability of healthy food and eliminate food deserts, by identifying and reducing regulatory barriers to healthy food. Much of the southwest region has been identified by the CDC and USDA as a *food desert*, where access to fresh, healthy food is limited due to, among other criteria, distance to grocery stores. There are two grocery stores located at the Valencia and Cardinal intersection (about 3.6 miles southeast of the Ajo and Kinney intersection), but the rest of the region is served by smaller food markets or convenience stores. Staff is aware of large grocery chains who abandoned plans to develop in the region because of the retail enhancement contribution policy, which has left the region with fewer options for accessing healthy food.

AGENCY/DEPARTMENT & PUBLIC COMMENTS:

Staff conducted standard transmittal to county departments and stakeholders and received no comments.

The Resolution for the Comprehensive Plan amendment is attached for Board of Supervisors' hearing, for adoption 31 days after signing.

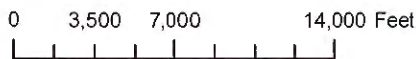
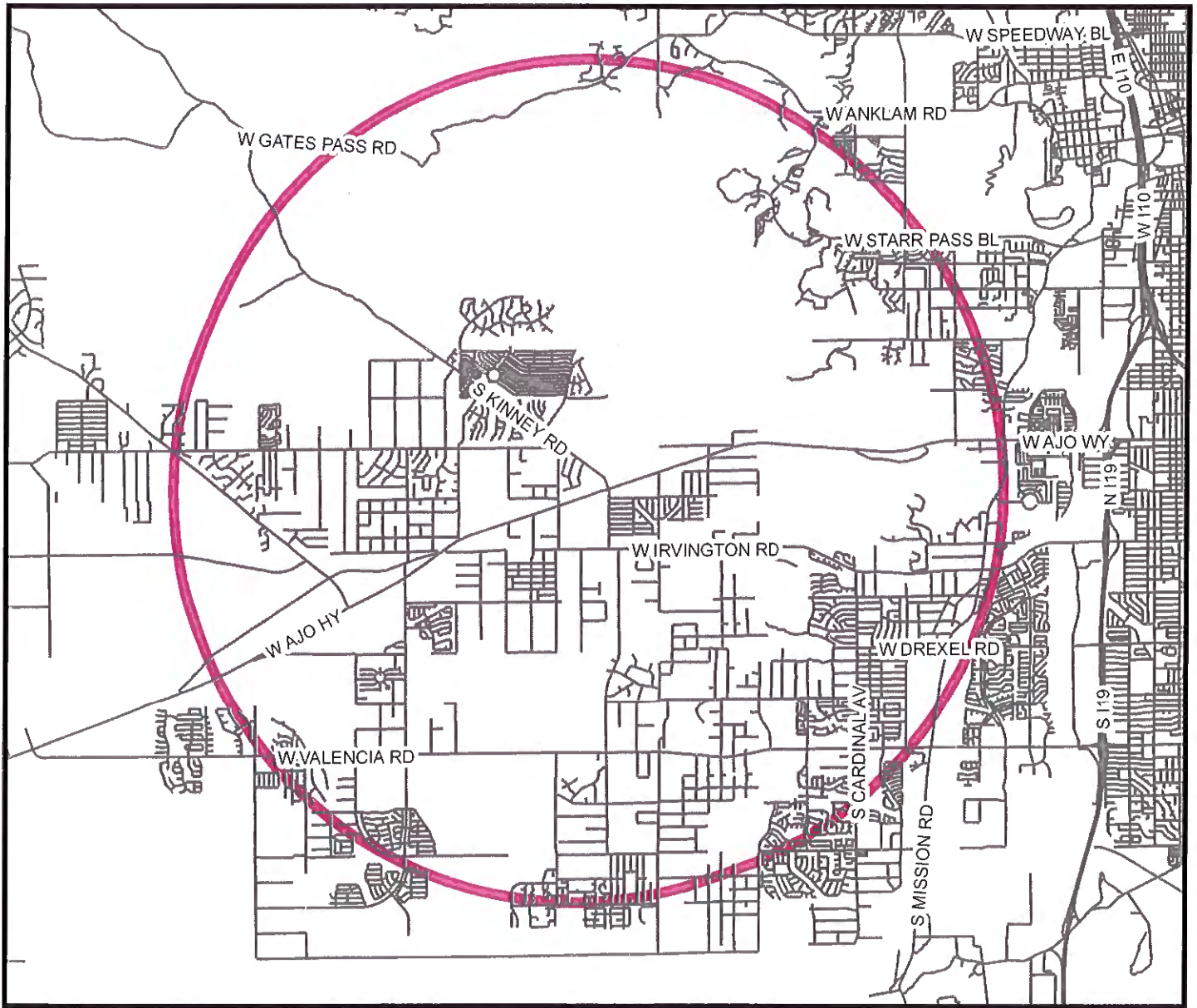
Respectfully submitted,





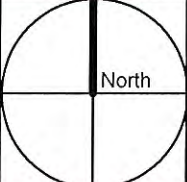
Mark Holden, AICP
Principal Planner

COMPREHENSIVE PLAN AMENDMENT

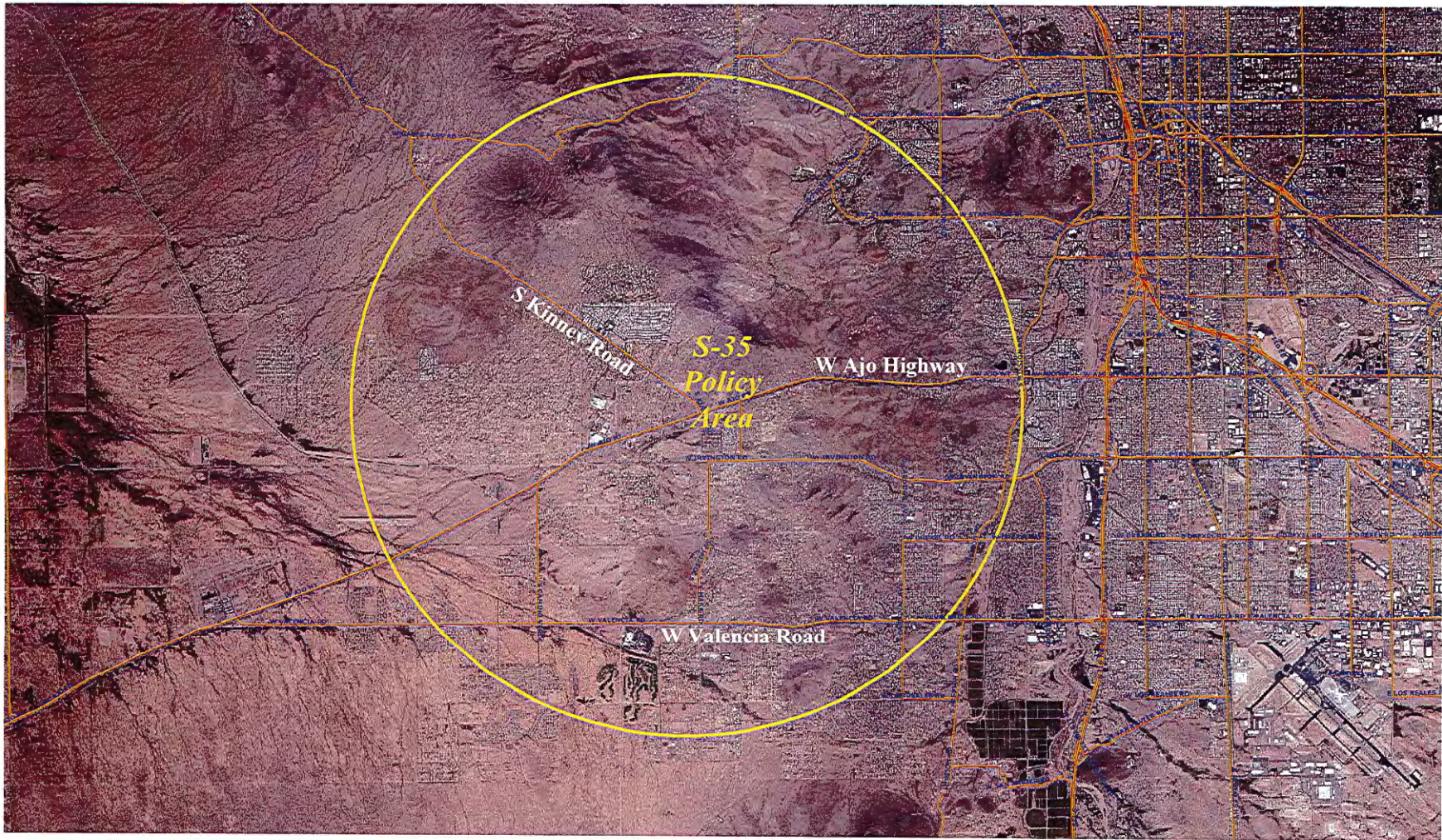
Special Area Policy



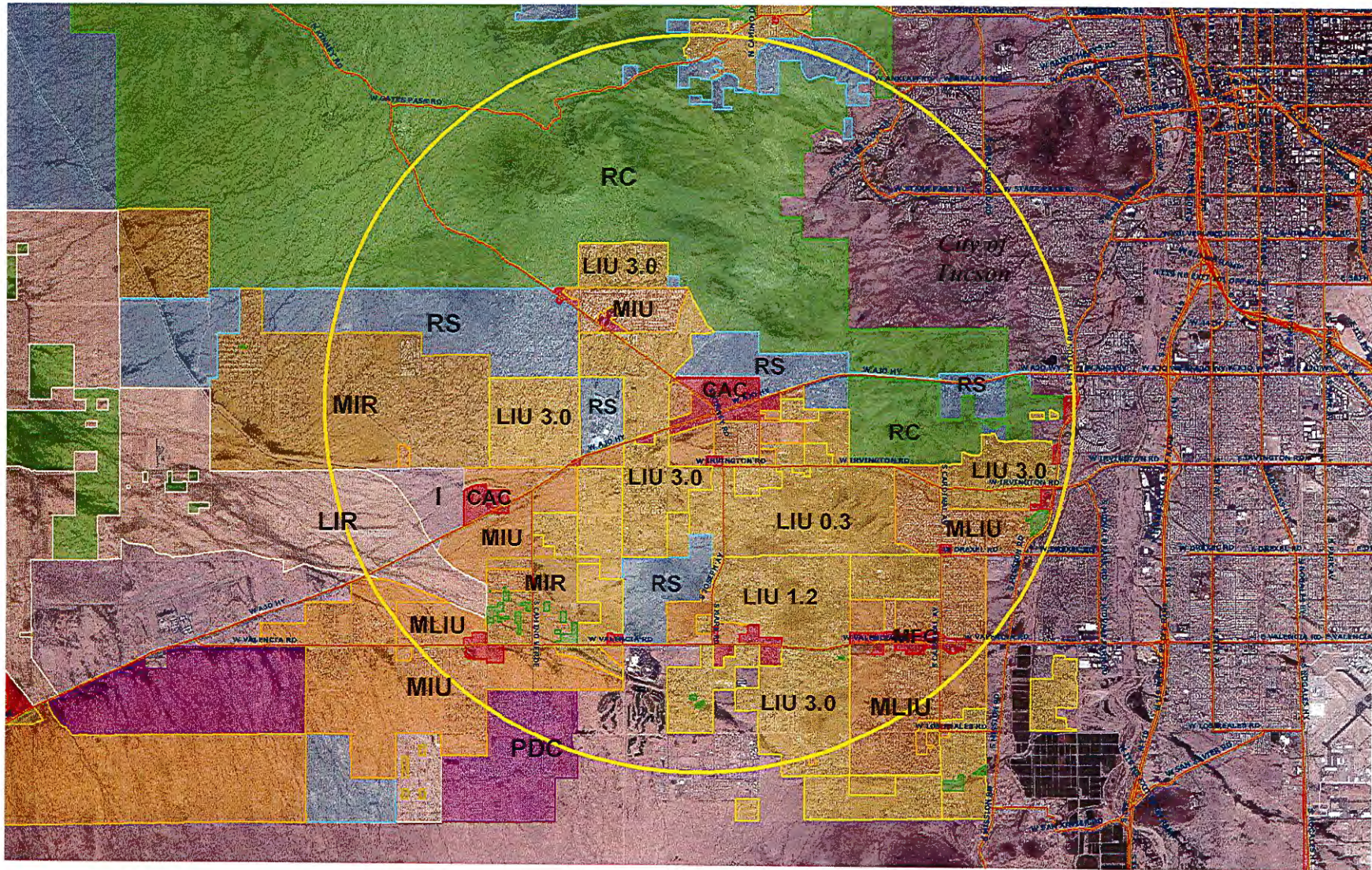
 Special Area Policy S-35

| | | | |
|---|---|----------------------|---|
| Taxcode: Multiple | P18CA00001 PIMA COUNTY - REPEAL OF SPECIAL AREA POLICY S-35 PLAN AMENDMENT | | Districts 3 & 5 Location: Within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road |
| | Special Area Policy S-35 - Retail Enhancement Contribution Area (32,170 acres +/-) | | |
|  | Southwest and Tucson Mountains Planning Areas Multiple Sections | |  |
| | Planning and Zoning Commission Hearing: May 30, 2018 | Map Scale: 1:100,000 | |
| Board of Supervisors Hearing: June 19, 2018 (projected) | Map Date: May 9, 2018 / dms | | |

Aerial Photo



Comprehensive Plan Designations





MEMORANDUM

Date: March 14, 2018

To: Carmine DeBonis, Jr.
Deputy County Administrator
for Public Works

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Carla Blackwell, Director
Development Services

Chris Poirier, Deputy Director
Development Service

Re: **Tucson Mountain Ranch LLC**

I appreciate your March 7, 2018 memorandum regarding Tucson Mountain Ranch LLC – W. Valencia Road Rezoning Special Area Policy S-35 Retail Enhancement.

I would not expect this requirement to be imposed on any future rezoning. The Development Agreement was entered into 12 years ago and there is no sign of any development activity on the property for which the enhancement contribution was designed. Hence, please determine how best to terminate the Development Agreement and to modify any zoning approvals that were given based on the property owner entering into the Development Agreement as authorized by Resolution 2006-305.

CHH/anc

Attachment

c: Andrew Flagg, Chief Civil Deputy County Attorney

MEMORANDUM

DATE: March 7, 2018

TO: Chuck Huckelberry, County Administrator

FROM: Carla Blackwell, Director *CB*
Chris Poirier, Deputy Director/Planning Official *CP*

SUBJECT: P17RZ00011 Tucson Mountain Ranch LLC – W. Valencia Road Rezoning
Special Area Policy S-35 Retail Enhancement Contribution Area

The above-listed rezoning case is located at the northwest corner of the W. Valencia Road and S. Wade Road T-intersection. This case was recommended for approval by the Planning and Zoning Commission at its most recent meeting with one notable exception- to not apply S-35 Retail Enhancement Contribution Area to the site.

The proposal is for a rezoning to the CB-1 (Local Business) zone on a 15.3-acre portion of a parcel for a 129,000 square feet commercial center for grocery, strip retail, restaurant, and event spaces. There is a commercial anchor building planned for 40,000 square feet with an additional 20,000 square feet of retail as demonstrated on the attached preliminary development plan. The developer will build Wade Road north and the flood control channel.



Special area policy S-35 applies to all future commercial rezoning conditions for retail stores in excess of 40,000 square feet within a four-mile radius of the Ajo Highway and Kinney Road intersection. The operating constraints and enhancement contribution as outlined in the "Ajo Highway/Kinney Road Wal-Mart development agreement" (Wal-Mart) shall apply. At the time of this agreement in 2006, there was inadequate infrastructure, mainly transportation, to serve a big box retail store at the major intersection. Since then, the Arizona Department of Transportation is completing the improvements to the Ajo Highway/Kinney Road intersection, Valencia Road has been widened by the RTA and Ajo Way expanded by ADOT. With completion of these

improvements, it appears that sufficient transportation and flood control infrastructure will exist to serve the proposed uses without further need for enhancement contributions.

Comprehensive plan policies address not only physical infrastructure, but human infrastructure such as connectivity to parks and recreation, arts and entertainment, and food access, to name a few. The application of additional development constraints in the area through the implementation of S-35 as a rezoning condition has resulted in a lack of available grocery stores, entertainment areas, created food deserts, and placed constraints on gathering places conflicting with some of the human infrastructure goals and policies of the comprehensive plan.

On February 28, 2018, the rezoning case was heard by the Planning and Zoning Commission. The Commission recommended approval of the rezoning subject to standard and special conditions, without rezoning condition #10 requiring the enhancement contribution. The Commission went on record in strong support of not imposing S-35 to the rezoning and understood the implications thereof.

This case may be coming before the Board of Supervisors in April. This overview is to assist you in advising Board members since the case will have a broader impact on commercial properties in the Southwest region. If approved without the policy condition, it will effectively extinguish those elements of the (Wal-Mart) development agreement per County Obligations 8.1.1. and staff will no longer apply the S-35 policy to future rezonings in the affected area. Please note that adoption of a county sales tax would also nullify the enhancement contribution per 8.2 of the agreement. Attached is the development agreement for reference.

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RESOLUTION NO. 2006 - 305

RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, WAL-MART STORES, INC., AND DONAHUE SCHRIBER REALTY GROUP, L.P.

WHEREAS, Pima County may, pursuant to A.R.S. § 11-1101, enter into development agreements relating to property located in unincorporated Pima County; and

WHEREAS, Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart"); and DONAHUE SCHRIBER REALTY GROUP, L.P, a Delaware limited partnership ("Donahue Schriber") are planning a commercial development on property within unincorporated Pima County and wish to enter into an agreement with the County to deal with matters such as development standards and the funding and construction of various infrastructure improvements; and

WHEREAS, the Board of Supervisors has concluded that the development of the subject property, under the terms set forth in the proposed Development Agreement, will be an economic benefit for the residents of Pima County;

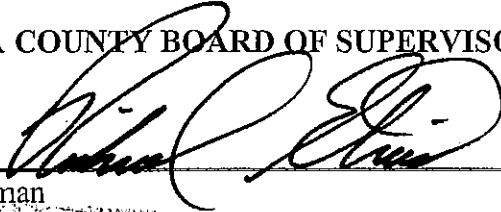
NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:

1. The Development Agreement between Pima County, Wal-Mart, and Donahue Schriber is hereby approved.
2. The Chairman of the Board is hereby authorized and directed to sign the Development Agreement for the Pima County Board of Supervisors.
3. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the development agreement.

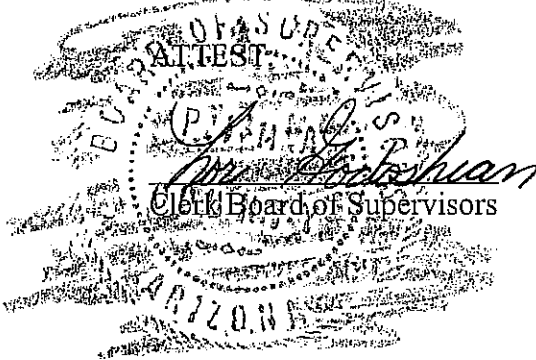
18

PASSED, ADOPTED AND APPROVED this 14th day of November 2006.

PIMA COUNTY BOARD OF SUPERVISORS:

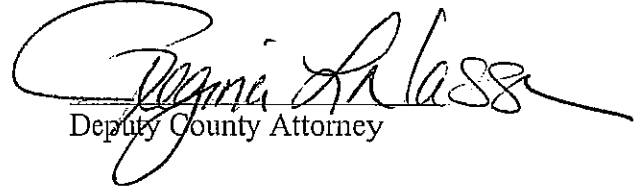


Chairman



Clerk Board of Supervisors

APPROVED AS TO FORM:



Deputy County Attorney

2006 NOV 14 10:00 AM

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: CKB
DEPUTY RECORDER
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PIMA CO CLERK OF THE BOARD
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NO. OF PAGES: 68
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AG 17:30
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AMOUNT PAID \$ 0.00

When recorded, return to:

Lewis and Roca LLP
One South Church Avenue, Suite 700
Tucson, Arizona 85701-1611

For Recorders Use

DEVELOPMENT AGREEMENT

between

PIMA COUNTY, ARIZONA

and

WAL-MART STORES, INC.

and

DONAHUE SCHRIBER REALTY GROUP, L.P.

and

DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION

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RESOLUTION 2018-_____

A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA; RELATING TO PLANNING; AMENDING THE PIMA COUNTY COMPREHENSIVE PLAN SPECIAL AREA POLICIES BY REPEALING SPECIAL AREA POLICY S-35, RETAIL ENHANCEMENT CONTRIBUTION AREAS, FOR PROPOSED NEW COMMERCIAL DEVELOPMENT LOCATED WITHIN A 4-MILE RADIUS OF THE OF THE INTERSECTION OF W. AJO HIGHWAY AND S. KINNEY ROAD, IN THE SOUTHWEST AND TUCSON MOUNTAINS PLANNING AREAS.

IT IS RESOLVED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AS FOLLOWS:

Section 1. The Pima County Comprehensive Plan Special Area Policies are hereby amended to repeal Special Area Policy S-35, Retail Enhancement Contribution Areas, as referenced in P18CA00001 Pima County – Repeal of Special Area Policy S-35 Plan Amendment, for proposed new commercial development located within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road, as shown on the map attached to this Resolution as Exhibit A.

Section 2. The various County officers and employees are authorized and directed to perform all acts necessary to give effect to this Resolution.

Section 3. This Resolution shall become effective 31 days after its adoption.


Passed and adopted, this _____ day of _____, 2018.

Chairman, Pima County Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED:



Executive Secretary
Planning and Zoning Commission

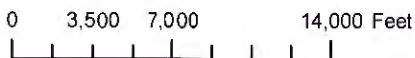
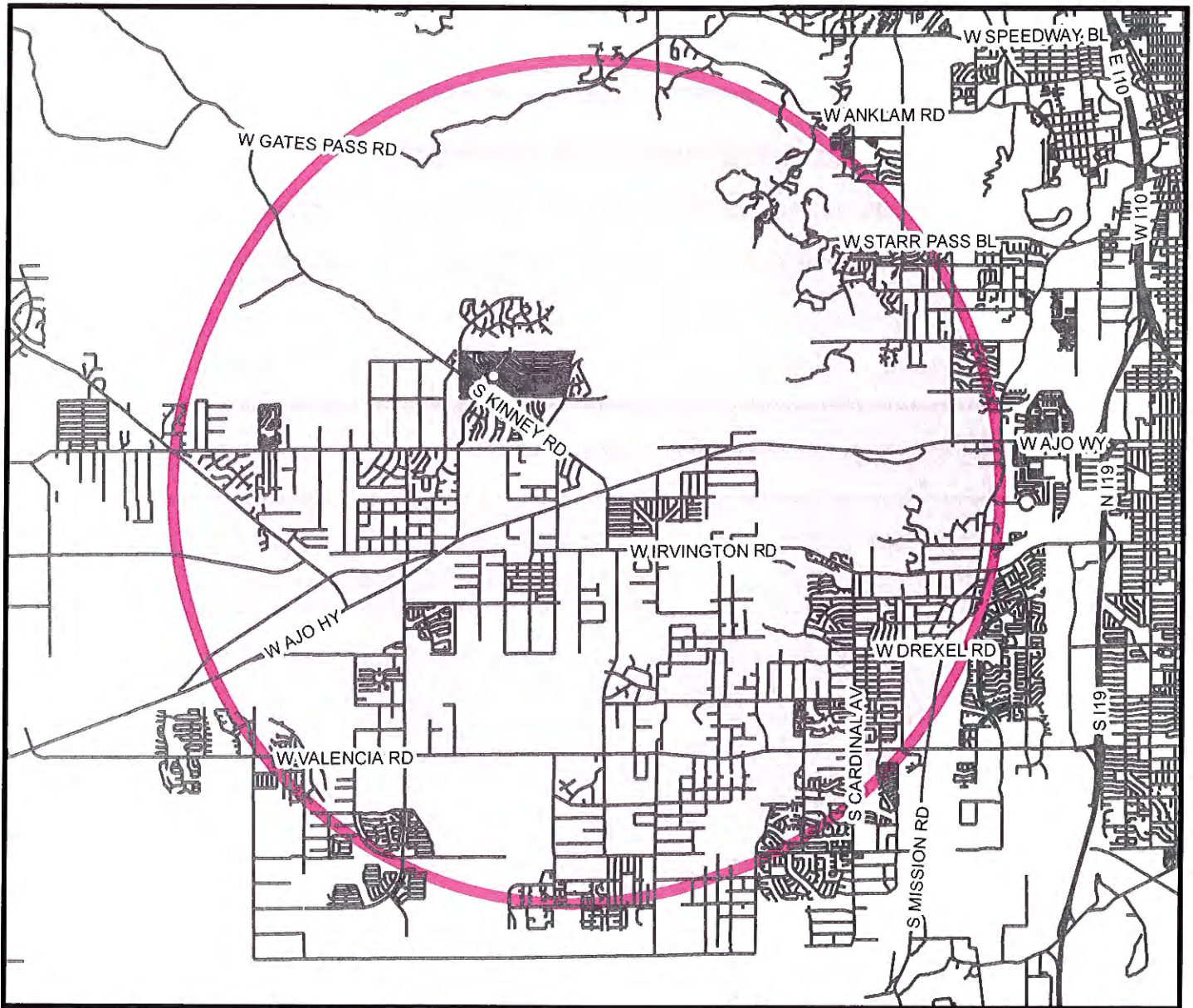
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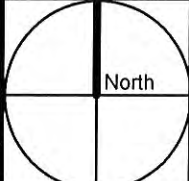
Deputy County Attorney
Lesley M. Lukach

COMPREHENSIVE PLAN AMENDMENT

Special Area Policy Exhibit A



 Special Area Policy S-35 REPEALED

| | | | | |
|---|---|------------------------------|---|--|
| Taxcode: Multiple | P18CA00001 PIMA COUNTY - REPEAL OF SPECIAL AREA POLICY S-35 PLAN AMENDMENT | | Districts 3 & 5 Location: Within a 4-mile radius of the intersection of W. Ajo Highway and S. Kinney Road | |
| | Special Area Policy S-35 - Retail Enhancement Contribution Areas | | | |
|  | Southwest and Tucson Mountains Planning Areas Multiple Sections | |  | |
| | Planning and Zoning Commission Hearing: May 30, 2018 | Map Scale: 1:100,000 | | |
| | Board of Supervisors Hearing: June 19, 2018 (projected) | Map Date: May 24, 2018 / dms | | |