City of Visalia
Agenda Item Transmittal

Meeting Date: June 20, 2011

Agenda Item Number (Assigned by City Clerk): 13

For action by:
_X_ City Council
___ Redev. Agency Bd.
___ Cap. Impr. Corp.
___ VPFA

For placement on which agenda:
___ Work Session
___ Closed Session

Regular Session:
___ Consent Calendar
___ Regular Item
_X_ Public Hearing

Est. Time: 90 min

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Agenda Item Wording:
Appeal of Planning Commission approval of the following actions on April 25, 2011:

Appeal of the Planning Commission's certification and approval of the following actions:

Environmental Impact Report State Clearinghouse Number 20081211133: Certification of the Final Environmental Impact Report (FEIR) for the Proposed Project which is to allow the expansion of the existing Walmart store located at 1819 East Noble Avenue from 133,206 square foot up to 190,000 square feet, with a grocery component, outdoor garden center and ancillary interior service-oriented tenants, including a fast food tenant and sign program. The FEIR was prepared to evaluate the potentially significant environmental impacts of the Proposed Project, and recommend mitigation measures to reduce significant impacts to a less than significant level. The Public Review Period for the Draft Environmental Impact Report began on October 14, 2010, and ended on November 29, 2010 (45 days).

With the exception of temporary Construction Noise, all of the Project's environmental impacts would be mitigated to a less than significant level. Due to the significant and unavoidable Construction Noise impacts, the Council's approval of the Proposed Project would necessitate the adoption of a Statement of Overriding Considerations setting forth the basis for finding that the Project's benefits outweigh the significant and unavoidable Construction Noise impacts, and the adoption of Findings that all other potentially significant environmental impacts are less than significant, or will be reduced to a level that is less than significant with the imposition of enforceable, feasible and effective mitigation measures contained in the FEIR and enforceable through the Mitigation Monitoring and Reporting Program (MMRP) **Resolution No. 2011-23 required.**

Conditional Use Permit No. 2007-17: A request by CEI Engineering Associates to allow the expansion of the existing Walmart store located at 1819 East Noble Avenue from 133,206 square foot up to 190,000 square feet, with a grocery component, outdoor garden center and ancillary interior service-oriented tenants, including a fast food tenant (the "Proposed Project"), as fully described in the Final Environmental Impact Report (SCH 20081211133). The existing 14.55 acre site area would be expanded to a total of 18.35 acres, all of which is currently zoned Commercial /Shopping Office (P-CSO), located at 1819 E. Noble Avenue. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038) **Resolution No. 2011-24 required.**

Variance No. 2007-06: A request by CEI Engineering Associates to allow a sign program for building and monument signage exceeding the standards in Design District "A". The site is zoned Commercial/Shopping Office (P-CSO), located at 1819 E. Noble Avenue. (APN:

100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038). **Resolution No. 2011-25 required.**

Site Size, Zoning, and Location: The existing 14.55 acre site area would be expanded to a total of 18.35 acres, all of which is currently zoned Commercial /Shopping Office (P-CSO), located at 1819 E. Noble Avenue. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038)

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Deadline for Action: Per Visalia Municipal Code Section 17.02.145.B, an appeal before the City Council must be heard within 30 days of the appeal filing date. This appeal was filed on May 5, 2011, the City Council held a public hearing on May 16, 2011, and continued the item to June 6, 2011. On June 6, 2011, the City Council continued the item to June 20, 2011.

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT

The previous recommendation remains to certify the FEIR and approve the conditional use permit and variance. Council directed staff and the environmental consultant to review and respond to the 216 page late correspondence from the appellant M.R. Wolfe and the 22-page late correspondence received by Jim Watt. The Rebuttal Memo in Exhibit A has addressed each comment in detail and determined that there are no new or significant issues raised in any of the correspondence from the May 16, 2011, meeting which would warrant additional study or would trigger recirculation of the EIR. The Rebuttal Memo provides further explanation and clarification of information already contained in the FEIR.

SUMMARY OF REBUTTAL MEMO

On May 16, 2011 two large documents with late comments and attached materials were submitted to the Planning Division. These documents consisted of a lengthy comment letter from the law firm of M. R. Wolfe & Associates (accompanied by technical letters from experts in traffic, noise, and air quality), and a comment letter from Jim Watt (accompanied by a technical letter from an urban economic consultant).

The submitted comment letters and supporting materials raised numerous issues related to the Visalia Walmart Expansion EIR. The comments from M. R. Wolfe & Associates covered a range of subjects, including for example: traffic impacts, and funding and certainty of traffic mitigations; air quality issues such as toxic air contaminants, region-wide emissions, and greenhouse gas emissions; noise issues related to the accuracy of noise measurements and the efficacy of planned noise barriers, and other highly technical analytical questions on noise. The issues raised by Jim Watt included: general plan consistency issues similar to those he has raised previously; and urban decay questions focused on the effect of recent projects such as the proposed Walmart on Mooney Boulevard and the remodeling of the two local Target stores on the EIR urban decay analysis by TNDG.

The team of environmental experts who prepared the Visalia Walmart expansion EIR has crafted detailed responses to each and every question and issue raised. Where highly technical issues are raised, these are addressed in a correspondingly technical level of detail, and are shown to be without foundation. The responses to regulatory and policy questions are responded to with detailed explanations which provide further supporting evidence to reconfirm

the accuracy and completeness of the EIR discussions and analysis with respect to those issues.

In summary, the comments submitted by Messrs.' Wolfe and Watt and their retained consultants on the eve of the May 16, 2011 City Council hearing on their appeal do not demonstrate the existence of a single significant impact or more severe impact that has not been fully and accurately identified in the EIR, and nor do they demonstrate the inability of the mitigation measures identified in the EIR to mitigate the project impacts to the extent feasible.

Likewise, the claimed EIR analytical deficiencies alleged by the commenters and their consultants have all been shown not to exist, in the detailed and good faith responses to both the April 25, 2011 and May 16, 2011 comments.

As such, revision and recirculation of the EIR is not warranted.

RECCOMENDED ACTION

The City Council should take action on Certifying the Final Environmental Impact Report at this time by adoption of Resolution No. 2011-23.

Recommended Motion: I move to deny the appeal and certify Final Environmental Impact Report, SCH No. 20081211133 by adopting Resolution No. 2011-23.

CONDITIONAL USE PERMIT NO. 2007-17 AND VARIANCE NO. 2007-06

There are no recommended changes to the Variance request for a sign program.

Potential Conditions in Response to Testimony Received at the May 16, 2011, City Council Meeting and Subsequent Correspondence:

During the public hearing several nearby residents commented concerning existing and potential disturbances from nuisance effects by deliveries and other associated operational activities near the proposed project site which may not be entirely associated with the loading dock area.

If the City Council determines that special conditions are appropriate, the following conditions may be considered for addition to CUP Resolution No. 2011-24.

1. Limiting Loading Dock Area Activities and Hours

That the hours of operation for all loading dock and independent deliveries, along with bailing and pallet operations, at grade delivery door usage, and the proposed c-trains, limited during the hours of 10 pm to 6 am. The parking of delivery vehicles at or around the dock area or rear of the building which idle for longer than permitted by State law (5 minutes) or would need to operate Trailer Refrigeration Units (TRU's) is also prohibited during these hours.

This would eliminate late night deliveries and potential nuisances associated with delivery and warehousing activities that could generate complaints by nearby residents. Staff's research of a representative sampling of similar Walmart projects in California concluded that new or expanded Walmart stores near residential areas have been approved with a wide range of latitude concerning delivery restrictions. These range from no restrictions (such as Tehachapi and Hesperia), to limiting hours of either or both store operations and deliveries during nighttime hours. (generally between 9 or 10 pm and 6 or 7 am). Such restrictions were included in the approvals in Clovis (2005), Fairfield (2006), Ontario (2007), Galt (2010), and Antioch (2011). Those cities setting limited delivery hours did so to coincide with their standard noise ordinance "quiet hours", or in accordance with the codified "big box retail" development standards that were already in place before their respective Walmart projects were approved.

The City has generally exercised a similar practice in limiting delivery time to between 6:00am to 7:00pm, such as the Home Depot at Demaree and Caldwell. This coincides with the most noise-sensitive hours recognized by the City and reflected as the Community Noise Equivalent Level (CNEL) penalty hours for noise impacts. Modified allowances have been approved in the past for similar projects near residences. Recent examples are summarized as follows:

> The Lowes at Demaree & Rigging backs up to single family residential to the east and is separated by a street and subdivision wall. A noise study prepared for the store imposes a 7 a.m. to 10 p.m. limitation - the same delivery hour restrictions that currently apply to the Home Depot.
>
> In April 2008 the City Council heard an appeal of a Planning Commission's action on CUP No. 2008-05 which limited the hours of operation for loading to 7am to 10 pm. The applicant was requesting 24-hour delivery allowances. The City Council upheld the Planning Commission action limiting the hours for deliveries. The project was not constructed primarily for reasons other than the delivery hour restrictions.

Applying this condition to the CUP approval would address and reduce the potential nuisance effects resulting from loading dock and delivery operations, and represents a restriction that is are over and above the existing conditions and mitigation measures that were determined to be adequate as part of the Planning Commission's approval of the FEIR, CUP, and Variance.

<u>This condition is not supported by the applicant</u>.

Applicant's Proposed Conditions: The applicant does not support the condition limiting the hours of operation for the loading dock, and has offered the following conditions to address the issues raised at the May 16, 2011, public hearing.

A. *That no fork-lift or pallet jackers shall be used outside the store between 10:00 pm and 6:00am, along the south and east sides of the site.*
B. *That there shall be no deliveries with Trailer Refrigeration Units (TRU's) or open flatbed trailers between 10:00 pm and 6:00am. (Regular non-TRU truck deliveries which can seal to the dock will be ok for night time hours).*
C. *That the southern trash compactor is prohibited from operation between 10:00 pm and 6:00am, the compactor on the north end of the docks can remain in use.*
D. *That moving of bales and pallets to the bale and pallet storage area between 10:00 pm and 6:00am is prohibited.*
E. *That no loading or unloading of the c-trains or storage trailers shall occur between the hours of 10pm and 6am.*
F. *That landscape maintenance and parking lot sweeping shall not occur between 10:00 pm and 6:00am.*

These conditions reflect a more narrowly defined set of objectives and times than would be restricted than the similar condition proposed by staff.

Staff recommends that the following condition be added to the CUP Resolution No. 2011-24.

2. Enhanced Perimeter Landscaping

That the tree specimens in the landscape area between the 6-foot high perimeter walls and the 14-15-foot high sound walls shall be of sufficient size (between 12 to 15 feet high at the time of

planting) to provide an immediate partial visual screening of the sound walls from the east and the west.

This condition would provide taller initial tree screening between these walls and provide a more visually positive view from the adjacent properties. This would allow the trees to reach a sufficient visual screening size quicker than the standards 15 gallon tree sizes, which are the standard landscaping requirement for trees.

The applicant concurs with this condition.

3. Sound Wall Connection at the Southeast Corner

That the 14 and 15-foot high walls shall abut one another at the southeast corner of the site excepting for an opening, not to exceed a height of seven feet, to accommodate a security and service access gate.

At the southeast corner of the site where the 14 and 15-foot high walls should meet, there is a gap which has an access gate. While the gate should be installed, the gap in the walls may provide an opportunity for undesirable noise to occur on adjacent properties. This condition would leave the gate and cause the gap in the walls over the gate to be closed.

The applicant concurs with this condition.

DISCRETIONARY APPROVAL PROCEDURE AND ALTERNATIVES

Prior Planning Commission Votes: On April 25, 2011, the Planning Commission held a public hearing on this Project and voted 3-2 (Segrue, Soltesz and Lane Yes, Salinas and Peck No) to certify the Final Environmental Impact Report SCH No. 20081211133, including the Statement of Overriding Considerations and uphold the approval of Conditional Use Permit No. 2007-17 and Variance No. 2007-06.

The Planning Commission considered all of the appellant's issues in their consideration of this project, and based upon the staff and environmental consultants' input on the project and environmental issues raised both before and during the April 25, 2011 hearing, concluded that the Final EIR had adequately addressed the environmental issues, and that the project as presented in the conditional use permit and variance was consistent with the General Plan and Zoning Ordinance. The Planning Commission certified the FEIR with no additional conditions or mitigation measures.

Prohibition on Filing New Conditional Use Permit and Variance Applications

Per Zoning Code Section 17.38.050., following the denial of a conditional use permit application or the revocation of a conditional use permit, no application for a conditional use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit unless such denial was a denial without prejudice by the Planning Commission or City Council.

Furthermore, per Zoning Code Section 17.42.140., following the denial of a variance or exception application or the revocation of a variance or exception, no application for the same or substantially the same site shall be filed within one year of the date of denial of the variance or exception application or revocation of the variance or exception.

Prior Council/Board Actions: On May 16, 2011, the City Council conducted a public hearing on this item, took testimony and closed the public testimony for this project. Staff requested a continuance to June 6, 2011, to allow time for the environmental consultant to review and respond to Late Correspondence which included a 216 page document received in the City Planning offices in the afternoon on May 16, 2011, from MR Wolf and Associates, and a document from Mr. James Watt.

Alternatives: The City Council may:

1. Deny the appeal and approve as is, upholding the Planning Commission actions. **(This alternative would uphold the Planning Commission actions without any changes or added conditions to the project approval)**
2. Deny the appeal and approve the actions with the addition of one or more conditions as determined by Council, upholding the Planning Commission actions. **(This alternative would add some or all of the potential added conditions discussed in this report)**
3. Approve the appeal overturning the decision of the Planning Commission, denying the Final Environmental Impact Report, SCH No. 20081211133, Conditional Use Permit No. 2007-17, and Variance No. 2007-06.

Recommended Motion: I move to deny the appeal and certify Final Environmental Impact Report, SCH No. 20081211133 by adopting Resolution No. 2011-23, and approve Conditional Use Permit No. 2007-17 by adopting Resolution No. 2011-24, and approve Variance No. 2007-06 by adopting Resolution No. 2011-25. ***(Project approval without added conditions)***

Alternative Motion 1: I move to deny the appeal and certify Final Environmental Impact Report, SCH No. 20081211133 by adopting Resolution No. 2011-23, and approve Conditional Use Permit No. 2007-17 by adopting Resolution No. 2011-24 with added condition(s), and approve Variance No. 2007-06 by adopting Resolution No. 2011-25. ***(Project approval with added conditions as determined by Council)***

Alternative Motion 2: I move to overturn the decision of the Planning Commission and deny the Final Environmental Impact Report, Conditional Use Permit No. 2007-17, and Variance No. 2007-06.

Attachments:

- Revised Resolutions upholding the Planning Commission certification of FEIR SCH No. 20081211133, and approval of Conditional Use Permit No. 2007-17 and Variance No. 2007-06
- Exhibit "A" – EIR Consultants Rebuttal Memo to the Appeal Letter and related correspondence from the May 16, 2011, City Council meeting
- Exhibit B - Late Correspondence received after the May 16, 2011, City Council meeting

Environmental Assessment Status

CEQA Review: An Environmental Impact Report (EIR) has been prepared for use with this project, consistent with the California Environmental Quality Act (CEQA). The City of Visalia acted as the lead agency on the environmental document. The Final EIR SCH No. 20081211133 was certified by the Planning Commission on April 25, 2011.

NEPA Review: None Required

Tracking Information: (*Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this City Council Transmittal (without Attachment – Exhibit - C) have been provided to:

Planning Commission
Appellant
Applicant

Response to May 16, 2011 Comments From M. R. Wolfe & Associates and Jim Watt and their retained consultants

INTRODUCTION

In his letter, Mr. Wolfe states that "*We have received a lengthy staff report that* purports *to provide additional information and evidence prepared by the EIR preparer. It is important to note that this information and evidence does not appear in the EIR itself. (Wolfe letter, p. 1).*

The need for the Rebuttal Memo prepared after the April 25, 2011 Planning Commission hearing approving the Walmart Project was necessitated solely due to the late submittals by both Mr. Wolfe and Watt. Both individuals submitted late comments at the April 25, 2011 Planning Commission hearing. The Rebuttal Memo was posted on the City's website Friday, May 13, 2011, three days prior to the May 16, 2011 Council Hearing on Mr. Wolfe and Watt's appeal.

The material contained in the Rebuttal Memo to the late correspondence from Wolfe and Watt on the day of the April 25th Planning Commission hearing does not constitute significant new information and does not deprive the concerned residents of meaningful public review or the opportunity to comment on additional project impacts or feasible mitigation measures or alternatives that are not adopted. As a response to questions posed in the late correspondence, the Rebuttal Memo provides further explanation and clarification of information already contained in the FEIR.

Mr. Wolfe's claim to have had inadequate time to respond to the Rebuttal Memo is curious. On May 16, 2011, he submitted a 218-page comment letter attaching various consultants' reports, largely challenging the EIR's conclusions. Mr. Watt submitted his own 22-page letter at the May 16th hearing. It would appear that these comments had been in preparation for some time, and that the content of the comments was not dependent upon the Rebuttal Memo. Mr. Wolfe does not appear to have experienced any prejudice in his ability to thoroughly comment upon the Final EIR and the May 13th Rebuttal Memo to his April 25, 2011 comments.

It is worth noting that Mr. Wolfe's 218-page comments were not responding to any "new information" in the May 13th Staff Report and Rebuttal Memo. Instead, among other things, Mr. Wolfe's letter sets forth various disagreements with the EIR's underlying analysis and adopted thresholds regularly used throughout the Central Valley when evaluating air quality. His two noise consultants challenge the methodology and conclusions used by Illingworth & Rodkin, the preparers of the EIR's Noise Assessment. Traffic comments reiterated much of what has been alleged before, with additional detail provided by Mr. Wolfe's retained traffic consultant. These comments could easily have been submitted much earlier than May 16th. Given that the material submitted by Mr. Wolfe was clearly prepared well in advance of both hearings, the commenter's actions in waiting until the last minute to submit these materials are not well-taken.

The City has worked diligently with its EIR consultant to respond to the additional comments Mr. Wolfe and Mr. Watt raised on May 16th. The City of Visalia disagrees with the commenter's characterization of the FEIR responses and to the writer's DEIR

comments and reaffirms that the FEIR provided thorough and complete responses to all comments received during the 45-day review period. The City has strived to provide all information in a timely and complete manner with the intent that all potential impacts are appropriately evaluated and presented for meaningful public review and comment, and to provide all of the potential impacts and benefits of the proposed Project to the decision makers. All requested information that was reasonably related to the analysis and potentially significant environmental impacts have been presented in a good faith effort at full CEQA compliance.

While the large volume of technical information should have been provided to the City during the appropriate 45-day comment period for the Draft EIR, the City of Visalia has endeavored to respond in good faith and has prepared responses to each of the issues raised in the comments which follow in order to provide final clarity on these issues for purposes of producing a complete administrative record.

As demonstrated in the detailed responses below, none of the commentary contained in the late correspondence results in any changes regarding the EIR conclusions on the significance or severity of project impacts. Mr. Wolfe/Watt late comments evidence nothing more than a standard disagreement between their retained consultants and the experts retained by the City—the EIR consultant retained by the City and his subconsultants. CEQA is clear that disagreements between experts do not invalidate an EIR's conclusions.

The information provided in response to comments regarding the EIR's analysis of Air Quality, Noise, Traffic or Urban Decay is an attempt to respond accordingly to the late comments received from the commenter after the end of the 45-day comment period had expired. None of the changes or additions as a result of the provided comments or responses meets the standards for recirculation as provided under the State CEQA Guidelines or applicable case law. The information does not show any new, substantial environmental impacts; a substantial increase in the severity of any impacts; and does not provide any new mitigation or alternatives that are feasible in order to lessen a potentially significant impact in the EIR. The environmental document provides a reasoned, balanced, and thorough evaluation of the physical impacts pertaining to the proposed Project in order to allow meaningful public review and provide the opportunity for the respective agencies to make informed decisions.

Finally, the material contained in the Rebuttal Memos need not be included in the EIR. Responses to last minute comments on an EIR may be addressed through Findings of Fact, Staff Reports and supplementary memos to Staff such as the two Rebuttal Memos required to address the lengthy technical comments withheld until the eve of two public hearings on this Project.

The particular comments to which the EIR consultant responds are summarized below in italics, followed by a response. In many cases, specific comments from lengthy passages are summarized. Shorter comments are repeated verbatim, again in italics.

I. AIR QUALITY COMMENTS/RESPONSES

A. Responses to May 16, 2011 Mark Wolfe Air Quality Comments

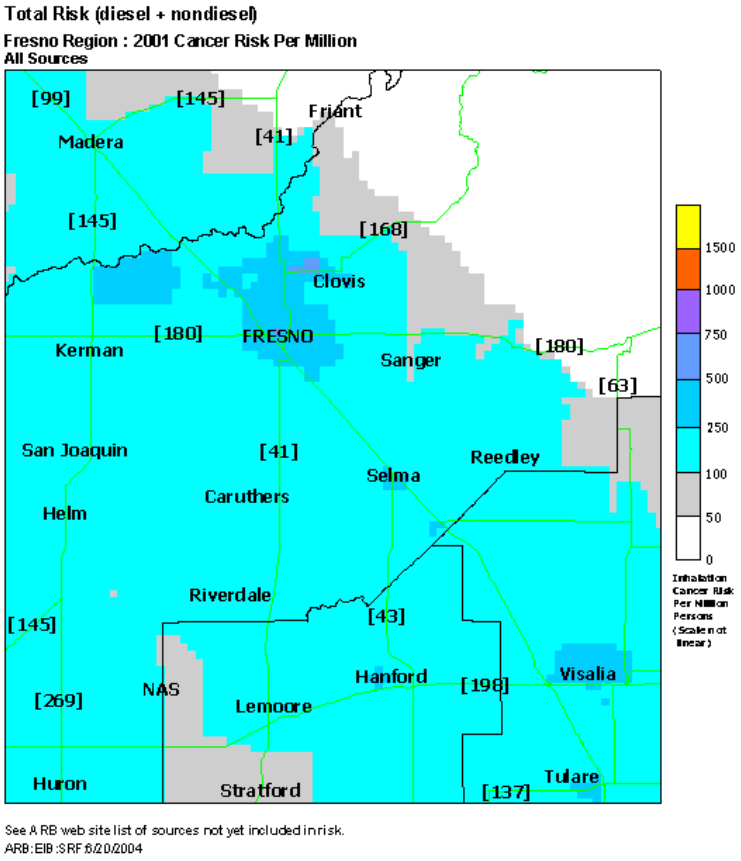
The City received lengthy comments from Wolfe Associates on the significance threshold CEQA requires an EIR to utilize when evaluating a Project's impacts related to Toxic Air Contaminants ("TACs"). This is a complex topic that can benefit from background discussion and clarification.

Background. Toxic Air Contaminants (TAC) assessments require the most technically demanding analysis of any air quality impact required for development projects. The analysis requires dispersion modeling and health risk assessment (HRA) to provide an estimate of a project's potential impact. The purpose of the analysis is to estimate the increase in cancer risk caused by a project.

The risk from TACs is reported as the total risk from exposure to all TACs. The risk estimates vary from well over 1,000 excess cancer cases in a million in parts of the Bay Area and Los Angeles Basin to values between 100 and 500 in San Joaquin Valley cities. The southern part of Visalia including the project is shown as having a risk between 100 to 250 in a million.

Mr. Wolfe's comments note that "existing TACs in the area are at a level that causes about 100 excess cancers per one million population." The risk values described in the EIR's air quality report in the EIR and referred to by Mr. Wolfe are from generalized risk mapping prepared by the Air Resources Board. He deems this to be a "high level of existing TACs, yet as noted above, 100 per million is one of the lowest in the entire State.

The Air Resources Board's mapping identifies the "area" to which Mr. Wolfe is referring in his comments. The maps display risk for broad areas of communities throughout the state. The map reflects anticipated reductions in risk with the implementation of the ARB's Diesel Risk Reduction Program. This data is not intended to show conditions related to specific sources of TACs, but shows the success in reducing this impact over the previous decade.



Source of the Significance Threshold. The significance threshold recommended by the San Joaquin Valley Air Pollution Control District (Air District) and used in the DEIR for TACs is an increase in cancer risk of 10 in a million. This is based on the Air District's Risk Management Policy for permitting stationary sources of TACs. The Air District Governing Board first adopted this threshold and others for land use projects in 1995 in the Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI). The threshold was confirmed when revisions to the GAMAQI were adopted in 2002.

The TAC threshold of 10/million is a project level threshold that measures the impact of emissions from a project on the nearest sensitive receptor (i.e. house, school, hospital, etc.). This threshold has been widely accepted and used exclusively by Lead Agencies throughout the San Joaquin Valley since its adoption by the Air District.

The GAMAQI discusses the need to consider the impact of sources near to the project site that would cause a cumulative impact to the sensitive receptors impacted by the project. However, the GAMAQI did not provide a cumulative threshold amount for an increase in risk. The Air District recommends a qualitative approach to identify sites that may have a disparate impact due to multiple large sources nearby, but did not recommend quantitative analysis of multiple sources for comparison to the risk threshold.

The task of compiling data to determine the exposure levels throughout the region with any accuracy has not been accomplished. The San Joaquin Valley is very large and diverse. Its communities each have a unique set of sources, development patterns and

meteorological conditions that make setting a cumulative threshold difficult. These conditions have led the Air District to defer setting a quantitative cumulative threshold.

It is important to note that the state's most populous air district, the South Coast Air Quality Management District, has also not adopted a quantitative cumulative toxic threshold. The South Coast Air Quality Management has focused on identifying the most impacted areas in their air basin and adopting controls to reduce emissions in the most impacted areas and throughout the basin from all sources of toxic emissions.

One large air district, the Bay Area Air Quality Management District, has adopted a cumulative toxic threshold of significance, and that threshold only became effective June 11, 2011. The Bay Area threshold is the combined risk from sources within 1,000 feet of project site of 100 in a million. Before settling on this threshold, the BAAQMD went through a multiple year process with many public meetings and workshops to develop their threshold. The BAAQMD developed screening tables to allow projects to screen out of additional analysis.

Although the BAAQMD approach could be repeated with substantial effort in other air basins, the 100 in a million threshold has not gone through the required analysis process and public review needed to support its use in the City of Visalia.

1. **Comment Air A.1: An Adequate Cumulative Impact Cumulative Impact Analysis Required use of San Francisco Bay Area Thresholds of Significance and the Quantification of all sources of existing TACs, not just those originating from the Project Site as required by the San Joaquin Valley Air Pollution Control District.**

Response Air A.1

Mr. Wolfe disagrees with the EIR's analysis and conclusions regarding cumulative impacts related to Toxic Air Contaminant (TAC) exposure. Mr. Wolfe contends the EIR is flawed because its TAC analysis adheres to the guidelines and thresholds of significance adopted by the controlling San Joaquin Valley Air Pollution Control District (SJVAPCD) to evaluate cancer risk increase resulting from Project-related TACs. Instead, Mr. Wolfe claims that the EIR should have ignored guidance from the controlling Air District and look to what is done in San Francisco, where the Air District apparently has adopted a different threshold for assessing TAC exposure risks in the urbanized Bay Area.

Like the South Coast Air Pollution Control Management District, the BAAQMD's guidelines recommend community-wide assessments of TAC exposure and adoption of Community Risk Reduction Plans to provide a context for determining reduction goals and to provide a framework for CEQA significance findings. The BAAQMD's recently updated CEQA Guidelines also include a project level threshold of 10 in a million and a cumulative threshold of 100 in a million.

Adopted largely to address environmental justice concerns and measure TAC exposure of residents living near proposed diesel emitting industrial projects, busy ports or 8-lane urban area freeways, the cumulative thresholds of significance have no bearing upon the

Project, nor are they relevant to the conditions in the San Joaquin Valley. Mr. Wolfe's comments evidence a misunderstanding of the roles played by the State's 35 different Air Pollution Control Districts in their different jurisdictions to enforce the federal Clean Air Act and regulate certain air emissions such as the TACs at issue here.

Mr. Wolfe's specific claims are as summarized below in *italics*, followed by the non-italicized responses of the EIR's Air Quality Analyst, David Mitchell, of Michael Brandman Associates:

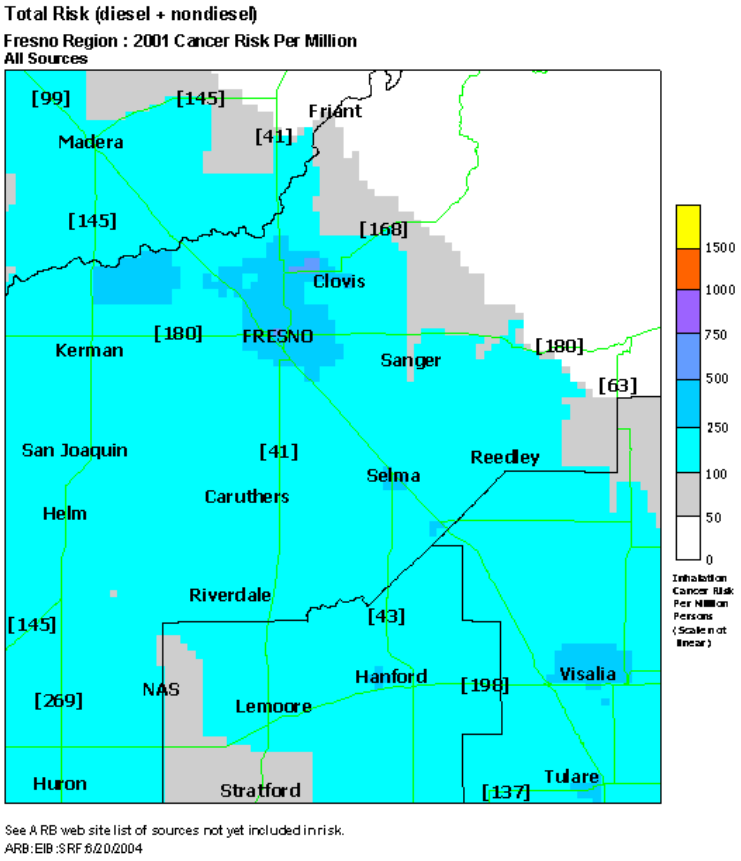
a. Comment Air A.1a: Existing TACs in the area are at a level that causes about 100 excess cancers per one million population. These existing TACs are caused by diesel vehicles in the vicinity, including delivery trucks and customer vehicles already serving the Project site, vehicles attracted to the neighboring commercial site, and vehicles on SR 198, directly north of the project site.

Response Air A.1.a:

The commenter's reference to "100 excess cancers" refers to the risk from TACs, which is reported as the total risk from exposure to all TACs. The risk from TACs is reported as the total risk from exposure to all TACs. The risk estimates vary from well over 1,000 in a million in parts of the Bay Area and Los Angeles Basin to values between 100 and 500 in San Joaquin Valley cities. The southern part of Visalia including the project is shown as having a risk between 100 to 250 in a million.

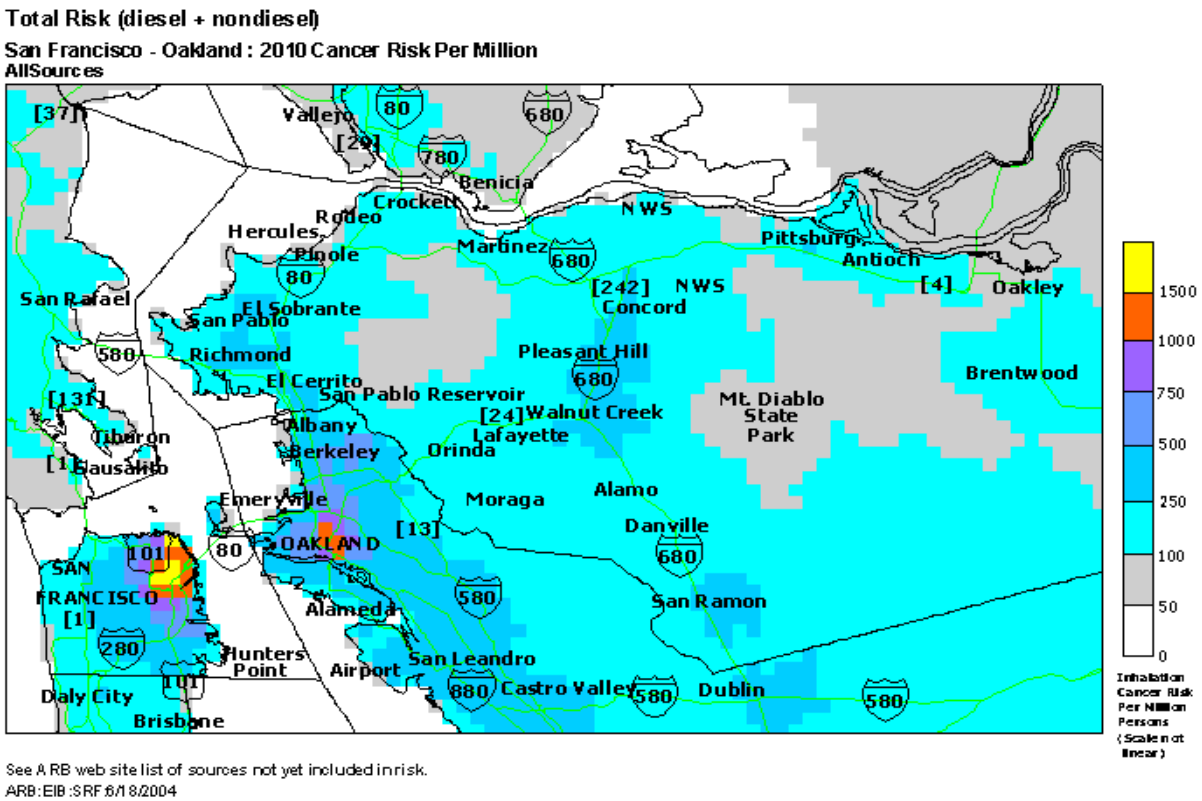
The levels experienced in Visalia are similar to other San Joaquin Valley cities as displayed on the map provided above, but *much lower* than experienced by larger urban areas such as Los Angeles and San Francisco. The mapping discussed earlier does not represent exposure at any particular location from cumulative sources. The information cited is not an appropriate data source for cumulative analysis since it has little or no relation to actual risk experienced by sensitive receptors due to their location near to the project.

The 100/million TAC risk value described in the air quality assessment in the EIR and referred to by Mr. Wolfe comes from generalized risk mapping prepared by the Air Resources Board. The maps display risk for broad areas of communities throughout the state. The map reflects anticipated reductions in risk with the implementation of the ARB's Diesel Risk Reduction Program.



The Air Board's mapping is not intended to show conditions related to specific sources of TACs, but shows the success in reducing this impact over the previous decade. Nor does it represent exposure at any particular location from cumulative sources. Note that the developed areas of the region have risks ranging from 100 to over 1,500 in a million. It is apparent that the BAAQMD did not consider background levels of cancer risk in their cumulative methodology.

As discussed in the DEIR and in detail below, there are no other sources nearby the site that would make a substantial contribution to the increase in cancer risk of sensitive receptors near the project compared to baseline. In addition, an existing background risk of about 100 in a million in the vicinity of the project site is low in comparison to the California average and major urban areas. For example, the population weighted cancer risk in the South Coast Air Basin is 853 in a million. The project makes a small increase in risk in an area with already low risk. This is in a context of declining risk due to state and air district toxic regulations.



2. **<u>Comment Air A.2: The EIR failed to conduct the cumulative TAC emissions impact analysis required by CEQA.</u>**

   a. *<u>Comment Air A.2.a</u>: Despite the high level of existing TACs, the EIR simply refused to consider the cumulative effects of the Project's TACs taken together with the <u>existing</u> TAC emissions in the area.*

<u>Response Air A.2.a:</u>

CEQA does not require the cumulative TAC risk analysis the commenter suggests. As required by CEQA, the EIR evaluated the impacts of the proposed project and the related cumulative impacts when past, present and future related projects are considered. A significant cumulative impact was not found to exist, and thus an analysis of whether the Project's contribution is "cumulative considerable" was not required.

The commenter's "cumulative TAC analysis" is based upon two faulty assumptions. First, the comment suggests that the "existing" or "baseline" condition upon which the entire EIR analysis is based should also be incorporated into the cumulative impact

analysis. This reasoning fails to recognize that impacts must be measured against the factual conditions on the ground as they exist prior to the addition of a proposed project. This fundamental concept is clearly stated in CEQA Guidelines Section 15126.2, which states that the impact of a proposed project is to be based on an assessment of "changes in existing physical conditions as they exist at the time the notice of preparation is published..."

Moreover, the analysis suggested by the commenter would result in double accounting since the existing impact levels would be counted as part of the baseline condition and also as part of the cumulative conditions. The scope of the cumulative impact analysis is clearly circumscribed in CEQA Guidelines Section 15130(a) (1) which states that "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects creating related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR." (Emphasis added.) Therefore, the commenter's claims that the cumulative impact analysis should encompass existing conditions and include effects that are not related to the project appear incorrect.

The second assumption from the comment is that the two-step analysis of cumulative impacts is required in each and every situation. In general, the two step analysis includes a first step of identifying a significant cumulative impact, which is followed by a second step to determine whether the project share of that significant cumulative impact is cumulatively considerable. However, the second step in the cumulative analysis is not required if the first step determines that the cumulative impact is not significant. Thus, a project would be unlikely to make a considerable contribution to a significant cumulative impact if the cumulative impact itself is less than significant.

As the EIR explains (DEIR, p. 258; Final EIR Responses E-18 through E-20) and as discussed below, there are no other projects in the vicinity of the proposed Walmart expansion project that would potentially contribute to the project's emissions of TACs. Since the project emissions are therefore the only source of cumulative TACs, the increased cancer risk associated with the project alone is the same as the increased cancer risk under cumulative project conditions.

Since the Air District has not established a specific threshold for cumulative TACs, the DEIR conservatively assumed the Air District's project-specific threshold of an increase of 10 cancer cases in a million to also serve as the cumulative impact threshold for TACs. Since the increased cancer cases associated with the project are calculated to be 3.8 in a million, well below the 10 in a million threshold, the project impact is less than significant. Since the cumulative increment is the same as the project increment, the cumulative TAC impact is also less than significant. Since the cumulative impact is less than significant, there is no requirement to determine whether the project contribution to the non-significant cumulative impact is considerable.

b. Comment Air A.2.b: The EIR should have used Bay Area standards [in effect since June 11, 2011] to assess "the significance of total TAC emissions in the Project vicinity," specifically " the Bay Area Air Quality Management District employs a threshold of 100 incremental cancers in one million as the basis of cumulative impact analysis. The USEPA also

recommends a risk level of 100 excess cancers in one million for community-level risk assessments for hazardous air pollutants."

Response Air A.2.b:

The BAAQMD provided a cumulative threshold approach in their latest CEQA Guidelines document. The BAAQMD recommends analyzing sources within 1,000 feet of a project site when performing a cumulative analysis for toxics. However, the BAAQMD approach does not consider background levels that range from risks of over 100 to over 1,500 per million in the Bay Area. Indeed, the BAAQMD threshold is unrelated to the community wide or background risk.

The BAAQMD Recommended Methods for Screening and Modeling Local Risks and Hazards provides clarification:

"For assessing community risks and hazards, the District recommends that a region around the proposed project be defined by a project radius for assessing potential impacts on new receptors and cumulative impacts of new sources. More specifically, a 1,000 foot radius is generally recommended around the project property boundary to identify existing sources that may individually or cumulatively impact new receptors and to identify existing sources that may contribute to the cumulative impact of new sources."

The ARB risk mapping for the Bay Area provides a definitive illustration. Note that the developed areas of the region have risks ranging from 100 to over 1,500 in a million. It is obvious that the BAAQMD did not consider background levels of cancer risk in their cumulative methodology.

The commenter suggests applying the BAAQMD cumulative threshold of 100 in a million but incorrectly applies the threshold to include the existing background risk in the community. The commenter's suggested use of background risk levels to a significance evaluation that is intended to apply to risk from select sources results in an apples and oranges comparison and is not a valid approach to a cumulative TAC analysis.

In other words, the commenter suggests an unworkable and unintended application of the BAAQMD's 100 in a million threshold. This threshold is draconian if it includes background levels of risk since background risk ranges from 100 and 500 in most of the San Joaquin Valley as mapped by ARB. A cumulative threshold of 100 including background risk would mean that *all projects* would have an analysis starting point for determining cumulative contribution that exceeded the commenter's suggested threshold.

The commenter also notes that the U.S. EPA applies a risk level of 100 cancers for "community-based risk assessment." The use of the EPA's community-wide risk analysis methods and thresholds would be completely inappropriate for a project-specific cumulative impact analysis.

The EPA describes "community scale" as follows:

"There is no prescriptive answer to this question; however, community-scale analyses commonly range in size from a single neighborhood up to as large as a

metropolitan area. The size of the "community" that is assessed will depend on the questions the partnership team wants to answer and the resources they have to perform the evaluation."

EPA describes a mulitisource cumulative air toxics assessment as follows:

> A multisource cumulative air toxics assessment at the community scale as a tool for reducing local risks will generally involve the following steps:
>
> • Evaluate the cumulative inhalation risk from air toxics sources in a defined geographic area;
> • Evaluate whether the cumulative inhalation risk is acceptably low;
> • If cumulative risk is not acceptably low, use the risk assessment results to identify the chemicals and sources that are causing the majority of the risk (i.e., the risk "drivers"); and
> • Select risk reduction options (preferably for the sources and chemicals posing most of the risk – the risk drivers) that will bring the overall risk down to an acceptably low level.

According to information from EPA Region 8's website describing risk characterization, "The level of total cancer risk that is of concern is a matter of personal, community, and regulatory judgment. In general, the USEPA considers excess cancer risks that are below about 1 chance in 1,000,000 (1×10-6 or 1E-06) to be so small as to be negligible, and risks above 1E-04 to be sufficiently large that some sort of remediation is desirable. Excess cancer risks that range between 1E-06 and 1E-04 are generally considered to be acceptable." The value 1E-04 is the same as 100 in a million.

However, the subject EIR is focused on the impacts of the proposed project, and the related cumulative impacts when past, presently and future related projects are considered. As evident from the discussion above, the use of a "community-wide risk analysis" using the US EPA's methods and thresholds would be completely inappropriate for a project-specific cumulative impact analysis.

The relevance of the information regarding EPA's community analysis approach is that it is not a regulatory threshold, but guidance for communities to use in preparing community plans to reduce local risk.

c. *<u>Comment Air A.2.b</u>: The DEIR and FEIR fail to consider the cumulative effects of TACs from past and present projects, e.g., the existing Walmart operations, the adjacent commercial center, and SR 198.*

<u>Response Air A.2.b</u>:
The cumulative analysis of toxics prepared for the EIR examined the area around the project and determined there was no significant cumulative contribution. The analysis method used was consistent with the cumulative analysis conducted for impacts throughout the EIR. However, even if one accepts that the form of analysis should be the one recommended by the commenter, the conclusion regarding insignificant cumulative contribution remains valid.

The largest source of toxics in the vicinity is State Route (SR) 198, which is located over 900 feet from the residences adjacent to the south of the project that experience the greatest impact from the project. Using the BAAQMD screening criteria Mr. Wolfe advocates to evaluate the impact of high volume roadways and traffic counts published by Tulare County Association of Governments for SR 198, it is possible to demonstrate that the project in combination with other sources with a potential impact produce an insignificant cumulative contribution.

As part of this analysis, the Bay Area surface street screening tables were consulted. The tables were used to identify potential impact risk from Highway 198 and Noble Avenue. The table below is the screening table for Solano County. This table was selected because it has the highest risk factors of any Bay Area county. The BAAQMD's new Highway and Screening Analysis Tool was also consulted to identify the risk from highway traffic; however, the tool does not show traffic volumes used to estimate risk. The highway segments BAAQMD examined were Highway 85 and Highway 152 in Santa Clara County. Risks were estimated risks at 6.11 at 750 feet and 4.90 at 100 feet from the roadway for Highway 85 and 4.272 at 750 feet and 3.481 at 1,000 feet for Highway 152. These risk factors are close to those obtained from the table provided below for surface streets. Since traffic volumes were not available, the surface street table was used to estimate emissions from Noble Avenue and Highway 198.

Solano County Cancer Risk Surface Street Screening Table

EAST-WEST DIRECTIONAL ROADWAY							
Annual Average Daily Traffic	Distance North or South of Surface Street - Cancer Risk (per million)						
	10 feet	50 feet	100 feet	200 feet	500 feet	700 feet	1,000 feet
1,000	No analysis required						
5,000							
10,000	2.55	2.26	1.82	1.01	0.75	0.71	0.67
20,000	5.02	3.79	3.04	1.93	1.29	1.06	0.90
30,000	7.42	7.39	6.79	4.38	2.11	1.59	1.27
40,000	7.95	7.91	8.25	6.31	3.00	2.32	1.65
50,000	13.76	12.00	9.76	7.07	3.69	2.78	1.95
60,000	14.31	12.38	10.90	8.62	4.36	3.27	2.40
70,000	14.87	12.77	12.04	10.16	5.04	3.76	2.86
80,000	16.99	14.60	13.76	11.61	5.76	4.30	3.26
90,000	19.12	16.42	15.48	13.06	6.48	4.83	3.67
100,000	21.24	18.25	17.20	14.51	7.20	5.37	4.08

Evaluation of Impacts from other TAC Sources.

Potential impacts from sources outside the project were screened to provide additional support for the EIR's TAC impact conclusions. The largest source of toxics in the vicinity is State Route (SR) 198, which is located over 900 feet from the residences adjacent to the south of the project that experiences the greatest impact from the project.

- *State Route 198 – Existing TAC Emissions.*

Tulare County Association of Governments (TCAG) reported annual average daily trips of 38,000 on Hwy 198 at the nearest road segment. The highway is over 900 feet from

the point of greatest impact from the project. At 700 feet, the highway adds a risk of 2.32 in a million.

- *Noble Avenue – Existing TAC Emissions*

Noble Avenue is over 800 feet north of the point of greatest impact from the project. TCAG traffic counts for the nearest Noble Avenue road segment at Road 152 recorded AADT of 2,150 trips per day. At this trip rate and distance, the BAAQMD screening table indicates that no analysis is required. Even at 10,000 trips per day, Noble Avenue would contribute a risk of 0.71 in a million using this table.

- *Save Mart's Existing TAC Emissions.*

The Save Mart is located approximately 600 feet west of the point of greatest impact. Risk for the Save Mart is conservatively assumed to be the same as the project or 3.4 in a million but would be expected to be much lower due the distance to the most impacted receptor from the project. This brings the total risk using highly conservative assumptions to 9.1 in a million. This is a factor of 10 lower than the BAAQMD cumulative threshold and is lower than the SJVAPCD project level threshold of 10 in a million.

The low potential risk for nearby sources demonstrates that even using threshold of 100 in a million would not be exceeded using the BAAQMD threshold approach. Note that as discussed in detail in the above responses, this threshold has no applicability to the San Joaquin Valley or this project's analysis of TAC emissions.

3. **Comment Air A.3: Use of the 10 in one million threshold to determine both 1) whether Project-specific TACs are individually significant and 2) whether these TACs make a considerable contribution to a significant cumulative impact violates CEQA.**

Response Air A.3:

In this context, the commenter is also mistaken in asserting that the DEIR uses the same threshold in its determination of significance of project-specific TAC impacts as it does in determining whether the project contribution to the cumulative impact is cumulatively considerable. As discussed above, and as explained in FEIR Response E-20, no evaluation of project contribution to the cumulative impact was undertaken because the absence of a significant cumulative impact indicated that no such evaluation was required.

In addition, the project complied with SJVAPCD analysis requirements for TACs as confirmed by an email from Glenn Reed, Senior Air Quality Specialist to Dave Mitchell, Michael Brandman Associates, dated June 10, 2011 and provided as an attachment to this second Rebuttal Memo.

4. **Comment Air A.4: The provided TAC threshold is not based on supportable evidence to justify the significance threshold of 10 additional cancers per one million as it relates to TAC exposures.**

Response A.4:

The commenter's claim that the TAC threshold applied in the EIR is insufficiently supported has been made previously by the commenter in connection with this EIR, and full explanations and clarifying discussions have been presented in FEIR Response E-18, and Rebuttal Memo Response A-8, and again in oral testimony by Dave Mitchell of Brandman Associates at the April 25, 2011 Planning Commission hearing on the EIR (see Planning Commission Hearing Transcript at pages 93 through 95). In summary, the TAC threshold is well supported scientifically and is the officially adopted TAC threshold for the San Joaquin Valley Air Pollution Control District (SJVAPCD) and other air districts throughout California.

As provided in the State CEQA Guidelines Section 15064.7(c), "when adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence."

As such, the City of Visalia is entitled to apply the significance thresholds established or recommended by a regulatory agency, such as the San Joaquin Valley Air Pollution Control District, the agency charged with managing air quality impacts for this region. The ability to rely on regulatory agency thresholds recognizes that such agencies are experts in their respective areas of jurisdiction (e.g., air quality), and that local agencies cannot be expected to independently formulate thresholds in multiple technical disciplines.

In addition, the SJVAPCD did consider existing toxic sources in setting its threshold. The SJVAPCD threshold for TACs is based on the SJVAPCD Risk Management Policy for stationary source emissions. The policy states "the goal of risk management is to reduce public exposure to toxic air contaminants to a level as low as reasonably achievable. This level is determined by weighing all relevant scientific, technological, social, and economic factors. The purpose of this risk management policy is to minimize the increase that new or modified stationary sources add to the existing toxic load in the public's breathing air."[Cite] [Emphasis added] In applying this same threshold to land use projects in the GAMAQI, the SJVAPCD relied on the same logic used in setting the stationary source threshold.

The argument that the Risk Management Policy is "not intended as a means of reducing total public health exposure to toxic substances in the air from all sources" is not relevant to the discussion of cumulative impact. This is merely a statement of fact recognizing that reductions are required from coordinated effort from state, federal, and local agencies. The regulatory efforts from state and federal action are predicted to reduce risk by 75 percent. The role of local agencies is primarily related to preventing land use conflicts through their land use decisions and requiring project designs that minimize exposure to toxics. The project as designed and located does not result in a significant

impact from toxics, providing evidence that the City has met requirements to do its part to minimize this potential impact.

The form of the TAC threshold stated as an increase in risk provides an ideal framework for evaluating the significance of an impact where a zero threshold is not possible. A threshold using a quantitative risk increase enables decision makers and the public to easily compare the change in the impact caused by the project to a quantified health impact. The analysis where this value is derived represents a worst-case representation for TAC exposures and therefore illustrates an exceedingly conservative evaluation of potential risks. Thousands of projects have disclosed the level of risk to decision makers and the judgment has been made each time that 10 in a million is an acceptable level of increased risk. The Air District Risk Management Policy that also uses this threshold was developed with the same thought process as needed for its use under CEQA. It was accepted in the context of all programs and regulations that reduce exposure of the public to toxics.

5. **Comment Air A.5: A discrepancy existed between the identified TAC risk in Appendix I (8.6 cancers in one million) as opposed to the rest of the document (3.4 cancers in one million).**

Response Air A.5:

As pointed out by the commenter, the tables in Draft EIR Appendix I indicated increased residential cancer risk of 8.6 cases in a million (these are Tables 3-3, 3-5, 3-6, 3-8, 3-10, and 3-12). Due to a clerical error, the superseded version of these tables was not inserted into the Appendix. The final and correct version of these tables, which are based on specific data on the local Walmart delivery fleet instead of default state-wide vehicle fleet emissions rates, indicates increased residential cancer risk of 3.4 cases in a million. The correct tables were entered into the record during the City Council appeal hearing of May 16, 2011 and are also included as Attachment Air Quality-1 to this Rebuttal Memo.

Importantly, this clerical error had no consequence for the DEIR's evaluation of TAC impacts. The evaluation and text discussions of TAC impacts in the Air Quality Report and DEIR are based on the correct tables. Inclusion of the corrected tables into the record in place of the obsolete tables removes any apparent inconsistency with respect to cancer risk associated with TAC emissions from the DEIR and Air Quality Report. The correct final tables reflect a far lower cancer risk than indicated in the obsolete tables, although the risk indicated in the obsolete tables was also below the 10 in a million significance threshold. As such, the replacement of the obsolete tables with the correct final tables results in no difference in the EIR's significance conclusions.

6. **Comment Air A.6: The Air Quality analysis is insufficient in that the analysis lacked suitable evaluation of localized emission impacts related to particulate matter and a complete evaluation of cumulative impacts.**

Response Air A.6:

The Ambient Air Quality Analysis was reviewed by the SJVAPCD, the expert commenting agency that requested the analysis and they accepted the results after fully

examining the study. The analysis did not identify new significant impacts that would require recirculation. The APCD not only reviewed the technical report but also requested, were provided, and reviewed all of the electronic files containing the emission estimations and air dispersion model input data and results. A copy of the SJVAPCD letter regarding the analysis is included in the FEIR.

The commenter claims that the AAQA ignores background PM10 and PM2.5. For pollutants where the air basin is classified as non attainment, the significance approach accepted by local, state, and federal air agencies is to identify a significant impact level (SIL) based on a level of increase determined to be de minimus by the US Environmental Protection Agency (EPA). In this regard, CEQA Guidelines Section 15064.7 provides that lead agencies are encouraged to adopt and/or apply "thresholds of significance." A threshold of significance is "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant" (CEQA Guidelines §15064.7(a)). Indeed, the use of a significance threshold in the case of the proposed project is precisely the methodology adopted by the BAAQMD which was referenced in the commenter's letter.

The commenter further contends that the air quality analysis established a difference in methods in assessing significance of the impacts for NO2, SO2, and CO versus particulates PM10 and PM2.5. In the case of NO2, SO2, and CO, the SJVAPCD is in attainment with these pollutants. Therefore, the test of significance is a comparison of the project's impacts plus background levels of pollutant contributed by other sources with the applicable federal and/or state ambient air quality standards for NO2, SO2, and CO. In the case of PM10 and PM2.5, the SJVAPCD is a non-attainment area for PM10 and PM2.5. CEQA case law established that the threshold in this case is not one additional molecule (or particle), which would prohibit any new development while the area was in non-attainment. The SJVAPCD has not established significance thresholds for PM10 or PM2.5.

So, to address these pollutants and to provide a level of analysis that illustrates the potential impact, use was made of the USEPA significant impact levels (SILs). SILs are a screening tool used to determine whether a proposed source's emissions will have a significant impact on air quality. If an individual project's impacts are less than the corresponding SIL, its impact is said to be de minimus. SILs are also used to determine whether a proposed source's impact on an existing violation of a standard is significant enough that it is considered to "cause or contribute to" the violation. In the case of the proposed project, its impacts on PM10 and PM2.5 were less than the SILS. Therefore, the proposed project was judged to have a less than significant impact.

7. **Comment Air A.7: The commenter has identified a number of errors in the localized emission analysis and therefore the localized emissions analysis are flawed due to these errors as well as a legally inadequate analysis of cumulative particulate impacts.**

Response Air A.7:

The SJVAPCD has not identified construction emissions as a significant source of local emissions that should be analyzed in ambient air quality analyses. The SJVAPCD reviewed the local emissions analysis for the Visalia Walmart Expansion project and did not request this additional analysis. The GAMAQI does not recommend the quantitative analysis of construction emissions because they are short-term temporary emissions that are highly variable by phase and activity. In addition, the project will not require extensive site grading because it is already largely developed. Since site grading would produce the maximum hourly emissions and this activity will be limited during the remodeling, it was not necessary to conduct extra modeling to eliminate this from concern. The sources that were not analyzed were not required by the SJVAPCD guidance and not identified as an issue in their review of the study.

The TRU emission analysis used emission certification levels for the equipment anticipated to be available at the start of project operation. The emission rates were based on the ARB certification levels for the equipment. Certification rates are rates that manufacturers must warranty will be achieved accounting for deterioration over the time. Therefore, the analysis of TRU emissions is correct.

See Response Air A.6 above regarding localized emissions and cumulative particulate impacts.

8. **Comment Air A.8: The SJVAPCD's thresholds of significance for criteria pollutants ROG and NOX as insufficient as a matter of law.**

Response Air A.8:

The source of the threshold of significance for criteria pollutants is the SJVAPCD's Guide for Assessing Mitigating Air Quality Impacts (GAMAQI). As stated earlier, the SJVAPCD is an expert commenting agency for air quality impacts including those resulting from criteria pollutant emission sources. The GAMAQI went through a public review process and was adopted by the SJVAPCD Governing Board in 1998 and was updated in 2002. The criteria pollutant thresholds for the ozone precursors ROG and NOx are 10 tons per year for each pollutant. This is the threshold level established in state law for air basins designated as Severe Nonattainment for the state ozone standard to require new stationary sources to provide emission offsets. This level is the lowest offset threshold in the entire Country.

Although the offset threshold only applies to stationary emissions sources, Air Districts around the state concluded that this level provides a logical threshold that is sufficiently stringent to ensure that projects that emit less than this amount would not result in a significant air quality impact. The offset threshold becomes lower with the severity of

the air quality problem in the air basin in recognition that areas with the greatest problem should have a more stringent threshold. Since adoption, the threshold approach has been accepted by communities throughout the state and the San Joaquin Valley including the City of Visalia.

Additional proof that the threshold is adequate is the continued rapid decline in the SJVAPCD emission inventory since the threshold was introduced even with rapid development during that period. It is not necessary to re-justify well established thresholds over and over. It is fully legitimate and supported by CEQA for the City of Visalia to continue to rely on this threshold that was created by the agency with the expertise to evaluate and create such a threshold.

Contrary to the commenter's opinion, the threshold is supported by substantial evidence. The form of the threshold is important for this discussion. The threshold is in a ton per year format. Ozone is a secondary pollutant that is formed in complex photochemical reactions separated in time and place from the point of emission of the precursors involved in the reaction (ROG and NOx). Emissions from a single project have no measureable impact on ozone concentrations. Therefore, the ozone health impact of a single project is also not measurable.

The project's ozone impact is the cumulative impact from all emission sources, so the question becomes what amount of emissions are cumulatively considerable. The stationary source offset thresholds are the most stringent thresholds applied to any source of ozone precursors; therefore, applying this threshold to indirect sources like the project is reasonable. In addition, the EIR also demonstrates plan consistency as a threshold for the cumulative impacts.

Finally, the SJVAPCD has adopted plans to attain air quality standards for all pollutants. The plans are designed to address the cumulative impact of all pollution sources, including those related to development projects. The plans do not rely on quantitative reductions from land use projects, but encourage land use agencies to include measures in projects to reduce trips and vehicle miles traveled. The project greatly improves pedestrian and transit access in an existing shopping center and fulfills the intent of the air quality plans. The 10 ton per year threshold is based on an important regulatory threshold, new source review, and a lower threshold for development projects is not needed for the SJVAPCD to demonstrate attainment and would not move attainment forward if were set at zero. The existence of attainment plans for the pollutants of concern constitutes substantial evidence that the threshold level is adequate.

The commenter is critical of a statement in the GAMAQI that a reasonable threshold is needed to avoid unnecessarily burdening every project with an EIR. The quoted statement from the GAMAQI is consistent with the "one molecule" court decision that recognized that a non-zero threshold can be used for air quality impacts. The key phrase is "unnecessarily burdening every project." The threshold was set at a level appropriate for the severity of the impact and placed the burden at a level necessary to prevent significant air quality impacts.

The commenter states that compliance with other regulatory standards cannot be used under CEQA as a basis for a significance finding. There are numerous examples of

regulatory standards that are commonly and legitimately used as CEQA thresholds. Noise standards and traffic LOS standards are just two examples.

In the final paragraph, the commenter claims that the EIR's reliance on Appendix G of the CEQA Guidelines to authorize application of the Air District's thresholds is misplaced. *Appendix G, Section III. Air Quality*, which states: "Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations"…of air quality impact. This clearly authorizes reliance on Air District thresholds in making determinations of significance. The GAMAQI went through public hearings and is based on a well accepted approach to determinations of significance for regional cumulative air quality impacts and the City of Visalia is more than justified under CEQA to rely upon its guidance in making impact determinations.

The City utilizes the data and thresholds of significance established by the agency charged with managing air quality impacts for this region. The City hired their own air quality technical experts to provide an in-depth evaluation of the potential impacts as they relate to air quality. The City has evaluated this data to make its own determinations as to the potential level of impact that may occur as required under CEQA.

B. Responses to May 16, 2011 Autumn Wind Air Quality Comments

Autumn Wind's specific claims are as summarized below in *italics*, followed by the non-italicized responses of the EIR's Air Quality Analyst, David Mitchell, of Michael Brandman Associates:

1. **Comment Air B.1: The cumulative impact analysis is insufficient in addressing the potential cumulative impacts related to TAC emissions for past, present, and reasonably foreseeable probable future projects**
2. **Comment Air B.2: Use of the TAC threshold of 10 additional cancers per one million as it relates to TAC exposures is not based on supportable evidence to justify its use.**

Response Air B.1-2:
Full responses to these comments are provided in General Air Quality Response "A" and Responses Air A.1 through Air A.5 above. In summary, there are no other projects in the vicinity of the proposed Walmart expansion project that would potentially contribute to emissions of TACs. Since the project emissions are therefore the only source of cumulative TACs, the increased cancer risk associated with the project alone is the same as the increased cancer risk under cumulative project conditions. The use of the 10 in one million TAC thresholds is well supported scientifically and is the officially adopted TAC threshold for the SJVAPCD and other air districts throughout California.

TNDG notes that the Autumn Wind comment inaccurately cites the Bay Area Air Quality Management District (BAAQMD) CEQA guidelines for the suggested TAC cumulative impact analysis as "future sources within 1,000 yards." The correct radius is 1,000 feet as stated under footnote no. 5 on page 4 of the comment letter.

3. **Comment Air B.3: The assessment of local impacts is insufficient due to a lack of an evaluation of construction emissions.**

Response Air B.3: Similar comments are contained in Comments Air A.6 and Air A.7 above and are addressed in the corresponding responses, which address the assessment of localized impacts as they relate to construction emissions.

4. **Comment Air B.4: The use of the Significant Impact Level (SIL) adopted by the US Environmental Protection Agency (EPA) for evaluating pollutant significance for PM10 and PM2.5 is inappropriate for evaluations where areas are not in attainment and does not provide a suitable evaluation for potential cumulative impacts.**

Response Air B.4: Please see Response Air A.7 for information regarding the use of SILs as part of the air quality analysis.

The commenter criticizes the use of SILs adopted by the US EPA as a significance threshold for localized criteria pollutant impacts and states that they only apply to sources in attainment areas. However, the commenter quotes the incorrect reference for SILs in stating that they only apply to attainment areas. As discussed under Response A1-7, for pollutants where the air basin is classified as non attainment, the significance approach accepted by local, state, and federal air agencies is to identify a significant impact level (SIL) based on a level of increase determined to be de minimus by the US Environmental Protection Agency (EPA).

The threshold used in the Ambient Air Quality Analysis for the project is based on CFR 51.165(b) (2) which states "A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard."

EPA describes the use of SILs in the following description from its proposed rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC): "Similarly, significant impact levels are intended to identify a level of ambient impact on air quality concentrations that EPA regards as de minimis. The EPA considers a source whose individual impact falls below a SIL to have a de minimis impact on air quality concentrations.

Thus, a source that demonstrates its impact does not exceed a SIL at the relevant location is not required to conduct more extensive air quality analysis or modeling to demonstrate that its emissions, in combination with the emissions of other sources in the vicinity, will not cause or contribute to a violation of the NAAQS at that location. In light of insignificance of the ambient impact from the source alone, EPA considers the conduct of a cumulative air quality analysis and modeling by such a source to yield information of trivial or no value with respect to the impact of the proposed source or modification." This information is important because EPA's regulatory process provides substantial evidence to support the threshold. Criteria pollutant emissions from stationary sources

are chemically identical to those produced by the sources one would find at a development project, further supporting the use of this threshold.

In the case of NO2, SO2 and CO, the SJVAPCD is in attainment with these pollutants. Therefore, the test of significance is a comparison of the project's impacts plus background levels of pollutant contributed by other sources with the applicable federal and/or state ambient air quality standards for NO2, SO2, and CO. In the case of PM10 and PM2.5, the SJVAPCD is a non-attainment area for PM10 and PM2.5. Since the SJVAPCD has not established significance thresholds for PM10 or PM2.5, in order to address these pollutants and to provide a level of analysis that illustrates the potential impact, use was made of the US EPA SIL screening tool to determine whether a proposed source's emissions will have a significant impact on air quality. If an individual project's impacts are less than the corresponding SIL, its impact is said to be de minimus.

SILs are also used to determine whether a proposed source's impact on an existing violation of a standard is significant enough that it is considered to "cause or contribute to" the violation. In the case of the proposed project, its impacts on PM10 and PM2.5 were less than the SILS. Therefore, the proposed project was judged to have a less than significant impact.

EPA recognized that large areas of the country exceed ambient air quality standards and that those nonattainment areas would need a non zero threshold sufficiently low to be considered a de minimus impact. Since PM10 and PM2.5 standards are not being met in the San Joaquin Valley, SILs are used to provide a non zero threshold based on a level from an important federal regulation applicable to the same pollutants. Ambient pollutant concentrations represent the combined emission levels from all emission sources at the point where the pollutant is measured. This provides a clear line for pollutants below air quality standards, but does not work when the area already exceeds the standard without the project. This led to the use of SILs as an appropriate measure of cumulative contribution to an existing exceedance. This should be looked at in the context of overall attainment strategy which reduces emissions to meet reduction targets even though emissions from some sources will increase.

5. **Comment Air B.5: The AAQA underestimates emissions impacts since it fails to account for several potential emissions sources including: natural gas combustion; fork lifts; and accessory power units; as well as a lack of regulations that would force smaller trucks with a gross vehicle weight rating (GVWR) under 10,000 pounds from idling five minutes or less.**

Response Air B.5:

The Ambient Air Quality Analysis followed SJVAPCD guidance and was reviewed and accepted by the SJVAPCD in their capacity as an expert commenting agency. The analysis omits emissions from a number of sources including natural gas combustion, forklifts, and accessory power units. These sources of emissions were not included in the AQ analysis because their level of emissions is insignificant compared to the emissions from the operation of the vehicle traffic.

At full build out, the proposed project would generate approximately 6.5 pounds per day of NOx emissions from all mobile emission sources compared to 1.9 pounds per day of NOx from natural gas consumption. In terms of CO emissions, the project's mobile sources would generate 51 pounds per day compared to the natural gas emissions of less than 2 pounds per day. The combustion of natural gas would also emit virtually no particulate matter or diesel particulates. This additional information regarding natural gas combustion does not provide any significant new information and does not substantially increase any potentially significant impacts already identified within the EIR.

The project includes new loading docks that allow the rear of the truck to create a sealed connection with the rear of the store. This means that forklifts unloading trucks would not operate outdoors. In any event they are expected to be battery powered and would not emit any emissions. Auxiliary power units (APUs) would not be expected to be used onsite since there would be no long term operations of such equipment while onsite. Trucks would essentially arrive at the loading docks, unload their contents, and leave after unloading. Additionally, the stacking of trucks waiting to unload is unlikely to be an issue. Thus, given this short unloading time for delivery trucks, including an analysis of potential APUs that may or may not have been added to trucks for heating and cooling when the engine is shut off is speculative and does not warrant such an inclusion in the air quality analysis.

The comment points out that small delivery trucks are not required to limit idling to 5 minutes. The smaller delivery trucks are basically part of the Walmart fleet which has been equipped with an anti-idling device that switches off the engine after 3 minutes of idling. In addition as part of a court settlement with the EPA in 2005, Walmart is required to post no idling signs at its loading docks and to notify other delivery companies of Walmart's policy prohibiting idling. Therefore, all of the delivery trucks will be required to idle for less than 5 minutes, and trucks that are part of the Walmart fleet would idle for 3 minutes or less.

6. **Comment Air B.6: The EIR's analysis assumes incorrect emission factor for transport refrigeration units (TRUs) as well as a lack of efficiency degradation over time, resulting in an inaccurate representation of emissions.**

Response B.6:

The commenter states that the emission factors for the TRUs are incorrect in assuming they will conform to the stringent 2013 standards. We disagree with this assertion. Current estimates are that the project would commence operation in 2012. It would be expected that the TRUs used by the Walmart trucks in order to meet the more stringent Ultra Low Emission TRU standards would be equipped prior to the 2013 deadline. Therefore, the analysis regarding the emissions from the TRUs is an accurate representation.

The commenter is incorrect regarding the need for the use of deterioration factors in the emission estimates. While all equipment deteriorates over time, the equipment must still meet all applicable emission standards through proper maintenance. This would include compliance with the stringent Ultra Low Emission TRU standards. In addition, the

emission factors derived from the EMFAC and OFFROAD emission models take into account equipment deterioration. Therefore, the analysis is representative of the potential physical impacts related to these emissions.

C. Responses to May 16, 2011 Mark Wolfe Greenhouse Gas (GHG) Comments

Mr. Wolfe's GHG comments are summarized below in *italics*, followed by the non-italicized responses of the EIR's Air Quality Analyst, David Mitchell, of Michael Brandman Associates:

1. Comment Air C.1: The EIR is inadequate since it follows the San Joaquin Valley Air Pollution Control District's guidance for determining the significance of greenhouse gas emissions.

Response Air C.1:

The commenter states that the EIR uncritically relies upon SJVAPCD guidance in its analysis of greenhouse gas emissions impacts. Greenhouse gases and climate change are relatively new impact areas with limited legal precedent. This has resulted in a wide variety of threshold approaches being adopted and used by Lead Agencies throughout the state.

The regional air pollution control districts have provided approaches for their respective air basins. Due to differences in development patterns, population growth rates, and community standards, it is unlikely that in the absence of a single statewide threshold, a single approach to GHG impact analysis will emerge in the foreseeable future. Despite this uncertainty, it is incumbent upon each Lead Agency to select an approach that is workable for their jurisdiction.

The SJVAPCD approach of implementing best performance standards (BPS) and demonstrating consistency with the State plan to achieve the reduction targets adopted by the state is one such workable approach.

a. *Comment Air C.1.a: The EIR adopts the SJVAPCD's 29% reduction test based upon State CEQA Guidelines Section 15064.4(b)(2) which allows agencies to make significance determinations based upon the agency's own determination that this threshold applies, but would not meet the 29 percent below business as usual reduction test used for this approach.*

Response Air C.1.a:

The SJVAPCD guidance provides substantial evidence to support its approach. As discussed previously, the City has relied upon the data and thresholds of significance established by the agency charged with managing air quality impacts for this region, as well as State goals based upon AB 32. The GHG analysis in the EIR discloses all significant emission sources related to the project with opportunity for influence or control, as well as applicable reductions from other land use related emissions. The

project's refrigerant system design influences its use of refrigerants and is appropriate for inclusion in the emission inventory and for crediting reductions.

b. Comment Air C.1.b: The use of a 29 percent threshold is not justified and would not meet short-term targets. The SJVAPCD threshold approach is a thoughtful, reasoned approach to a new impact area. The SJVAPCD concluded that it was not appropriate to set a project quantitative threshold since it was not possible to identify a measurable impact to climate from any project. Since no project by itself could cause a measurable impact to the climate, and no threshold amount applicable to any individual project would result in a measurable change in global greenhouse gas emissions, consistency with AB 32 targets was determined to be an appropriate threshold. No amount of additional analysis will change this conclusion.

Response Air C.1.b:

The City and its expert EIR consultants disagree with the assertion that the threshold is unsupported by facts. The 300-page staff report prepared by the SJVAPCD in support of its threshold approach includes a lengthy discussion describing greenhouse gas impacts and relating the threshold to the Air Resources Board (ARB) targets. The ARB Scoping Plan contains volumes of information to support the amount of reductions required for the State of California to reduce greenhouse gas emissions in the State of California to 1990 levels by 2020 with reductions from each emission sector. The City has independently reviewed this material, as well as the proposed Project's potential contribution to greenhouse gas emissions from the air quality technical experts. The City has relied upon a threshold that is well supported by fact and made its own determination as to the justification for its use.

***c. Comment Air C.1.c:** The SJVAPCD's determination regarding the reliance upon AB 32's goals and the creation of the 29% below BAU standard for significance determination related to greenhouse gas emissions is not justified by substantial evidence that such a standards would render such emissions less than significant.*

Response Air C.1.c:

The SJVAPCD staff report prepared to support their threshold approach states: "Thus, District staff concludes that it is not feasible to scientifically establish a numerical threshold that supports a determination that GHG emissions from a specific project, of any size, would or would not have a significant impact on global climate change." This means that although the obvious environmental objective is to reduce greenhouse gas emissions to prevent catastrophic climate change, it is not possible to assign an emission quantity to a project as a significance threshold related directly to impacts on climate. Further, the SJVAPCD states that "ARB, in carrying out its AB 32 mandates, has determined that the emission reductions targets established per AB 32 can be accomplished by achieving a 29% reduction in GHG emissions from Business-as-Usual (BAU), from key GHG emission source categories. This establishes what could be considered a de facto performance based standard for GHG emission reductions to be

achieved at the project level for GHG emission source categories." Finally, the SJVAPCD threshold relates the project to the path to achieve the environmental objective provided in the ARB Scoping Plan.

d. ***Comment Air C.1.d:*** *The use of the 29% below BAU standard for significance determination related to greenhouse gas emissions is insufficient since the standard does not actually illustrate how it would help meet AB 32's goals and the use alone of a straight 29% value provides a "one-size-fits-all" target that does not ensure an aggregate 29% overall greenhouse gas reduction.*

Response Air C.1.d:

Substantial evidence is included in the EIR to support the project significance finding. The City has relied upon the data and thresholds of significance established by the agency charged with managing air quality impacts for this region.

The GHG analysis in the EIR quantified the project emissions that would occur on opening day and quantified the benefit of adopted regulations, mitigation measures, and design features that would reduce emissions in the present and by 2020. The analysis applied reductions from regulatory actions in proportion to their effect on the emissions related to the project. The analysis demonstrated that emissions would be 39 percent less than if no regulations or design features were applied to the project by 2020. This is substantially better than the 29 percent required to meet state targets. The commenter criticized the inclusion of measures to control refrigerants because they were not part of his definition of land use related sources; however, refrigerants are substantial sources in grocery stores and a typical source of potential greenhouse gas emissions.

e. ***Comment Air C.1.e:*** *The use of a hypothetical baseline is inappropriate under CEQA as it relates to the evaluation of greenhouse gas emissions.*

Response Air C.1.e:

The target year is not a hypothetical baseline. There are many ways of stating and portraying the AB 32 goal. ARB used a future year projection of emissions to account for the effect of growth on the state's emission inventory in the 2020 target year. ARB used this method to provide a more accurate picture of the reductions required. A reduction based on current emissions (2008) of 15 percent is equivalent to a 29 percent reduction from business as usual by 2020. Identifying reductions required to meet future year targets is the method used for all attainment planning for other air pollutants. It is done to create a realistic future baseline inventory for a target year, and is not an improper hypothetical baseline as claimed by the commenter.

The Commenter claims the 2020 baseline allows projects to "game the system;" however, the case law presented does not apply to climate change impacts. The cases quoted found it improper to assume an approved but unbuilt project is included in the environmental baseline. The greenhouse gas analysis for this project fully discloses the impact of the project in the first year of operation and in the 2020 target year. There is no target that

must be achieved prior to 2020 for the state to achieve its greenhouse gas reduction goals. The project will implement design features and regulatory measures in effect at the time of construction and thus does not defer mitigation to a later date. The form of the threshold requires comparison to conditions in a future year. The actual environmental conditions with and without the project are not measureable due to the global scale of the impact and the complexity of the earth's climate. In fact global level of GHG emissions with and without implementation of AB 32 on a statewide basis is itself near the lower limit of measurability. According to the ARB, California produces 1.4 percent of the world's greenhouse gas emissions, so achieving the 80 percent reduction target from Executive Order S-3-05 will provide a 1.1 percent reduction in global emissions by 2050 assuming growth throughout the developing world does not offset all reductions.

f. ***Comment Air C.1.f:*** *Neither the EIR nor the SJVAPCD meets CEQA's requirements for justifying the use of a simplistic significance test (in reference to the 29% below BAU standard for significance determination related to greenhouse gas emissions).*

Response Air C.1.f:

The commenter's concluding paragraphs restate and reiterate the preceding comments on the greenhouse gas emissions analysis contained in the EIR. As discussed in the above responses, these comments lack merit and do not result in changes to the EIR analysis and conclusions on the significance of project impacts related to greenhouse gas emissions and global climate change.

As discussed previously, the greenhouse gas analysis in the EIR quantified the project emissions that would occur on opening day and quantified the benefit of adopted regulations, mitigation measures, and design features that would reduce emissions in the present and by 2020. The analysis applied reductions from regulatory actions in proportion to their effect on the emissions related to the Project. The analysis demonstrated that emissions would be 39 percent less than if no regulations or design features were applied to the Project by 2020. This analysis represents an in-depth and thorough examination of this potential impact as required pursuant to CEQA.

D. Responses to May 16, 2011 Autumn Wind Greenhouse Gas Comments.

Autumn Wind's GHG comments are summarized below in *italics,* followed by the non-italicized responses. of the EIR's Air Quality Analyst, David Mitchell, of Michael Brandman Associates:

1. **Comment Air D.1: The EIR's evaluation of greenhouse gas emissions is invalid for the following reasons:**

- *The analysis relied upon thresholds of significance adopted by the SJVAPCD;*

- *The analysis used reductions to meet the 29% Business As Usual (BAU) significance thresholds;*

- *The commenter disagrees with the EIR preparers' interpretation of the BAU standards, their relation to emissions reductions, and the goals of AB 32.*

Response Air D.1:
Except as discussed in the following analysis, these comments are similar to those contained in Comments Air C.1 through Air C.1.f above. Full responses to these comments are provided in the corresponding responses to those comments.

The EIR provides a thorough evaluation of potential greenhouse gas emissions as it relates to the proposed Project. The commenter's background discussion attempts to illustrate that this analysis is somehow flawed or insufficient by focusing more on State CEQA Guidelines Section 15064.4(b) (2).

This is an inaccurate representation of the provided analysis as it relates to air quality impacts and greenhouse gas emissions in particular. As discussed, the greenhouse gas analysis in the EIR quantified the project emissions that would occur on opening day and quantified the benefit of adopted regulations, mitigation measures, and design features that would reduce emissions in the present and by the year 2020. The analysis applied reductions from regulatory actions in proportion to their effect on the emissions related to the Project. The analysis demonstrated that emissions would be 39 percent less than if no regulations or design features were applied to the Project by 2020.

This analysis represents an in-depth and thorough examination of this potential impact as required pursuant to CEQA. Even without a BAU determination, the section still evaluates the proposed level of emissions for construction and operations as well as in-depth project design features to reduce greenhouse gas emissions. Additionally, the reliance upon the capture of refrigerants as a reduction in BAU conditions and compliance with fuel standards is justified as part of the analysis under CEQA.

The commenter at page 16 states that the project threshold needs to focus on reductions past 2020 because additional reductions are required by 2050. The ARB chose not to develop a plan to achieve the 2050 target because any strategy to be implemented that far in the future is highly speculative. The same applies to the development of threshold approaches for CEQA purposes.

The ARB's Preliminary Draft Staff Proposal referred to by the commenter has not gone forward in the three years since its release. It is important to note that the vast majority of project greenhouse gas emissions are from indirect sources such as motor vehicles traveling to and from the site and from off-site power plant emissions from electricity used by the project. Impacts from these sources are in no way permanent and irreversible. Motor vehicles are expected to transition to electric power from fossil fuels over the coming decades. Electrical power generation is transitioning from non-renewable fuels to zero emission and renewable sources such as biomass, solar, wind, along with existing hydroelectric and nuclear plants. Carbon capture and sequestration is also a possibility for reducing emissions from the remaining fossil fuel plants. During the transition, fuel efficiency and building energy efficiency measures provide additional reductions. The technologies that will be implemented to achieve reductions between 2020 and 2050 are likely to be different than any of the competing emerging technologies now being implemented to meet the 2020 target. Considering that many people replace their vehicles every ten years or sooner, the commenter is asking for a prediction of what

will be the fourth in a series of vehicles people will purchase between now and then. Commercial shopping centers also are updated and remodeled to meet new market trends and take advantage of new technology on a regular basis. The Walmart project in question is a perfect example of a project that updates an existing store by installing state of the art energy management systems, pedestrian friendly features, and additional parking lot shading during a remodel.

In sum, the City has performed a good faith effort to detail potential environmental impacts as they relate to greenhouse gas emissions and has included a thorough and accurate discussion of applicable regulations, projected greenhouse gas emissions for both construction and operations, and a number of design features to reduce project emissions. As stated within Section 15064.4(a), "a lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate, or estimate the amount of greenhouse gas emissions resulting from a project." This is exactly what the City has strived to accomplish.

2. **Comment Air D.2: The commenter disagrees with the EIR's interpretation and use a Business As Usual (BAU) standard as a baseline for determining the level of potential impacts and creates a "hypothetical" baseline as opposed to an environmental baseline.**

Response Air D.2:

See Responses Air C.1.e and Air C.1.f above. The commenter states on page 17 that the relevant question in determining significance of projects is whether a project will impair the existing environment. As stated in response A1-15, the change in environmental conditions with and without the project are not measureable due to the global scale of the impact and the complexities of the earth's climate. This is the reason for using future year targets that account for the cumulative impact of all sources as a basis of comparison.

Considered from a different perspective, the impact of the project on the existing environment is that it will be part of one year's contribution to the business as usual inventory between now and 2020. In order to determine the project's impact in 2020, one needs to take into account the reductions that are applicable to the project from design features, mitigation measures, and regulations. It is not an invalid straw comparison; it provides a logical means of determining a project's impact at the time when the emissions are meaningful - 2020.

The criticism seems to be related to lack of understanding of the method used for accounting for emissions and reductions. While it is different than other approaches, it is necessary due to the form of the threshold and the long term strategy to reduce emissions. Using current emissions without taking into account regulatory reductions would result in an invalid analysis that overstates the project's impact on the ability to achieve AB 32 goals. The reason that reductions are taken in 2020 instead of at the time of project construction is for simplification, not obfuscation.

An approach that was based on the impact on AB 32 goals in the current year would require determining year by year emission goals for AB 32 and year by year emission reductions for ARB scoping plan measures. This year by year approach would still not provide an accurate picture of progress toward achieving the targets in the critical 2020 timeframe.

The commenter is concerned that using the future year baseline will incentivize inflating a hypothetical project to show greater reductions. This concern is not justified by the facts. The emission generating activities are assumed to be constant on opening day and in 2020. The emissions decline immediately for reductions involving building construction and trip generation, but decline over time for measures with gradual implementation such as Pavley and the Renewable Portfolio Standard. There is no opportunity to inflate anything when all emissions are clearly disclosed. See Responses Air C.1.a and Air C.1.d regarding refrigerant emission reductions.

The commenter at page 18 objects to including reductions from regulations applicable to high global warming potential gases from air conditioning and refrigeration systems used for space cooling and for food storage and displays.

The EIR analysis disclosed the full scope of the project's emissions. Leaving out a large source of emissions would be criticized for failure to disclose their impact. In this case, regulations adopted to control the emissions from these systems will dramatically reduce this impact. Therefore, the analysis properly discloses the level of impact and its contribution to achieving the AB 32 goals. It should be noted that complying with regulations is not without costs incurred by the project applicants. Compliance will require substantial investment in equipment, maintenance, and monitoring that were not previously required for these projects or for existing sources.

3. Comment Air D.3: A 29% BAU reduction in emissions does not ensure that the project is actually doing its part to comply with the overall goals of AB 32.

Response Air D.3:

See Response Air C.1.d. Many of the ARB Scoping Plan measures will result in emission reductions from existing sources. In fact, the bulk of reductions will be achieved by existing sources. For example, Pavley motor vehicle fuel efficiency regulations and the renewable portfolio standard (RPS) affect existing development and new development. These regulations among others result in all vehicles traveling to existing and new development producing fewer greenhouse gas emissions over time. The RPS ensures that anyone in California who purchases power from the regulated utilities will be buying cleaner power. In fact, according to CARB's Greenhouse Gas Emissions 2020 Forecast, the forecast of total emissions expected in 2020 from Pavley I and the RPS is 38 MMTCO2e total.

On the other hand, new development is subject to increasingly stringent energy and water conservation regulations that apply only to new development. Regulations aimed at new construction such as Title 24 apply to new developments, so any project built to comply

with the latest version of the standard will be doing more to reduce emissions than previously constructed existing sources. The project includes design features that go beyond regulations to provide reductions in addition to those required by regulation as described in the DEIR.

The commenter states that no evidence was provided that the SJVAPCD threshold would result in achieving the AB 32 goal. It is not possible to show that even a zero threshold will have an impact on climate change. This is a global problem. There is no guarantee that global warming will be slowed by a single day by California reducing its emissions when other states and other countries have no similar commitment. The only predictable result is an emission reduction amount mandated for California. The framework for identifying the reductions required to achieve the state's target is the Scoping Plan. The Scoping Plan provides the tie or connection to reductions required to prevent impacts to climate change assuming all countries followed suit.

The 29 percent threshold provides a simple and straightforward approach to demonstrate consistency with state goals. This provides a great advantage because it is more understandable and readily applied to a wide variety of communities and projects. Since the ARB Scoping Plan does not assign a reduction to a "land use sector," it is conservative to assume that a reduction percentage applied to the actual source sectors applicable to the project that exceeds the Scoping Plan's overall reduction goal would not interfere with achieving this goal.

The greenhouse gas analysis prepared for the EIR estimated emission reductions from implementing regulations, and best practices including site and building design features, and measures to reduce vehicle trips and miles traveled that would result in a 39 percent reduction, well in excess of the 29 percent target reduction.

4. **Comment Air D.4: New development projects need to reduce emissions to a larger degree since there is less of an opportunity for reductions from the existing built environment and that varied degrees of reduction levels would be necessary based upon diverse land uses.**

Response Air D.4:

The commenter suggests that projects must reduce more emissions than the average to compensate for limited opportunities for existing development. New development will automatically do more than existing development because new projects must meet the latest energy efficiency and conservation standards. For example, reductions accounted for in the Scoping Plan for changes to Title 24 energy efficiency standards are based on new buildings being constructed to accommodate projected population growth. There are no reductions counted for projects exceeding Title 24. These are supplementary reductions that help ensure the goal will be met. The design features for the project will meet or exceed standards in many cases, bringing reductions in excess of amounts predicted by the Scoping Plan. See also Responses Air.C.1.f and Air D.2 above regarding significant reductions from existing sources such as automobiles.

In addition, the agency charged with managing air quality impacts, including greenhouse gas emissions, has determined that a BAU reduction target of 29 percent is appropriate as

a factor to evaluate potential impacts; yet, the proposed Project actually reduced their emissions levels to 39 percent. Additionally, the EIR included a full evaluation of potential Project emissions and numerous Project design features aimed at reducing such emissions, going well beyond current CEQA mandates for such an evaluation.

The commenter refers to CAPCOA conclusions that it is more effective and less costly to require reductions from new development instead of existing development. While this is true for some greenhouse gas reduction measures, it is not true for all. In fact, it is commonly known that energy retrofits of existing buildings are the most cost-effective reductions of all measures. The onsite measures, like energy efficiency, while important are not nearly as large in terms of reductions as the measures that affect both new and existing development such as the RPS and Pavley vehicle standards.

The commenter claims that the EIR must attain the reduction called for by the Scoping Plan in each economic sector for which the project participates to show consistency with AB 32. This assertion is without merit. The commenter fails to consider that most project impacts are indirect impacts where the project only has limited or marginal ability to influence. The Scoping Plan reductions are compiled with the combined reductions from multiple regulations that apply directly to the specific source categories within emission sectors and subsectors. Reductions provided by development projects help support the reductions projected for each sector, but are not required to achieve the full reduction amount for each sector for the state to achieve the target.

5. **Comment Air D.5: Using the Bay Area Air Quality Management District's (BAAQMD) plan for new development limited to 1,100 tons of greenhouse gas emissions as a significance threshold is more accurate to preserve the goals of AB 32.**

Response Air D.5:

No single approach has been proven to be the only valid approach for an evaluation of greenhouse gas emissions; the project is certainly not required to adhere to plans or guidance adopted by the BAAQMD.

As identified within the State CEQA Guidelines, Section 15064.4(a), it is up to the lead agency to decide in the context of a particular project "which model or methodology to use" so long as this decision can be supported by substantial evidence. Here, the applicable San Joaquin Valley Air Pollution Control Management District utilizes the 29 percent BAU model. Thus, it is well within the judgment of the City to decide to follow the rule and guidelines provided by the region's applicable air quality management district – the SJVAPCD.

Although the BAAQMD went through an exercise to identify an amount of reductions they expect to need from new development to maintain consistency with AB 32 targets, the analysis only applied to the BAAQMD and not the entire state. Pursuant to CEQA, the City fulfilled its duty to evaluate potential greenhouse gas emissions as part of the proposed Project, as well as the implementation of design characteristics to reduce such emissions.

6. **Comment Air D.6: Using the BAAQMD's thresholds, the Project would not meet the fair share reductions in order to fulfill the goals of AB 32.**

Response Air D.6:

Citing the BAAQMD's standards, the commenter states that a minimum reduction of 23.9 percent must be achieved across all sectors to achieve an appropriate aggregate reduction. This is contrary to reduction accounting practices for all air quality plans. As is the case for this Project, some source sectors will achieve well beyond 29 percent and some much less than 29 percent depending on the technology available, implementation schedules, and cost considerations. The reductions from all sectors are compiled and weighted by their contribution to the total inventory to determine the aggregate reduction. This method was used for the greenhouse gas analysis included in the DEIR.

There is no obligation or requirement to use BAAQMD definition of land use sector emissions for the EIR's GHG analysis. The inclusion of refrigerant emissions are an important source of greenhouse gases in any land use project that includes commercial scale refrigerators and freezers. Disclosing the emissions and the reductions from these significant emission sources is required by CEQA to provide a full disclosure of project impacts, and the City does not intend to effectively "pick and choose" when to report or control greenhouse gas emissions based only on a desired outcome.

The BAAQMD methodology is designed for the development patterns and demographics unique to the Bay Area and cannot be directly applied. Theoretically, the San Joaquin Valley could go through a lengthy and expensive exercise to develop a similar approach that accounts for dramatically different conditions over the 250-mile length of the Valley. One major flaw in the BAAQMD approach is that it comes up with an overall reduction number, but not a fair way of allocating the reduction requirements among the individual jurisdictions making the land use decisions. A one size fits all target does not account for the ability of the jurisdictions to achieve the reduction due to their current land use pattern, transportation options, and demographics.

The proper place to determine a fair share of transportation sector emission reductions is the SB 375 regional target setting process. This allows each of the eight Valley Transportation Planning Agencies (TPA) to identify the amount of reductions that can be achieved based on actual conditions in each County. This process is currently underway. In the interim, the threshold approach chosen for the DEIR is reasonable and supportable.

The project is meeting its fair share of reductions toward achieving state greenhouse gas reduction targets by implementing design features that improve energy efficiency and pedestrian and transit access to an existing shopping center and by complying with regulations that apply to the construction and operation of the facility. The commenter may disagree with the amount of reductions required to demonstrate fair share, but that determination is within the purview of the Lead Agency.

7. **Comment Air D.7: The SJVAPCD's use of the 29 percent BAU is insufficient to meet the desired goals of AB 32.**

Response Air D.7:

The project is not required to meet other thresholds that the commenter may prefer. The threshold approach chosen and analysis prepared to quantify project emissions and applicable reductions demonstrates that the project will not interfere with or hinder the achievement of the AB 32 targets.

II. NOISE COMMENTS FROM MSSRS. WOLFE, PETTYJOHN AND WATRY; ILLINGWORTH & RODKIN RESPONSES

A. Responses to May 16th Noise Comments from Mark Wolfe.

1. Noise Comment A.1: The Project's proposed soundwalls will not adequately mitigate noise impacts on residents adjacent to the Project site.

Response Noise A.1:

The highest maximum noise levels attributable to the project would only occur in areas of the site where heavy trucks would circulate very near to the south and east site boundaries. These locations would include the southernmost portion of truck turning radius (shown on the truck circulation diagram) adjacent to the proposed 14 foot noise barrier extension planned along the south boundary of the site or along the truck circulation route adjacent to the 15 foot noise barrier planned along the east boundary, as discussed below.

South Project Boundary

As stated in the DEIR, maximum instantaneous noise levels generated by heavy trucks circulating along the south property line are expected to reach 72 to 77 dBA L_{max} at distance of about 40 feet. (DEIR, p. 209.) This distance represents the north property lines of the nearest residences when trucks circulate at their closest point. These maximum noise events would occur at a distance of 45 feet of a worst-case receiver positioned approximately 15 feet from the proposed 14-foot noise barrier.

Without a noise barrier, the maximum noise level calculated to result from heavy truck circulation is 76 dBA L_{max} at 45 feet. However, with the 14' noise wall extension along the entire southern boundary of the Project site, noise levels would be reduced by 15 dBA, resulting in L_{max} noise levels of 61 dBA or less at the rear yard of the closest residence to the loading dock area along the Project's site's southern boundary.

The commenter and his retained noise consultants indicate that the soundwalls would be less effective than the DEIR concluded due to "refraction" from "radiated and reflective noise." This possibility was in fact taken into account during preparation of the noise analysis. In the above-referenced "worst-case" scenario, heavy trucks would circulate approximately 200 feet from the nearest portion of the expanded Walmart building. (See DEIR Volume II, Appendix H (Noise), Figure 4, which shows delivery truck circulation route.) The orientation of the building with respect to the location of the truck when it is nearest the most-affected neighbors would not allow for a direct reflection of noise back toward these residences.

Possible minor reflections off of the expanded Walmart building were accounted for in the calculations of noise levels at offsite receiver locations and were determined to be negligible at a distance of 200 feet (i.e. the distance between the large truck and the Walmart Building when the truck would be closest to the receiver at 744 S. Tracy Avenue), given the building's orientation. This is because the reflected contribution has to travel from the truck to building and back to the receiver, and the reflected noise

continues to attenuate with distance over the entire reflected path. In this case, the possible reflected noise would travel a minimum of 400 feet (i.e., the distance from the truck to the building and then to the receiver). The reflected noise would be more than 10 decibels below the direct-path noise, so it would not measurably contribute to the noise that travels directly from the truck to the residence.

East Project Boundary

Similarly, trucks circulating along the east boundary of the project site and adjacent to residential receivers located west of South Pinkham Road would result in maximum instantaneous noise levels of 72 to 77 dBA L_{max} when trucks circulate at a distance of about 40 feet. This distance represents the west property lines of the nearest residences when trucks circulate at their closest point.

Without a noise barrier, the maximum noise level calculated to result from heavy truck circulation is 77 dBA L_{max} at 40 feet. The proposed 15' masonry wall would provide 14 to 16 dBA of noise reduction, resulting in L_{max} noise levels of 63 dBA or less at the westernmost rear yard boundary of the closest residence to the truck circulation route along the Project's site's eastern boundary.

These maximum noise events would occur more than 300 feet from the expanded Walmart building (i.e., the distance from the Walmart building to the truck travel lane along the eastern site boundary). Possible minor reflections would be negligible because of the large distance separating the maximum noise event (e.g., truck circulation, parking lot sweeper, etc.) from the nearest reflecting surface of the expanded Walmart building.

a. *Comment Noise A.1.a: DEIR comments identified a Federal Highway Admin highway noise barrier design document that states is "very difficult" for highway noise barriers to reduce noise by more than 15 decibels, and thus DEIR comments requested "calculations used to determine the attenuation provided by the sound wall for each instance in which attenuation from the sound wall was assumed to reduce noise to receivers," and the identification of "any assumptions regarding the efficacy of barriers*." (Wolfe letter, p. 14).

b. *Comment Noise A.1.b: The Final EIR failed to provide any calculations or document any assumptions regarding the 14' southern boundary sound wall's ability to reduce noise by 16 decibels in response to these comments, and as a result the public was denied essential information regarding the proposed sound wall effectiveness.* (Wolfe letter, p. 14).

Response Noise A.1.a:

The commenter has repeatedly urged that the noise reduction values and documented effectiveness of *highway noise walls* as reported in a FHWA design document somehow undermine the EIR's conclusions that the Project's 14' southern boundary soundwall will effectively mitigate point source Project noise impacts on residents south of the Project site. The commenter has referenced this FHWA publication in his comments on the

DEIR, in comments on the Final EIR and now in a 218-page comment compilation purporting to respond to an April 25th staff report.

Citation to this FHWA publication reflects either a grave misunderstanding of the nature of noise to be mitigated from a freeway as opposed to a retail store, or a deliberate attempt to confuse the reader by imposing the inherent limitations in reducing noise from a freeway as compared to reducing noise from point sources on a retail store site.

Similarly, the reference made in the commenter's attached letter from Wilson Ihrig to the INCE publication for aircraft noise is misleading and confusing. Noise from a truck is not equivalent to noise from an airplane. The publications referenced by the commenter apply to highways and aircraft, not to point source noises from a retail shopping center.

As discussed in detail below, the FHWA limitation applies to **average** noise levels (L_{eq}) from traffic distributed along a freeway (referred to as a **line source**). The proposed noise barriers for this project are designed to reduce the instantaneous **maximum** noise level (L_{max}) from a single source of noise (referred to as **point source**) where it would cause the highest sound level at the most affected residence. The practical limitation for attenuation from a noise barrier is different in each of these two scenarios, as explained below.

Point Sources vs. Line Sources

Highway Noise Abatement Criteria are expressed in terms of the hourly average sound level (L_{eq}). The effectiveness of highway soundwalls are evaluated in terms of the hourly average noise levels coming from the constant sounds of vehicles traveling on the freeway. Highways are characterized as "*line sources,*" which are defined as:

> "Multiple *point sources* moving in one direction, e.g., a continuous stream of roadway traffic, radiating sound cylindrically [along a line]. Note: Sound levels measured from a line source decrease at a rate of 3 dB per doubling of distance." See http://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/design/design02.cfm for this definition of "line source."

On the other hand, noises coming from delivery trucks, loading and unloading activities, mechanical equipment, etc., are very different because they are individual, intermittent noises coming from a single source rather than numerous, continuous noise sources distributed along the freeway. These are two different acoustical conditions. Loading dock and delivery truck related noises are treated as "point sources."
According to the above-referenced FHWA website, a point source consists of a "*Source that radiates sound spherically [from a single point]. Note: Sound levels measured from a point source decrease at a rate of 6 dB per doubling of distance.*"

Practical Limits to Barrier Height

The practical limit of noise attenuation from a highway noise barrier, a barrier that attenuates noise from numerous sources distributed along a line, is approximately 15 dBA L_{eq}. This is because most transportation agencies will not build noise barriers that exceed 16 feet in height primarily due to the additional construction costs associated with

the additional structural strength required for the entire wall, not just the extra height, and the ever diminishing incremental benefit in terms of noise reduction that can be gained from higher barriers. While it is possible to build higher walls, the considerations of accelerating construction costs per additional foot of height, combined with the diminishing sound reduction achievable by such increases in height, places a practical limit on the height of sound barriers (i.e., 16 feet per Caltrans). Second, noise received behind the noise barrier at any instant in time accumulates from all of the individual vehicles distributed along the roadway including those near the receiver and those farther from the receiver. The accumulated noise from many different sources serves to limit the potential noise barrier reduction by a 16 foot wall to about 15 dBA L_{eq} for line sources.

Frequency of Noise

Another important variable for determining the performance of a noise barrier is the frequency (pitch) of the sound. Since highway noise levels are expressed as average noise or L_{eq}, the sound frequency of highway noise is also expressed as an average frequency. Average highway noise is in the mid-frequency range. Since noise barriers are less effective at reducing mid- and low-frequencies, the degree to which highway noise levels can be reduced is less than the reduction that can be achieved for higher frequencies, as discussed above. Therefore, given the practical height limit of 16 feet for noise barriers, as discussed above, the practical limit of noise reduction of average **highway** noise levels with average noise frequencies is 15 dBA $L_{eq.}$

Barriers attenuate higher frequencies more effectively than lower frequencies. The 24 dB L_{max} practical upper limit of attenuation achieved from a wall for the higher frequency components of sound is 24 dB L_{max}. The practical limit of noise attenuation from a noise barrier intended to mitigate noise from an individual point source on a retail site is approximately 17 to 24 dB L_{max} from the low to the high frequency range. (As discussed under Response NOISE A.1.b. below, the planned 14-foot sound wall along the southern project boundary is calculated to reduce noise from the nearest sources by 15 dB, plus 1 dB of noise attenuation for distance, for a total noise reduction of 16 dBA $L_{max.}$)

Conclusions Regarding Applicability of FHWA Highway Criteria to Retail Noise

As discussed, one objective of the EIR noise analysis was to evaluate whether the proposed 14-foot sound wall planned along the south project boundary would meet the City of Visalia limits for **maximum** daytime and nighttime noise levels (L_{max}) from **point sources** of noise that would occur in conjunction with project operations. As discussed in the DEIR, on page 209, the maximum noise levels from truck circulation would be well under the applicable City standards with the 14-foot wall in place, i.e., 4 dBA below the most stringent standard under worst-case conditions at receivers to the south. (This is discussed further under Response NOISE A.1.b. below.)

The commenter is focused on the ability of the 14-foot noise wall to provide a 16 dBA L_{max} reduction in noise from TRUs, as stated on page 212 of the DEIR. This receiver (744 S. Tracy Avenue) was selected because it is a two-story residence and the primary concern was noise at the second story. The barrier height was determined by the received noise level at the second story.

At the ground floor receiver, the calculated noise level was 35 dBA Lmax from the TRU, and 30 dBA below the City's maximum noise level limit. The argument regarding the practical limit of noise barrier performance is not relevant because the projected noise level would be substantially below the limit at this location. While this level of noise reduction that would be provided by the 14-foot wall (plus distance separation) is mentioned incidentally on page 212 of the DEIR, it is a 4-dB greater reduction than is required to reduce worst-case maximum noise levels, as mentioned above.

In summary, the DEIR's mention of the 16 dBA noise reduction resulting from the 14-foot noise wall (including distance separation) at the south property boundary is primarily informational in nature, especially since only a 12 dBA noise reduction is required to meet the City's noise standards at the south project boundary under worst-case conditions. Therefore, the planned sound wall not only results in meeting the City's standards but actually over-mitigates the worst-case potential noise impact.

In addition, while Illingworth & Rodkin mention that the practical limit of noise reduction from a 14-foot noise wall is 24 dBA; this applies only to high-frequency noise and not the mid- and low-frequency noise resulting from highway traffic. Thus, the commenter's introduction of FHWA highway noise criteria and the practical limits of noise reduction may be relevant to a discussion of **average** highway noise from highway **line sources**, but are not relevant to the DEIR noise analysis. Further, since the commenter's technical noise consultant must be aware of these facts, this comment can only be considered as a deliberate attempt to confuse and obfuscate the issue.

Nevertheless, the City of Visalia believes that the above discussion in response to this misleading comment is important to present the facts and analysis upon which this comment should be dismissed as irrelevant to the meaningful analysis of the project's actual noise impacts and the efficacy of measures proposed to mitigate those impacts.

Response Noise A.1.b:

The calculation of the level of noise reduction achievable from a noise barrier of a specific height, whose location from both the point source and the sensitive receptor is known, is addressed in the DEIR and is not a groundbreaking or cutting-edge exercise. As is evident from the Draft EIR's 12 pages of analysis of Project Activity noise impacts (see pp. 209-217) that the DEIR relied upon the "standard barrier theory" of noise attenuation and "industry-accepted methods"[1] to conclude that the southern boundary's 14' soundwall, in combination with attenuation with distance, would reduce truck circulation noise by 16 decibels at the most-affected receiver (15 dBA because of barrier attenuation plus 1 dBA for additional distance from the noise source) as compared to conditions without a 14' soundwall.

At this location, the future mitigated noise level is calculated to be 61 dBA L_{max} or less, at least 4 dBA below the City standard for nighttime L_{max} noise levels. The eastern boundary's 15' soundwall would reduce Project Activity noise by 16 dBA at the most-affected receiver as compared to conditions without a 15' soundwall. At these locations, the future mitigated noise level is calculated to be 61 dBA L_{max} or less, at least 4 dBA

[1] Harris, Cyril M. *Handbook of Acoustical Measurements and Noise Control, Third Edition.* 1998. Pp. 3.18-3.20.

below the City standard for nighttime L_{max} noise levels. The Final EIR explained that the DEIR's conclusions regarding the proposed soundwalls' noise-attenuation abilities were in fact based upon these well-known and accepted sources, both of which the two noise consultants advising Mr. Wolfe ought to have a working familiarity with. However, in order to clarify this issue for the lay reader, a brief overview of these concepts is provided below.

Standard Barrier Theory Applied to Project

Under the standard barrier theory of noise attenuation, the noise reduction that can be achieved by a particular noise wall is calculated by determining the distance that the sound travels under two different scenarios:

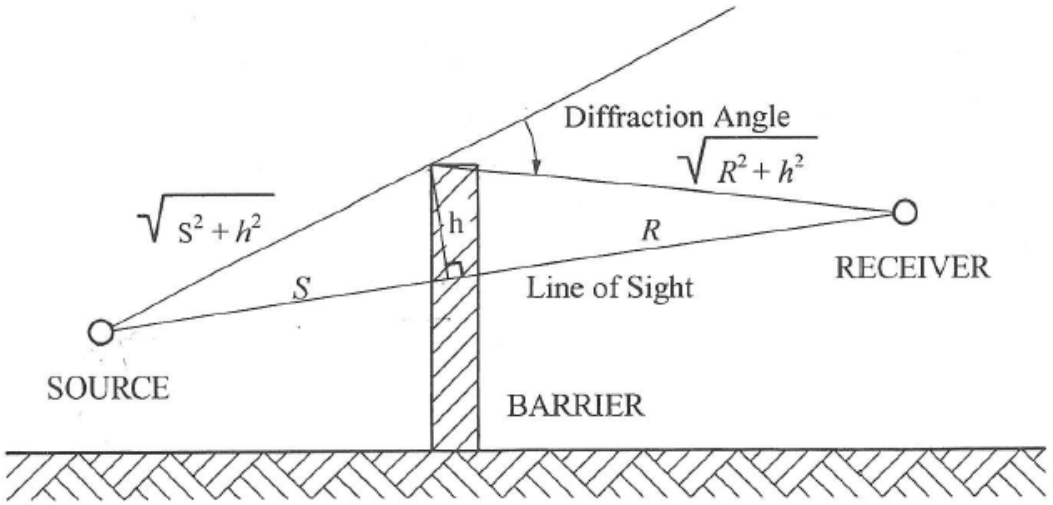
- In the first scenario, a noise barrier is assumed to be in place. This noise barrier creates what is called a "diffracted path" that the sound must travel before reaching the sensitive receptor.

- In the second scenario, **no** noise barrier is assumed to be in place. The noise travels on a direct path toward the sensitive receptor.

    - This is known as a "line-of-sight path" that the noise must travel before reaching the sensitive receptor.

- The differences in the distance the sound must travel under scenario 1 compared to scenario 2 will reveal the amount of noise attenuation to be achieved by a proposed sound wall.
    - This is called the "path-length difference".

This number is the difference in distance between the source and receiver measured over the top of the barrier compared to the direct path between the source and receiver assuming the barrier is not there. The proposed soundwalls provide a noise reduction for the sensitive receptors located within its "shadow zone." The shadow zone is the area shielded from the direct view of the noise source by the intervening noise barrier, as shown in the diagram below.



Source: Lecture Notes for Noise Control for Buildings, Manufacturing Plants, Equipment and Products, Hoover & Keith, Inc. 2003.

The table below shows the expected barrier attenuation, or "insertion loss," by octave frequency band for different path lengths for receivers located in the shadow zone of a noise barrier. Based on the values contained in the table, the following are examples of noise level reduction ranges associated with different path length differences.

Path Length Differ-ence, ft (m)	Insertion Loss, dB								
	Octave Frequency Band,								
	31	63	125	250	500	1000	2000	4000	8000
0.01 (0.003)	5	5	5	5	5	6	7	8	9
0.02 (0.006)	5	5	5	5	5	6	8	9	10
0.05 (0.015)	5	5	5	5	6	7	9	10	12
0.1 (0.03)	5	5	5	6	7	9	11	13	16
0.2 (0.06)	5	5	6	8	9	11	13	16	19
0.5 (0.15)	6	7	9	10	12	15	18	20	22
1 (0.3)	7	8	10	12	14	17	20	22	23
2 (0.6)	8	10	12	14	17	20	22	23	24
5 (1.5)	10	12	14	17	20	22	23	24	24
10 (3)	12	15	17	20	22	23	24	24	24
20 (6)	15	18	20	22	23	24	24	24	24
50 (15)	18	20	23	24	24	24	24	24	24

Source: Lecture Notes for Noise Control for Buildings, Manufacturing Plants, Equipment and Products, Hoover & Keith, Inc. 2003.

- A typical path-length difference--such as ½ foot to 5 feet--provides a noise level reduction 10 to 20 dBA for noises associated with the loading dock area of a retail store (i.e., in the mid-frequency range from the table above).

- A larger path-length difference ranging from 5 feet to 50 feet provides a noise level reduction that ranges from 20 to 24 dBA (i.e., in the mid-frequency range from the table above).

The following discussion explains the calculation of noise reduction resulting from the planned 14-foot sound wall along the southern project boundary. For reasons explained in detail below, the receiver position is fixed at a point 15 feet away from the noise barrier.

The positions of project noise sources vary depending on the position of the source (e.g., truck loading dock circulation, truck turnaround area, etc.), and range from 25 to 30 feet from the noise barrier for the noisiest activities nearest to the south and east boundary.

For example, at the most affected receiver to the south, the line-of-sight path from the nearest noise source (e.g., truck turnaround area) to nearest residential receiver is 45 feet (i.e., 30 feet from truck turnaround to 14-foot sound wall; 15 feet from sound wall to receiver in rear yard). The diffracted path length from the truck over the 14-foot wall to the receiver location is 48.5 feet. The calculated barrier insertion loss for the proposed 14-foot barrier along the south boundary of the site for this example is 15 dBA (at a path length difference of 3.5 feet). Following the same steps, in a different geometry, the calculated barrier insertion loss for the proposed 15-foot barrier along the east boundary of the site is approximately 16 dBA (at a path length difference of 4.5 feet).

The barrier insertion loss calculation is based on the critical octave band frequencies (from the above table) which are associated with loading and truck noise sources. (The calculation sheets prepared by Illingworth & Rodkin to determine noise reductions resulting from the 14-foot noise wall are included as an attachment to this Rebuttal Memo.)

Explanation of Assumed Receiver Position

In the DEIR noise section, the position of the noise receiver is described as 15 feet from the proposed noise barrier which places the receiver within 5 feet of the property boundary, some distance inboard of the common property boundary between the project site and the receiver's property. For receivers along the southern project boundary, this distance is set at 5 feet from the common property line.

For purposes of noise calculations, the placement of a noise receiver at the property boundary would provide a false indication of noise levels that would be anticipated in the outdoor living area of the residential rear yard. This is because the noise reducing effect of a sound barrier is greatest immediately adjacent to the wall, and decreases gradually with distance from the wall. Thus, in order to produce an accurate and worst-case estimate of actual ground conditions in the usable rear yard area, the assumed receiver position is 5 feet from the property boundary in this instance.

The positioning of the receiver location away from the property boundary has little or no effect on the estimated noise levels. Although some noise attenuation occurs as a result of the increased distance from the noise source, this reduction is balanced by the increase in noise level resulting from moving the receiver position away from the most noise-protected location adjacent to the noise wall.

Although the noise limits of the City of Visalia Noise Ordinance apply as measured at the property line of the affected noise sensitive land use, for purposes of the EIR noise analysis, the property line was not considered to be the location where the residential receptor would be subject to worst-case noise levels.

Noise levels at the property boundary would either be measured at the top of the boundary wall, where the noise attenuating effects of the wall would not occur, or just within the residential side of the noise wall, where noise levels would be lowest and not representative of conditions within the usable yard area of the residential property. As discussed above, neither of these locations would produce an accurate representation of noise impacts at the receiver location. Therefore, measurements taken at these locations would be of dubious value under CEQA. Instead, the receiver location at a point 5 feet from the proposed barrier was considered to reflect reasonable worst-case conditions for purposes of the EIR. This receiver position would be at the portion of the rear yard where noise levels would be highest given the distance from project noise sources, and in a position where received noise levels would be influenced less by property line noise barriers.

As discussed on pages 207 through 217 of the DEIR, the combination of noise reduction from the barrier and noise reduction due to distance are calculated in all instances to result in noise levels less than the City of Visalia's nighttime noise level limit of 65 dBA L_{max}. The methods and calculations applied by Illingworth & Rodkin to arrive at these conclusions have been explained in detail in this response.

2. **<u>Comment Noise A.2: The EIR's discussion of existing sound levels is inadequate.</u>**

    a. <u>Comment Noise A.2.a</u>: *Mr. Pettyjohn's field tests show that existing sound levels exceed the City's noise standards at for residences situated adjacent or close to the existing Walmart's loading docks.*

    b. <u>Comment Noise A.2.b</u>: *Noise violations occurred, even with the presence of 14 foot and 6 foot sound walls…The fact that existing operations exceed residential noise standards to this extent even with sound walls in place, renders the EIR's assumptions highly suspect.* (Wolfe letter, p. 15).

<u>Response Noise A.2.a</u>:

The purpose of the EIR's ambient noise survey was to establish existing baseline noise levels at the residences that could be most affected by the proposed project, that is, the residences closest to the proposed *new* loading docks and truck circulation area. The intent of the measurements made by Mr. Pettyjohn was to show that existing noise levels resulting from loading dock activities currently exceed Municipal Code noise limits. The choice of measurement locations reflects this intent, and does not provide information

that is useful in evaluating the post-project noise impacts and the proposed soundwalls' ability to mitigate them to a level that is less than significant.

Mr. Pettyjohn's letter summarizes the results of noise measurements made at three locations south of the *existing* Visalia Walmart loading dock during one nighttime period in April 2011. Site #1 was at 744 S. Tracy Street, 7 feet south of the north property line. This location is approximately 250 feet from the closest portion of proposed loading docks where trucks would be parked. Pettyjohn sites #2 and #3 were in the rear yard of 1900 E. College Avenue, approximately 190 feet from the same point described above.

However, in the future, the loading docks would be shifted approximately 120 to the east, and shielded by a secondary 10-foot barrier located adjacent to the loading bays. Site #2 was 13 feet east of the west property line, and 15 feet south of the jog in the noise barrier, in the approximate center of the rear yard. Site #3 was 22 feet east of the west property line at the north property line very near an existing noise barrier.

In some instances, it is useful to measure an existing source of noise if that source of noise would remain with the project. However, the existing loading docks would be removed. The expanded store's loading dock area will be redesigned and relocated approximately 120 feet to the east, and will feature additional 10' noise barriers on either side of the downward drive ramp. As a result, Mr. Pettyjohn's noise measurements do not represent the noise levels that would occur with the project and are not relevant to the assessment of noise impacts resulting from a newly-constructed, relocated and noise buffered loading dock area.

Response Noise A.2.b:

Mr. Pettyjohn describes in great detail the results of the measurements made near the existing loading dock in an attempt to cast doubt on the comprehensiveness of the noise monitoring survey completed for the EIR. However, the Pettyjohn noise measurements lack the most elementary detail that would be needed to determine their adequacy and accuracy in reporting on existing conditions.

Mr. Pettyjohn's non-representative noise measurement location at 1900 E. College Avenue had the only reported "Walmart" exceedance of the Municipal Code noise standards. It consisted of "yelling and talking," activities not related to the sound of delivery trucks, forklifts or any other operational project feature. Other aspects of the Pettyjohn noise measurements are discussed below.

- *Microphone height not disclosed*

The heights of the microphones at each of Mr. Pettyjohn's three measurement sites are not indicated in the letter or on the graphs. The measurements made at the property line of 1900 E. College Avenue (Site #3). When a noise barrier is located along a property line, standard and widely-accepted acoustical measuring practices would locate a microphone at the height of the receiver, which in this case would be a height of five feet above the ground to represent the average height of a human's ears, typically 5 to 15 feet behind the barrier on the receiving property, such as Pettyjohn Site #2.

With regard to Pettyjohn Site #3, there is an existing 6-foot noise barrier along the north property line, so it is presumed that the measurement was made at an elevation above the six-foot noise barrier. This conclusion is supported by the graphs provided with Mr. Pettyjohn's memo, which indicate significantly higher noise levels at Site #3 as compared to Site #2 which is only 15 feet to the south and away from the 6-foot noise barrier. The significantly higher noise reading at the property line indicates that this measurement was taken on top of the existing wall and not immediately behind, where lower noise levels would have been measured compared to Site #2 due to shielding from the wall. This is discussed in detail below. (See also discussion on "Explanation of Assumed Receiver Position" under Response Noise A.1.b above.)

When a noise barrier is located along a property line, standard and widely-accepted acoustical measuring practices would locate a microphone at the height of the receiver, which in this case would be a height of five feet above the ground to represent the average height of a human's ears, typically 5 to 15 feet behind the barrier on the receiving property, such as Pettyjohn Site #2.

Due to its position above the existing noise barrier, Pettyjohn Site #3 is not a noise measurement location that is representative of a resident standing in their rear yard, and not a fair location to conclude that there was an exceedance of the Municipal Code standards. (See "*Explanation of Assumed Receiver Position*" under Response Noise 1.b.1 above for a discussion of appropriate measurement locations for assessing noise impacts.) Pettyjohn measurement Site # 2 would have been a more appropriate location to quantify noise levels at this residence because it represents the location of worst-case noise levels within the rear yard of that property.

- *Noise sources not identified or reported.*

According to Mr. Pettyjohn, there was one "noise violation" consisting of human voices measured in the backyard at 1900 E. College Drive near existing loading docks. Mr. Pettyjohn claims that this indicates that there will be future noise violations due to the project since he measured that violation despite the existing 14 foot soundwall. However, this claim ignores the fact that the project loading docks will be relocated and noise buffered by new loading dock walls that do not exist under current conditions.

His letter states that existing Walmart operations generate noise levels that exceed the 65 dBA L_{max} nighttime noise level threshold used in the impact analysis. A review of the data shows that maximum noise levels (indicated as a blue line on Figure 1) twice exceeded the 65 dBA L_{max} nighttime noise level threshold between approximately 1:05 a.m. and 1:20 a.m. at Site #3, along the north property line of 1900 E. College Avenue. According to these data, the maximum noise level reached 68 dBA L_{max} at about 1:05 a.m. and 66 dBA L_{max} at about 1:20 a.m. The noise source is labeled "Walmart," but no other explanation is provided. As discussed above, these elevated noise levels are not reflected in the simultaneous noise measurements taken at Site #2 located 15 feet to the south of Site #3. If the measurements at Site #3 had not been taken on top of the wall, but at a receiver listening height of 5 feet above the ground, the noise levels would be expected to have been lower than measured at Site #3, and more similar to the levels measured at Site #2, due to the greater noise shielding effects immediately behind the wall at Site #3.

Although Mr. Pettyjohn states that he was at the 1900 E. College Avenue home during the duration of the noise measurements, no useful information is presented as to the type of noise source he measured, other than "Walmart." He also does not provide information regarding the times when "impulsive" sounds or sounds resulting from yelling or talking in the loading dock area were noted, or the distance of the noise source with respect to the noise measurement position.

In short, Mr. Pettyjohn's letter fails to support his claim that the existing Walmart operation results in a noise exceedance because: 1) the noise measurements upon which this claim rests is based on a faulty method of noise measurement; and 2) he fails to show that the causes of the noise exceedances he measured originated from Walmart loading dock and truck operations. As such, they are of no value to demonstrate the point he is trying to make – that existing noise cannot be mitigated despite the presence of the partial 14' screenwall along the site's southern boundary.

Noise data collected at Sites #1 and #2 showed no exceedance of the 65 dBA L_{max} nighttime noise level threshold attributable to Walmart. One "unknown source" of noise generated a maximum noise level of 75 dBA at Site #1. It is worth noting and also rather curious that the loudest noise level measured during the monitoring survey was from an "unknown" source, while the source of noise levels measured more than 20 dBA lower than this (such as a heavy truck at 52 dBA L_{max}) were noted. This data point also supports the fact that maximum noise levels from non-Walmart sources occasionally exceed the nighttime noise level threshold for maximum events, in this case by up to 10 dBA.

c. *Comment Noise A.2.c: Sound levels measured continuously overnight from three positions in the backyard of the home at 1900 E. College Drive, south of to Walmart's existing docks and activity areas, exceeded the maximum LMAX sound level of 65 dB(A) during the nighttime hours of 7:00 p.m. to 6:00 a.m.*

Response Noise A.2.c:

Although the comment implies that noise levels at all three of Pettyjohn's measurement locations exceeded the City's nighttime noise standard, in fact such elevated readings were only taken at one measurement location (Site #3). For reasons discussed in detail in Response Noise A.2.b above , the validity of this elevated noise level is highly dubious due to the faulty method by which the measurement was taken, and because the source of the elevated noise event could not be attributed to Walmart loading dock or truck delivery activity

A review of the data shows that maximum noise levels (indicated as a blue line on Figure 1 of Mr. Pettyjohn's letter) twice exceeded the 65 dBA L_{max} nighttime noise level threshold between approximately 1:05 a.m. and 1:20 a.m. at Site #3, along the north property line of 1900 E. College Avenue. According to these data, the maximum noise level reached 68 dBA L_{max} at about 1:05 a.m. and 66 dBA L_{max} at about 1:20 a.m. The noise source is labeled "Walmart," but no other explanation is provided.

Noise data collected at Sites #1 and #2 showed no exceedance of the 65 dBA L_{max} nighttime noise level threshold attributable to Walmart. One "unknown source" of noise generated a maximum noise level of 75 dBA at Site #1.

Curiously, the loudest noise level measured during the monitoring survey was "unknown" although noise levels over 20 dBA lower (heavy truck at 52 dBA L_{max}) were noted. This data point also indicates that maximum noise levels from non-Walmart sources occasionally exceed the nighttime noise level threshold for maximum events, in this case by up to 10 dBA.

The data collected by Mr. Pettyjohn indicate that noise levels were only exceeded at the north property line of 1900 E. College Avenue, and not in the rear yard where receivers would be expected to be located during the vast majority of time, and exceeded the nighttime noise level threshold for maximum events by only 1 to 3 dBA. For reference, a noise level change of 3 dBA is just detectable outside of a laboratory environment. Noise levels at Site #2, just fifteen feet south of the north property line measurement and near the center of the rear yard, did not exceed 65 dBA L_{max} at any time. As discussed above, the noise levels observed at Site #2 should have been higher or equal to the levels at Site #3, if the noise measurement at Site #3 had been taken at the appropriate receiver listening height instead of on top of the wall.

d. Comment Noise A.2.d The City's noise regulations limit the maximum, LMAX, sound level to 65 dB(A) during the nighttime of 7:00 p.m. to 6:00 a.m. and 70 dB(A) during the daytime and evening.

e. Comment Noise A.2.e The City's noise regulations impose a 5 dB(A) penalty (less sound is allowed) for music, speech or impulsive sound.

f. Comment Noise A.2.f The sound was perceived to be impulsive and repeated at random intervals with a very large difference between the average and the maximum sound level.

g. Comment Noise A.2.g The highest LMAX sound level was 68 dB(A). The 65 dB(A) limit without a penalty was exceeded several times, and the 60 dB(A) limit with the penalty was exceeded many more times..

(Wolfe letter, p. 15; Pettyjohn letter, p.2, comments 1.b, e(i-ii)).

Response Noise A.2.d

The correct noise level limits for "Daytime and Evening" and "Nighttime" time periods were used in the EIR noise assessment.

Response Noise A.2.e-g

A penalized noise level limit of 60 dBA L_{max} is presented in the commenter's letter to further make a case that existing noise levels are in violation of the Municipal Code. Paraphrasing Comment 1.d.i, "many impulsive sounds were noted during the test and that yelling and talking were easily audible during the night." The type of 5 dBA penalty Pettyjohn advocates is imposed pursuant to Section 8.36.040 C. of the Municipal Code

for "…pure tones, noises consisting primarily of speech or music, or for recurring impulsive noises."[2]

The facts do not warrant imposition of the commenter's suggested 5 dBA tonal noise penalty for all noise coming from the project site. Sound is judged by each individual differently, and the frequency content, amplitude or loudness, and duration of sounds all contribute to one person's definition of noise. While there may be an occasional voice heard from someone behind the building, the primary noise sources emanating from the site are not speech or music. Sounds emanating from loading dock activities are not normally tonal, do not consist primarily of speech or music, and are not recurring impulsive sounds (e.g., hammering).

The noises emanating from the Walmart operation are not tonal in nature. Therefore, penalties for tonal noise are not justified here. As such, the EIR analysis did not include a 5 dBA penalty, as described in Section 8.36.040 C. of the Municipal Code for "…pure tones, noises consisting primarily of speech or music, or for recurring impulsive noises." This is due to the fact that Illingworth & Rodkin's experience with similar projects shows that such noises are not typical for retail operations, thus not warranting an additional 5 dBA penalty for all sounds generated by the proposed land uses. The DEIR, at page 211, also notes that "low speed truck noise results from a combination of engine, exhaust, and tire noise and is not tonal in nature."

Loading dock sounds are instead infrequent, discreet events of varying duration. These sounds come from a wide variety of sources such as truck circulation, loading and unloading activities, forklifts, occasional communication, and are not normally repetitive or impulsive. The noises emanating from the Walmart operation are not tonal in nature. Therefore, penalties for tonal noise are not justified here. The DEIR, at page 211, also notes that "low speed truck noise results from a combination of engine, exhaust, and tire noise and is not tonal in nature." For the reasons stated above, no additional penalty was applied to the Municipal Code noise limits.

The EIR's approach is consistent with the City's noise regulations. Municipal Code Section 8.36.040.C imposes a 5 dBA penalty for "…pure tones, noises consisting primarily of speech or music, or for recurring impulsive noises." Section 8.36.020 (Definitions) states that a "Pure tone noise" means any noise which is distinctly audible as a single pitch (frequency) or set of pitches. In addition, for the purpose of the 5 dBA penalty, a pure tone shall exist if the one-third octave band sound pressure level in the band which the tone exceeds the arithmetic average of the sound pressure levels of the two continuous one-third octave bands by five dB for center frequencies of five hundred (500) Hz and above and by eight dB for center frequencies between one hundred sixty (160) and four hundred (400) Hz and by fifteen (15) dB for frequencies less than or equal to one hundred twenty-five (125) Hz.

[2] Mr. Pettyjohn does not say unequivocally that the 60 dBA L_{max} threshold should absolutely have been used in the EIR noise analysis, likely because he himself would not normally impose such a penalty for a retail store. The commenter and his noise consultants further fail to identify a single Walmart store or other similar retail project where a 5 dBA tonal penalty has been imposed, likely because such an example does not exist. This, despite careful combing of the EIRs and records of other Walmart projects for the sole purpose of identifying "inconsistencies" between the EIRs and their conclusions.

Mr. Pettyjohn's frequency data shows no pure tone noise exists. The sound pressure level at 125 Hz (74 dB) exceeds the arithmetic average of the sound pressure levels of the two continuous one-third octave bands (100 Hz – 58 dB and 160 Hz – 68 dB, arithmetic average equals 63 dB) by 11 dBA. Penalties for tonal noise are not justified as demonstrated by Mr. Pettyjohn's own data.

Neither Mr. Pettyjohn nor Mr. Wolfe provide any evidence to support their opinion that these noise sources are impulsive, would justify the application of a 5 dBA penalty, and would exceed the adjusted noise limit. Vague references in their letters to "impulsive sounds" do not support this penalty. (Pettyjohn letter, p. 2, at 1.d.i-ii). It is further noted that neither Pettyjohn letter comment 1.e. i nor ii identifies whether or not the "impulsive" sounds or sounds resulting from yelling or talking generated sound levels in excess of the Municipal Code standards. There is no logical progression here that would lead to a finding that there was an exceedance, nor is it relevant to impacts from the proposed project.

Finally, in response to comment (f) above, it should be noted that there is normally a large difference between the average and the maximum sound levels when noise events are infrequent.

h. *Comment Noise A.2.h: The EIR relies on testing done at wrong locations: Recent measurements made at 744 S Tracy Drive showed substantially lower LMAX sound levels than seen at 1900 E College. The selection of 744 S Tracy Drive as the best position for assessing the impact of the expansion might completely misrepresents the sound exposure of those who live adjacent to the main noise sources, the loading docks, pallet stacks and bailed recycled material storage. Neither the DEIR nor the FEIR address the maximum sound levels measured at 744 S. Tracy.*

Response Noise A.2.h:

The EIR tested at the correct locations to evaluate Project impacts. The intent of the noise measurements made as part of the EIR noise assessment was to document noise levels at receivers near the relocated loading docks where ambient noise levels, especially maximum instantaneous noise levels, are currently lower and most susceptible to increase as a result of the project. A lower ambient noise environment would be more affected by a proposed project than one that currently experiences more noise. Thus, the EIR's noise measurement data provided a "worst-case" baseline against which project impacts were assessed.

As described on Page 199 of the DEIR, a noise monitoring survey was conducted on June 24-25, 2009 to quantify the existing ambient noise environment at residential receivers located adjacent to the proposed loading dock. One long-term (24-hour) and one short-term (10 minute) noise measurement were made to complete the noise monitoring survey.

Short-term noise measurements are routinely conducted during environmental noise surveys over 10 to 15 minute periods at locations near long-term noise monitoring site to provide an additional data point for comparative purposes.[3]

Noise Measurement ST-1 was taken near the northeast corner of the property at 1930 E. College Avenue to take a reading of noise levels adjacent to the location of the proposed loading bays and truck turnaround area on the project site. The purpose of this short-term measurement was to supplement the measurements taken at LT-1 in order to refine and calibrate the LT-1 data with respect to the ST-1 location. A review of the data collected at the short-term site and the long-term site showed consistent ambient noise levels between the two sites, noted other local noise sources such as air-conditioning units in adjacent residential yard areas, and did not detect any significant noises from Walmart.

As expected, the ST-1 measurement data closely matches the LT-1 data for the measurement period and indicated that the LT-1 measurement data was suitable to establish a baseline for the ST-1 location as well as the LT-1 location for purposes of the noise analysis. Therefore, the data collected at Sites ST-1 and LT-1 credibly represented ambient noise levels during a time period when Walmart was not a significant source of ambient sound. As discussed above, the LT-1 measurement data was most critical to the noise analysis because it provides detailed 24-hour baseline data at the sensitive receptor location which currently has the quietest ambient noise conditions with respect to the project site and because it is therefore subject to the greatest potential increase in noise levels due the Walmart expansion. The measurement results from the ST-1 measurement location establish and confirm that the noise conditions measured at the LT-1 location are representative of ambient conditions.

Noise measurement LT-1 was located in the rear yard of 744 Tracy Avenue. This site was selected to quantify existing noise levels at receivers adjacent to the project site where ambient noise levels from distant traffic and existing Walmart operations were expected to be lowest given the distance from these sources. The measurement site was over 400 feet from the existing loading dock and over 1,000 feet from State Route 198, and shielded from these noise sources by an existing 8 foot noise barrier. The microphone was positioned 5 feet above the ground. The project proposes to relocate the loading dock and truck circulation area to the east placing noise sources near to this residence (i.e., within 45 feet of the proposed truck turning circle and circulation route).

This receiver was also selected because the existing sound wall is 8 feet high as compared to most receivers near the existing loading docks and along the project's south property boundary that are shielded by a 14 foot noise barrier. This location, therefore, credibly represents the receiver where noise levels could be increased the most with the construction and operation of the project.

Noise measurement ST-1 was made on the afternoon of June 25, 2009 between 2:30 p.m. and 2:40 p.m. The measurement site was at the north end of S. Tracy Avenue, opposite

[3] Examples of similar short-term noise measurements made by Illingworth & Rodkin, Inc. for environmental noise assessments for proposed commercial retail projects include the Antioch Walmart Expansion, the Santa Rosa Walmart, the San Jose Lowe's (Brokaw Road), the Concord Home Depot, and the Chico North Specific Plan. Examples of other noise assessments which included short-term noise measurements that were completed by firms other than Illingworth & Rodkin include the Panama Lane (Bakersfield) Walmart, and the Tracy WinCo.

the front of 744 S. Tracy Avenue, and adjacent to the rear yard of 1930 E. College Avenue. The microphone was positioned 5 feet above the ground, and located 15 feet from an existing 8 foot noise barrier. The data collected at both sites were used to establish existing ambient noise levels at the three most affected residences for comparison to future noise levels with the project. (Noise locations where noise measurements were taken for the DEIR noise assessment and Mr. Pettyjohn's noise measurements are shown in Attachment Noise-2.)

Mr. Pettyjohn confirms that noise levels measured as part of the environmental analysis of the proposed project were credible and representative of the noise environment at receivers located south of the proposed new loading dock area, where he compares the data in Comment 3b., page 4 of his memo and finds that L_{50} noise levels measured for the EIR and measured and summarized by Mr. Pettyjohn were within 1 to 2 dBA of each other. (See Pettyjohn memo, page 4, and DEIR Volume II, Appendix H (Noise), Figure 2, at page 11.)

In the same comment by Mr. Pettyjohn, he also confirms that maximum noise levels measured as part of the EIR were less affected by maximum noise events occurring at or near the existing loading dock area as noise levels were typically 5 to 15 dBA L_{max} less than those measured by Mr. Pettyjohn. After one accounts for differences in measurement height and location, there is no discrepancy between the noise measurement results taken for the EIR noise analysis and the noise measurements taken by Mr. Pettyjohn.

The difference between the noise measurement results reported by Mr. Pettyjohn and those reported in the EIR occurs because of the intent of the noise measurements. Mr. Pettyjohn's intent was to document the highest noise levels possible, at the property line of the receiver nearest the existing loading docks. This particular noise measurement location is not relevant to the proposed project as the proposed loading docks and associated noise sources would be moved approximately 120 feet to the east and shielded by new 10-foot noise barriers. The proposed project will change the loading dock area substantially, and existing noise measurements made by Mr. Pettyjohn are irrelevant in the assessment of the proposed expansion project.

3. **Comment Noise A.3: The EIR's assumptions re Project's new noise sources are erroneous and inconsistent with other WM projects:**

   a. *Comment Noise A.3.a: The EIR unaccountably makes assumptions regarding noise sources for large trucks, vendor trucks, and TRUs that are inconsistent with assumptions made in other noise analyses, including analyses prepared by the same noise consultant and for another Wal-Mart project.*

   b. *Comment Noise A.3.b: Project noise sources may actually be 10 decibels higher, and there is nothing in the EIR that would require the Project to permit only quieter trucks and TRUs (if such are available). These noise sources would result in significant impacts, which the EIR does not disclose. Thus, its analysis is inadequate.*

Response Noise A.3.a:

The basis for the assumptions regarding noise levels from specific sources is presented on Pages 207 to 216 of the DEIR. The assumptions for all Walmart noise sources, with the exception of TRUs, were consistent with previous Walmart noise studies prepared by Illingworth & Rodkin, Inc. Additional TRU noise measurements were collected at the Visalia store with the specific intent of obtaining accurate noise data for TRU deliveries that would occur at the subject store. See response Noise A.3.b, below for detailed discussion.

Response Noise A.3.b:

Noise data utilized in the EIR noise analysis were based upon noise measurements made at existing Walmart stores for past and current projects. Measurements made by Illingworth & Rodkin Inc. at the Walmart store in Antioch, California (June 2005) and the Fresno Southeast Walmart store (September 2008) were used to establish truck circulation noise levels for activities at the Visalia Walmart Store. These data were internally consistent and support the assumption that maximum noise levels from truck circulation at the Visalia Walmart would reach 70 to 75 dBA L_{max} at a distance of 50 feet. There is no basis for assuming that truck circulation activities would be 10 dBA louder as Mr. Watry asserts.

Mr. Derek Watry was also retained by Mr. Wolfe to comment on the noise assessment Illingworth & Rodkin prepared for the Antioch Walmart Expansion Project. Mr. Watry's lengthy comment letter on that noise analysis[4] takes no issue with the source noise level data used by our firm in the Antioch Walmart Expansion Project noise assessment, although the data is consistent with the data used to assess potential noise impacts resulting from the Visalia Walmart Expansion Project.

Additional noise measurements made in July 2010 at the Visalia Walmart provided updated source noise level data for Walmart truck TRUs. As discussed on Page 211 of the DEIR, I&R measured noise levels from two diesel powered Walmart refrigeration trucks at the Visalia Walmart store. The noise measurements were conducted during warm weather conditions requiring the TRUs to operate more frequently. The trailers were parked east of the existing loading dock. Noise measurements were made 16 feet (5 m) from the center point of the two operating TRUs. The measured noise level was 73 dBA with both TRUs in operation.

According to information provided by the applicant regarding operations at the Visalia store, all Walmart truck deliveries are made by a vehicle fleet which includes no vehicles older than 7 years. All TRUs on refrigeration trucks consist of newer, quieter, more efficient units. The applicant has reconfirmed that the TRUs measured at the Visalia store in June 2010 consisted of the newer models which are included on the entire

[4] Walmart Expansion Project, Antioch, California, Review of the Project Environmental Noise Analysis, Wilson Ihrig & Associates, July 23, 2010.

refrigerated truck fleet serving the Visalia Walmart store currently and going forward. (Jason Hatwig, CEI Engineering, June 10, 2011.)

Therefore, the noise measurement data collected from TRU units at the Visalia Walmart store in June 2010 credibly represent the range of noise levels that would result from trucks associated with the project. Noise data specific to other commercial retail operations are not relevant to the proposed Walmart project and were not used in the analysis.

c. *Comment Noise A.3.c: The analysis of the efficacy of the sound wall on the south side of the site is flawed because it does not recognize the significance of radiated and reflected noise.*

d. *Comment Noise A.3.d: Truck traffic moving along the south side of the site will be in a trough formed by the sound wall, the pavement, and the south side of the Walmart store itself. These hard, reflective surfaces will amplify and raise the height of the noise source, and will reduce the efficacy of the barrier. Mr. Watry demonstrates that the analysis in the EIR simply fails to consider this source of incremental noise.*

Response Noise A.3.c:

Regarding "radiated and reflected noise," the term radiated was introduced previously in Mr. Wolfe's comments. The entire EIR noise analysis addressed radiated noise (i.e., the direct noise coming from the source). Mr. Watry introduces the concept of barrier degradation due to reflections. While there is no dispute regarding Watry's assertion that sound barrier performance can be degraded by reflections under certain conditions, it is not accurate for Mr. Watry to claim that those certain conditions illustrated in his comments would occur at the Visalia Walmart store.

The highest maximum noise levels attributable to the project would only occur in areas of the site where heavy trucks would circulate very near to the south and east site boundaries. These locations would include the southernmost portion of truck turning radius (shown on the truck circulation diagram) adjacent to the proposed 14 foot noise barrier extension planned along the south boundary of the site or along the truck circulation route adjacent to the 15 foot noise barrier planned along the east boundary.

In these worst-case scenarios, heavy trucks would circulate approximately 200 feet from the nearest portion of the proposed building when generating maximum noise levels at receivers to the south and nearest the truck circulation route. (See DEIR Volume II, Appendix H (Noise), Figure 4, which shows delivery truck circulation route.) Additionally, the orientation of the building would not allow for a direct reflection of noise.

Similarly, trucks circulating along the east boundary of the site would be over 300 feet from the proposed building when generating maximum noise levels at receivers to the east and nearest the truck circulation route. Possible minor reflections off of the Walmart building were accounted for in the calculations of noise levels at offsite receiver locations, and were determined to be negligible at these distances.

Response Noise A.3.d:

Please see Response A.1 above for a response to the issue raised in this comment.

e. Comment Noise A.3.e: EIR contains "multiple inconsistent descriptions of the sound wall along the southern site boundary." CEQA requires a stable and consistent project description that is adequate to evaluate environmental impacts. The commenter was unaware of the wall height assumed in the analysis.

Response Noise A.3.e:

The commenter is referring to a single, reference to an obsolete plan to raise the existing 6-foot wall along the west portion of the southern boundary wall to 8 feet, and is found at DEIR p. 210. The DEIR reference should have been to a 6-foot wall, which is evident from the remainder of the EIR, and the noise study itself. For example, correct references to the existing 6-foot high masonry wall along the south site boundary appear in the DEIR at pages 18, 19, 40, 41, 45, 119, 120, 123, 199, 207, and 208. The corresponding discussion in the noise report correctly refers to the 6-foot wall (see page 16 in Illingworth & Rodkin's *Environmental Noise Assessment* dated September 2010, contained in DEIR Appendix H.)

More importantly, the noise calculations for the proposed expansion project assumed no change to the existing 6-foot high masonry wall along the western half of the southern site boundary. Correction of the clerical error reference to a planned 8-foot high masonry block wall results in no change to the noise levels calculated and summarized in the DEIR or technical report. The point of the reference is to indicate that the existing, lower masonry wall along the southern site boundary will not change – it will remain as is, which is 6 feet, and will not increase to 8 feet.

It remains the case that "The movements of vendor trucks along the western portion of the south boundary would result in maximum instantaneous noise levels of 55 to 60 dBA L_{max} at the nearest residences to the south assuming the shielding provided by the existing [6-foot] high masonry block wall."

The commenter next attempts to turn an already-corrected DEIR reference to a 17' southern boundary soundwall into a CEQA violation. The commenter apparently did not notice the FEIR's very detailed discussion of the Project's proposed soundwalls and the site's existing soundwalls, found at pages 93-94. Here, the FEIR corrected via strikethrough text the DEIR's obsolete reference at page 18 to a 17-foot wall, inserting "14-foot wall" in its place. That the commenter has now located other obsolete references to a 17' wall *on the same page the FEIR already corrected* and is attempting to show that it misled the public and prevented an accurate evaluation of the efficacy of the proposed southern soundwall is quite a stretch.. The EIR's project description is stable and consistent, as the FEIR has already corrected any possible confusion over the existing and proposed soundwall heights.

Importantly, Illingworth & Rodkin's *Environmental Noise Assessment*, dated September 2010 (DEIR, Appendix H) based its noise calculations on the correct 14' foot height for the southern boundary wall and the 15' height for the eastern boundary wall. The report also correctly referenced the two soundwall as 14 and 15 feet in height.

B. Responses to May 16, 2011 noise comments from Steve Pettyjohn.

1. Comment Noise B.1: Sound levels measured in the backyard of 1900 E. College Drive, south of to Walmart's existing docks exceeded the City's noise limits.

Response Noise B.1:

As described in detail in Response Noise A.2.a-c, Mr. Pettyjohn attempts to use noise measurements taken at poorly described locations to conclude the EIR is inadequate. In doing so, he presents an analysis of his measurements riddled with critical informational omissions, analytical flaws and an apparent misunderstanding of the purpose for the EIR's noise measurements.

a. Noise Comment B.1.a:

- *The author was at this home for the complete duration of the test, except while picking up a meter from 744 S. Tracy Drive between 7:10 and 7:20 a.m.*
- *Figure 1 shows the sound level at the north property line of the house at 1900 E. College Drive when measured in 1 second intervals. Not all of the data is shown this graph because of limitation of Microsoft Excel. The data should go to 8:00 a.m., but stops about 6:30 a.m.*

(Pettyjohn letter, p. 2, comment 1.d-e)

Response Noise B.1.a:

The commenter's points regarding his measurements at 1900 E. College Avenue raise more issues regarding the accuracy of the measurements taken from his two chosen locations. The commenter left the 1900 E. College Avenue house during the monitoring, but does not indicate if the monitoring was continuing and if so, who was in charge of ensuring it was properly handled. He also says that the data measured for 1900 E. College Avenue "should go to 8:00 a.m., but stops about 6:30 am." It is thus far from clear what –if any--measurements were taken from 6:30 to 8:00 – the time period he concedes the data should have included.

Given the intent of the measurements to demonstrate the loudest noise events possible to support the existing violations means future violations theory, the omission of 1.5 hours of data measurements coupled with his absence from the site raises doubt concerning the validity of his measurements, aside from the other issues identified with them in Noise Responses A.2.a-c above.

b. Comment Noise B.1.b:

- *One of the owners of the home said that she was typically awakened by sound generated by activity at Walmart in the dock, pallet and compacted cardboard storage area.*
- *Chapter 9.32 of the Municipal Codes states that it is illegal to make any sound that prevents a resident from the quiet enjoyment of their property. This applies to sounds that prevent a person from sleeping without regard to the actual sound level.*
- *The requirements of this regulation were not included in the noise analysis done for the Draft or Final EIR, making it not complete and not accurate.*
- *Similar results are shown in Figures 2 and 3 for Positions #1 and #2, respectively.*

(Pettyjohn letter, p. 2, comment e (iii-vi)

Response Noise B.1.b:

The EIR was not required to conduct a qualitative "public disturbance" analysis of noise impacts. Chapter 9.32 of the Municipal Code, Public Disturbances, was not included as a significance criterion in the EIR noise analysis. This particular code section is not quantitative (i.e., there are no numerical noise limit for comparative purposes), and noise is subjective and defined differently by each individual. Section 9.32.030 states that, "No person shall disturb the peace, quiet and comfort of any neighborhood by creating therein any disturbing or unreasonably loud noise."

The technical noise assessment completed for the EIR could not possibly evaluate what type of noise or what level of noise would result in the interference with one's quiet enjoyment of their home, as each resident likely has a different expectation of what level of noise is either disturbing or unreasonably loud. Alternatively, the quantitative noise limits contained in Section 8.36.040 of the Municipal Code were appropriately utilized to assess the significance of project-generated noise on the community.

In comment 1.e.vi, Mr. Pettyjohn states that the noise level trends at Site #1 and Site #2 follow the same general trend as the noise levels measured at Site #3. This would be expected given that the measurements were made in close proximity to one another and documented the same sources of noise. Measured noise levels would differ, however, based on distance from the noise source and because of intervening structures or barriers.

c. Comment Noise B.1.c: Figure 4 displays four of the 5 metrics measured in 5-minute intervals at Position #3 at 1900 E. College Drive and used to judge whether the sound meets the City's limits given in Table I.

i. The nighttime LMAX sound limit, the level that can not be exceeded for any time, is shown in this figure with and without the penalty applied.

ii. Both speech and recurring impulsive sound were generated at Walmart during the tests that are believed to be representative of a

typical night with limited heavy truck traffic, since at 10 heavy trucks were counted the day before these tests were conducted.

iii. *Similar results are shown in Figures 5 and 6 for Positions #1 and #2, respectively.*

(Pettyjohn letter, p. 2, comment 1.f (i-iii)

Response Noise B.1.c:

Figure 4 presents the five-minute interval noise data collected by Mr. Pettyjohn at Site #3. The maximum noise level reached 68 dBA L_{max} at about 1:05 a.m. and 66 dBA L_{max} at about 1:20 a.m. at this noise measurement location that was not clearly described (height and relationship to the sound wall). The noise source is labeled "Walmart," but no other explanation is provided as to the specific noise sources that caused the exceedance. This is important information to present, particularly when a violation is alleged.

Illingworth & Rodkin further notes that the noise data between approximately 11:45 p.m. and 12:30 a.m. is missing, indicating a sound level meter failure. Again, no mention is made in the letter that addresses the lack of detail with regard to noise sources identified as "Walmart" or the sound level meter failure.

Importantly, noise data collected at Sites #1 and #2 showed no exceedance of the 65 dBA L_{max} nighttime noise level threshold attributable to Walmart.

Re Table I - it is important to note that the noise levels indicated in the Exterior Noise Standards table shown on page 2 of Mr. Pettyjohn's letter are 5 dBA higher than the City's Noise Standards in Section 8.36.40 of the Visalia Municipal Code. The correct noise level limits were used in the noise analysis.

d. Noise Comment B.1.d: *Sound is judged by the frequency content of the sound, the amplitude or loudness of the sound and the duration of the sound.*

   i *Neither the Draft EIR nor the Final EIR discusses the tonal content or frequencies produced by the background or sources associated with Walmart activities.*

   ii *Chapter 8.36 of the Municipal Code includes penalties as noted in Table I for pure tones that can only be detected by measuring the frequency content.*

   iii *Additionally, the tones that are changed because of Walmart activity must be compared with background sound level.*

   iv *Tonal measurements were made only at Position #2 in the backyard of the home at 1900 E. College Drive using 5-minute intervals and testing for all 5 of the metrics given in Table I as required by the City's Noise standard.*

   (Pettyjohn letter, p. 3, comment g (i-iv)

Response Noise B.1.d:
Please see Response Noise **A.2.e-g** above for a full discussion regarding the commenter's suggestion that the EIR was required to impose a 5 dBA penalty on all noise from the Walmart site for "tonal" noises.

e. Noise Comment B.1.e: Figure 7 shows the LMAX. Leq (average) and the L1.7 sound tones measured from 1:05 a.m. to 1:10 a.m. when activity at Walmart created an impulsive sound.

i The equipment manufacturer requires that the sound be measured using the "Fast" response when making tonal measurements rather than the "Slow" response used with the broadband measurements made at the three positions where only the Aweighted sound level is measured.

ii The LMAX sound level measured for the impulse during this 5-minute interval was 73 dB(A).

iii Most of the sound energy lies between 125 and 10,000 Hz.
(Pettyjohn letter, p. 3.h.i-iii)

Response Noise B.1.e:

In the above comments, the commenter is again attempting to explain the "impulsive activity" data presented on Figure 7, collected between 1:05 a.m. and 1:10 a.m. This time period corresponds to the maximum noise level event that generated a noise level of 68 dBA L_{max} at Site #3 (non-representative property line measurement location) and 65 dBA L_{max} at Site #2 (representative measurement location). Again, the source of the "impulsive activity" is mysteriously not disclosed. The data presented by Mr. Pettyjohn showing the difference between "fast" and "slow" response is typical of intermittent noise levels. The presumption of "impulsive activity" is not supported by the data or any explanations provided by Mr. Pettyjohn. This statement is Mr. Pettyjohn's unsubstantiated opinion.

f. Noise comment B.1.f: Background sound levels measured over 5-minutes starting at 1:50 a.m. are presented in Figure 8.

***i** The A-weighted LMAX sound level was only 49 dB(A).*

ii ii. The Leq and L1.7 sound pressure levels curves have the same general shape as the LMAX curve and they are only slightly lower.
(Pettyjohn letter, p. 3.h.i-iii)

Response Noise B.1.f:
The commenter is attempting to explain the "background sound" data presented on Figure 7, collected between 1:50 a.m. and 1:55 a.m., which coincides with the five-minute interval during the nighttime period where ambient noise levels were lowest.

g. *Comment Noise B.1.g: A comparison of the LMAX sound level due to Walmart activity and for background sources is displayed in Figure 9.*

i *The A-weighted sound level due to Walmart activity is 24 dB(A) higher than the background.*

ii *This difference in sound energy is equivalent to the difference of being paid $2,500 per hour versus $10 per hour. The Walmart generated sound is 251 times greater than the background sound.*

iii *Equivalently, the volume of traffic on SR198 would have to go from 3,000 cars per hour to 753,000 cars per hour to raise the sound by 24 dB(A).*

(Pettyjohn letter p. 4, comment j (i-iii).

Response Noise B.1.g:

Figure 9 is an attempt at sensationalizing the difference between the highest maximum instantaneous noise level attributable to some unknown event with the lowest maximum instantaneous noise level measured when ambient noise levels were lowest.

These two discrete events were measured during different periods of time and are of no value in the noise assessment. The data contains no useful information as to the source of the impulsive activity, is not consistent with one-second noise L_{max} noise data presented in Figure 3 of the Pettyjohn report (no maximum noise levels were reported in excess of 65 dBA L_{max}), and should be completely disregarded.

Further, the analogies used to describe the logarithmic nature of decibels and to show that a maximum noise level contains more acoustical energy than ambient noise levels are absurd and only serve to confuse the issue. Simply stated, there is more sound when an event occurs close to the sound level meter as opposed to a period of time where no specific events occur and ambient sounds from distant sources form the baseline. This fact is obvious and each analogy attempts to sensationalize the difference in acoustical energy between a sound attributable to some event with the minimum background level associated with no specific event.

2. Recent measurements made at 744 S Tracy Drive showed substantially lower LMAX sound levels than seen at 1900 E College.

a. *Comment Noise B.2.a: A comparison of the Leq sound level measured over 10 second intervals is given in Figure 10 with a similar comparison of the LMAX sound levels given in Figure 11.*

i *The general shape of the Leq curves is the same with the exception of the spike in the sound at 2:00 a.m. The source of this spike is unknown.*

ii *The same results are observed in Figure 11 for the maximum sound level comparison.*

b. *Comment Noise B.2.b Figure 12 compares the LMAX sound levels measured only at Position #1 and #3*

   i *The shape is nearly the same, but the amplitude is typically much higher at Positions #3 when activity is occurring in the area of the dock.*

   ii *A small spike is seen at Position #3 at 2:00 a.m. corresponding to the large spike at Position #1. The wall is shorter at Position #1 and the source may have been closer to this receiver rather near the dock and pallet area.*

   (Pettyjohn letter p. 4, comment 2.a-b)

Response Noise B.2.a-b:

Under Item 2.a, Mr. Pettyjohn is simply attempting to explain that average and maximum noise levels in the rear yards of homes approximately 300 feet apart follow the same general trend during the night. This is not a comment requiring additional response.

Under Item 2.b, Mr. Pettyjohn is simply attempting to explain that maximum noise levels in the rear yards of homes closer to the existing loading docks are higher than the maximum noise levels measured approximately 300 feet to the east. This fact is obvious because noise attenuates with distance from the noise source. The data also shows that "unknown" neighborhood noises contribute to ambient noise conditions, and on occasion, generate the highest noise levels. This is not a comment requiring additional response.

3. **Comment Noise B.3: The selection of 744 S Tracy Drive as the best position for assessing the impact of the expansion would have been acceptable for judging those with limited exposure to activity at Walmart.**

Response Noise B.3:

Mr. Pettyjohn's comments are essentially claiming that the EIR's noise analysis allegedly relied on noise measurements taken at the wrong locations.

The rationale used to select the ambient noise monitoring sites is described in Response Noise A.2.d above. The purpose of the ambient noise monitoring survey was to establish existing noise levels at receivers that would be most affected by the proposed project in order to provide a credible baseline noise environment for assessing project impacts. This location represents the receivers nearest the new loading dock and truck circulation area. Mr. Pettyjohn's data confirms that maximum noise levels at this location, 744 S. Tracy Drive, are lower than maximum noise levels measured nearer to the existing loading docks.

a. *Comment Noise B.3.a. However, this completely misrepresents the sound exposure of those who live next to the main noise sources, the loading docks, pallet stacks and bailed recycled material storage.*

Response Noise B.3.a:

As discussed in Response Noise A.2.a, the whole discussion of noise levels adjacent to the existing loading docks is not relevant to the impact analysis of the proposed project. If the noise monitoring survey selected a site adjacent to the existing loading docks, this approach could have been criticized on the grounds that this location overstates the existing baseline noise environment of receivers that would be least affected by the proposed project, as the loading dock is proposed to move 120 feet to the east. The purpose of the noise monitoring survey was not to measure noise levels from existing loading dock operations since the current loading dock is not representative of the type or location of the loading dock proposed with the project, nor is it shielded by noise barriers along the loading dock perimeter as the new loading dock will be.

b. The current tests show that the L50 sound level was 1 to 2 dB(A) higher on Tracy Drive, but the LMAX sound levels were 5 to 15 dB(A) lower.

Response Noise B.3.b:

The comment "that the L_{50} sound level was 1 to 2 dB(A) higher on Tracy Drive, but the L_{MAX} sound levels were 5 to 15 dB(A) lower" confirms that our selection of 744 S. Tracy Drive as the receiver least affected by existing Walmart activities was correct. L_{max} noise levels measured at this site were less than those measured by Mr. Pettyjohn because of the distance separating the Tracy Drive receiver from existing loading dock operations. L_{50} noise levels (i.e., the noise level exceeded 30 minutes or more in an hour) are primarily the result of distant traffic along SR 198 and would be expected to be slightly higher at the Tracy Drive site because it is not shielded by the same 14-foot noise barrier that attenuated noise levels at 1900 E. College Avenue. The noise barrier at 744 S. Tracy Drive is approximately 8 feet tall.

c. Comment Noise B.3.c.: Using only this position would not provide an accurate assessment of existing conditions as required by CEQA.

Response Noise B.3.c:

See Response **A.2.a**. discussing rationale for ambient noise measurement survey.

CEQA does not establish requirements for noise measurements. Existing conditions at the worst affected receivers were documented in the EIR following standard. The purpose of the ambient noise measurements was to identify the most affected receivers and document noise levels where they were lowest. In this case, the most affected receivers were away from the existing loading docks and not shielded by the existing 14-foot noise barrier. These data accurately represent noise levels at the most affected receiver locations, and the data are confirmed by Pettyjohn. Since Illingworth & Rodkin already had relevant noise data related to truck circulation noise and other retail operational noise sources, and because the existing loading area was not representative of the relocated loading dock proposed by the project, measurements near the existing loading dock were not needed to conduct the noise impact analysis for the relocated and expanded loading docks. Noise generated by the existing loading dock was not relevant

to any of the calculations made in the noise analysis, since these calculations were all based on data from other Walmart stores contained in Illingworth & Rodkin's files.

The data contained in Mr. Pettyjohn's letter confirm that noise levels measured as part of the EIR noise analysis of the proposed project were credible and representative of the noise environment at receivers located south of the proposed new loading dock area. Mr. Pettyjohn's data also confirms that maximum noise levels at 744 S. Tracy Drive are lower than maximum noise levels measured nearer to the existing loading docks.

4. **Comment Noise B.4: The measurements done by Walmart's consultant did not use the sound descriptors given in Table I.**

   a. *Comment Noise B.4.a: A complete and accurate assessment can not be made without measurement using the sound metrics or descriptors used in the noise standard.*
   b. Comment Noise B.3.b: CEQA requires and the Draft EIR points out the requirement for comparison with local standards, but this is not possible without the correct measurements.

Response Noise B.4.a-b

The measurements made as part of the EIR collected data utilizing the L_{max}, L_1, L_2, L_{10}, L_{25}, L_{50}, L_{90}, L_{min}, and L_{eq} acoustical descriptors. The L_{max}, L_2, L_{25}, and L_{50}, correspond directly to the noise level limit categories contained in the Municipal Code. Only the L_{eq}, L_1, L_{10}, L_{50}, L_{90}, and L_{max} were graphically displayed in an effort to keep the data as clear and concise as possible. These data were sufficient to establish baseline noise conditions. Further, the impact analysis itself does express noise levels in the terms used in the City's noise standards (e.g., Category 1, Category 5, etc.) as explained in the last paragraph on page 208 of the DEIR. The ambient noise measurements documented noise levels in the Categories 1 and 5, which were directly applicable to the noise assessment. In short, there is no basis to claim that the EIR noise measurements were incomplete or inaccurate, particularly because Mr. Pettyjohn's noise data from 744 S. Tracy Avenue presents very similar noise data.

c. Comment Noise B.4.c: The Draft EIR does not contain any of the sound measurements made at 744 S Tracy Drive, except in the appendix where the original report can be found.

Response Noise B.4.c:

The appendix where the original noise assessment can be found is part of the Draft EIR, and includes the very sound measurement information for 744 S. Tracy Drive the commenter references.

The noise measurement data from 744 Tracy Avenue is graphically presented in DEIR Volume II, Appendix H (Noise), Figure 2 (at page 11). (This exhibit is reproduced as Attachment Noise-3 to this Rebuttal Memo.) The Environmental Noise Assessment contained in Appendix H is an integral part of the Draft EIR, and to claim otherwise is disingenuous. The inclusion of highly technical data in the body of an EIR (i.e., EIR text,

as contained in Volume I of the subject DEIR) is specifically to be avoided, as explicitly provided in Section 15147 of the CEQA Guidelines, which states

> *"The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of the EIR should be avoided by including supporting information and analysis as appendices to the EIR document. These appendices shall be readily available for public examination and shall be submitted to all clearinghouses that assist in public review."*

d. <u>Comment Noise B.4.d:</u> This does not meet the requirements of CEQA since a comparison of the measured sound data over particularly the nighttime hours can not be made. The single graph in the Appendix is very difficult to use to get accurate sound data because of its size and the density of the information.

<u>Response Noise B.4.d:</u>

The EIR noise measurements were made to establish existing noise conditions at receivers that would be most affected by the proposed project, which includes a substantial change in the type and location of the loading dock, noise barriers, and truck circulation route as compared to existing conditions.

A review of Figure 2 of the Noise Assessment from a printed published version of the DEIR indicates that it is highly legible for purposes of displaying noise level data for all of the noise metrics at all measurement intervals. Nevertheless, another copy of Figure 2 of the Noise Assessment is included in this document as Attachment Noise 3. It is noted that the graphical representation of noise data in Figure 2 is very similar in nature, appearance, and legibility as the noise measurement graphs attached to Mr. Pettyjohn's memo.

5. <u>Comment Noise B.5: Neither the Draft nor the Final EIR address the maximum sound levels measured at 744 S. Tracy.</u>

<u>Response Noise B.5:</u>

Response Noise B.4 above describes the rationale used to select the noise monitoring position at 744 S. Tracy Avenue. The data collected at this site provided a worst-case baseline against which project impacts were assessed. The data were not collected as part of a code-enforcement issue. Although the noise data showed that maximum noise levels intermittently exceeded the City of Visalia's noise standards for non-transportation noise sources, this result was expected, and given the distance from the existing loading docks (over 300 feet) these events were not attributed to Walmart activities. Illingworth & Rodkin's experience with community noise monitoring has shown that L_{max} noise levels measured at locations away from major sources of noise can be generated by a variety of sources common to a residential neighborhood. Such sounds could include aircraft, vehicles on residential streets and driveways, car alarms, dog barks, landscaping

activities, or other less significant sources of noise that occur close to the sound level meter.

In addition, the measured ambient noise data were not relevant in the calculations of noise levels resulting from the proposed project. For example, post-project noise levels, e.g., 56-61 dBA L_{max}, assume that the planned extension of the 14-foot wall to the east, not the existing 6-foot wall, would attenuate noise in the southeast portion of the project site.

The project will also result in many changes to existing conditions, including altered noise sources, different locations of noise sources, and altered site elements that will affect the transmission or blocking of noise. The changes proposed to the project only allow for the measurement of existing noise levels to establish baseline conditions, and are not of use in calculating noise levels from new and altered sources of noise. Moreover, the significance of noise impacts is determined by comparing calculated project noise levels with applicable City noise standards, which serve as thresholds of significance. The determination of existing noise levels serves only to describe ambient conditions and has no role in the determination of project noise impacts.

a. Comment Noise B.5.a: Figure 2, in Appendix H shows L_{MAX} sound levels that exceed 60, 65 and even 70 dB(A).

Response Noise B.5.a:

Although the noise data showed that maximum noise levels intermittently exceeded the City of Visalia's noise standards for non-transportation noise sources, this result was expected, and given the distance from the existing loading docks (over 300 feet) these events were not attributed to Walmart activities. Illingworth & Rodkin's experience with community noise monitoring has shown that L_{max} noise levels measured at locations away from major sources of noise can be generated by a variety of sources common to a residential neighborhood. Such sounds could include aircraft, vehicles on residential streets and driveways, car alarms, dog barks, landscaping activities, or other less significant sources of noise that occur close to the sound level meter.

b. Comment Noise B.5.b: An assumption was made that a live tester was not present except during the startup and takedown of the equipment.

Response Noise B.5.b:

The commenter is correct. This was an unattended long-term ambient noise measurement location that documented ambient noise levels over daytime, evening, and nighttime periods in a residential backyard.

c. Comment Noise B.5.c: The sources of the L_{MAX} sound level peaks that exceed the limits of the City's noise standard are not given.

Response Noise B.5.c:

See response to Noise B.5.a. The range of measured noise levels was typical of a residential backyard and the intermittent exceedances of the Municipal Code standards could have resulted from sources within the yard or outside the yard.

d. Comment Noise B.5.d: Based on the current measurements, the source could have been Walmart activity, particularly during the late night hours where the data resembles that obtained during the more recent tests.

Response Noise B.5.d:

As noted in response to Noise B.5.a, the distance from the existing loading docks to the measurement location was over 300 feet and the yard was shielded by an 8 foot sound wall. Given, these factors, maximum noise levels from the loudest events including truck circulation, parking lot sweepers, etc., would not account for the intermittent ambient noise levels that exceeded the Municipal Code noise limits. As Mr. Pettyjohn notes, these events were likely attributable to some "unknown" source.

e. Comment Noise B.5.e: The Draft and Final EIR are incomplete and inaccurate without and assessment of this sound relative to the City's Municipal Code. This includes Chapter 9.32 and the requirement to learn whether have complaints about the existing sound and whether it prevents the quiet enjoyment of their home and backyard.

Response Noise B.5.e:

Please see Response Noise B.1.b.

6. Comment Noise B.6: The proposed expansion will move the docks farther to the east, close to the homes at Tracy Drive, but leaving the pallet stacks and recycled bales next to the existing sound wall rather than north of the docks.

Response Noise B.6:

Noise levels resulting from the proposed expansion project were calculated assuming the shifting of the loading docks to the east, the proposed location of the pallet and bale storage area as shown on the project site plan, essentially where it currently exists, and the use of forklifts for both daytime and nighttime periods. As discussed in the EIR noise assessment and the DEIR noise section (pages 213 and 214), the calculations show that noise levels at the nearest receptors with the proposed noise barriers in place would be reduced to acceptable levels.

As discussed on page 213 of the DEIR, the pallet and bale storage area would be located alongside the eastward extension of the 14-masonry wall on the south, and would be enclosed by 10-foot high masonry walls on the east and west. The pallet and bale storage

and forklift activity would occur 30 feet from the nearest residential receiver locations, where worst-case noise levels would remain below the applicable City noise limits.

There is no basis for Mr. Pettyjohn's assertion that there will be an increase in the noise from this activity. The data presented by Mr. Pettyjohn show that existing noise levels in representative rear yard areas are in compliance with the noise ordinance limits (e.g., Site #2) even with the reflections experienced as part of existing conditions. As discussed above, the noise assessment by Illingworth & Rodkin calculated the effect of surface reflections in the proposed project, and found that the contribution of such reflections to overall noise levels was negligible.

a. *Comment Noise B.6.a: This will increase the noise resulting from the handling of the pallets at all hours and the operation of forklifts to move the pallets and bales.*

Response Noise B.6.a:

Noise levels resulting from the proposed expansion project were calculated assuming the shifting of the loading docks to the east, the proposed location of the pallet and bale storage area as shown on the project site plan, essentially where it currently exists, and the use of forklifts for both daytime and nighttime periods. As discussed in the EIR noise assessment and the DEIR noise section (page 213 and 214), the calculations show that noise levels at the nearest receptors with the proposed noise barriers in place would be reduced to acceptable levels. There is no basis for Mr. Pettyjohn's assertion that there will be an increase in the noise from this activity.

b. *Comment Noise B.6.b: Current tests show much less sound reduction is provided by the 14-foot sound wall than expected.*

Response Noise B.6.b:

Mr. Pettyjohn's data shows no comparison of noise levels with and without a 14-foot noise barrier. This statement is not supported by any facts. The reader is referred to Response Noise A.1 for a detailed discussion of

c. *Comment Noise B.6.c: The influence of the new expanded building with its very high walls and the walls along the loading docks will significantly reduce the insertion loss provided by the barrier because of multiple reflections.*

Response Noise B.6.c:

Response Noise A.3.c details the methodology for calculating maximum instantaneous noise levels and why reflected noise is not a significant contributor to the noise levels at the residential receivers. This is primarily due to the fact that the noise sources that would generate the highest noise levels would not be located between the building and 14 foot sound wall located along the south property line. Vendor truck deliveries would be the primary noise source expected in the area between the expanded building and the

sound wall. As noted on pages 209 and 210 of the DEIR, vendor trucks would generate noise levels 10 dBA L_{max} below the noise of heavy truck movements, resulting in noise levels of 46 to 51 dBA L_{max} in the nearest rear yard shielded by the 14 foot barrier. The calculated noise level is 14 dBA L_{max} below the nighttime noise standard. In the unlikely event that barrier performance is degraded due to reflections between the building and the sound wall, as asserted by Mr. Watry, calculated noise levels would be more than 10 dBA L_{max} below the City's nighttime noise standard.

The reflective noise issue brought up by Mr. Watry does not affect the sources of noise that would generate the highest noise levels, nor affect the determination of the height of the noise barriers necessary to meet the Municipal Code noise limits.

d. Comment Noise B.6.d: Each reflection is equivalent to adding another source of sound to the total. The influence of these reflections is not shown in either the Draft or Final EIR.

Response Noise B.6.d:

Reflected noise issues have been addressed under Response Noise A.3.c and Response Noise B.6.c.

7. Comment Noise B.7: The at-grading loading area will be moved from the northeast corner of the existing docks to the south side of the building, closer to the backyard at 1900 E. College Drive than currently exists.

Response Noise B.7:

Vendor deliveries at the at-grade delivery door have been addressed under Response Noise B.6.c.

a. Comment Noise B.7.a: The influence of this new source with high walls surrounding the area has not been properly addressed.

Response Noise B.7.a:

Vendor deliveries at the at-grade delivery door have been addressed under Response Noise B.6.c.

b. Comment Noise B.6.b: Again, the multiple reflections will significantly reduce the sound insertion loss provided by the barriers.

Response Noise B.7.b:

Reflected noise issues have been addressed under Response Noise A.3.c, and reflected noise issues related specifically to vendor deliveries at the at-grade delivery door have been addressed under Response Noise B.6.c.

c. *Comment Noise B.6.c: Current tests show that the barriers are not providing the amount of sound reduction expected, particularly for impulsive sounds.*

Response Noise B.7.c:

See Response A.2.a through A.2.g for detailed discussions of the inadequacy of Pettyjohn's noise measurements ("current tests"), and consequent lack of validity to this comment regarding efficacy of the planned noise barriers.

C. Responses to May 16, 2011 comments from Derek Watry on the EIR's noise analysis.

1. Comment Noise C.1: Low Truck Source Reference Levels Eliminate Significant Noise Impacts

a. *Comment Noise C.1.a: For the three truck-related noise sources evaluated—Large trucks; vendor (medium) trucks and Truck Refrigeration Units ("TRUs"), reference levels used in the Noise Assessment are roughly 10 dB lower than used in (1) a noise assessments prepared for a Safeway project (2008); (2) a draft noise assessment prepared for a dropped Walmart project, also dating back to 2008; and (3) a noise assessment prepared for a WinCo project by LSA in 2011. We believe it is more reasonable to assume higher source noise levels.*

Response Noise C.1.a:

A full response to this comment on TRU noise generation was provided above in Response Noise A.3.b.

2. Efficacy of 14 ft Sound Barrier Wall is Over-Stated

a. *Comment Noise C.1.b: The EIR's assumed 16 dB efficacy for the 14 ft sound wall south of the Walmart store is overstated, in light of the FHWA's freeway sound barrier design manual's statement that it is "very difficult" to achieve attenuation over 15 dBA when designing a sound barrier for line-source noises (cars continuously traveling down a freeway). Further, a technical document used to address efficacy of airplane noise barriers confirms that the EIR has overstated the 14' soundwall's efficacy. "The INCE study included barriers for airplane noise. An airplane, like a truck, is a moving point source."*

Response Noise C.1.a:

Please see Response A.1.a-b above for a full discussion on the irrelevance of these two technical source documents to the evaluation of the 14' soundwall's efficacy.

b. *Comment Noise C.1.b: The EIR's Noise Consultant cites a well-known book in the field of acoustics, Handbook of Acoustical Measurements and Noise Control, Third Edition, edited by Cyril M. Harris. From this citation, it is evident that the Noise Consultant is evaluating the 14' soundwall's efficacy as if it were located in an open field, thereby ignoring "some of the "real world" physical conditions present at the Walmart site."*

i *Unlike the idealized situation represented in Harris, the Walmart wall is not in the middle of an open field. Rather, the Walmart store itself is only 40 ft away and is itself roughly 25 ft high.*

Response Noise C.1.b.i:
The issue of reflected sound which is alluded to in this comment is addressed fully in Responses Noise A.1 and Noise A.3.c. As discussed, the physical characteristics of the planned Walmart expansion and its relationship to operational traffic in the context of the nearest receptors was included in the EIR noise analysis.

ii *Comment Noise C.1.b.ii: The acoustically hard space formed by the building, the pavement, and the wall will be a reverberant space in which sound energy will build up, effectively amplifying the level and raising the height of the noise source.*

Response Noise C.1.b.ii:
The issue of reflected sound raised in this comment is addressed fully in Responses Noise A.1 and Noise A.3.c. The general principal described is applicable but as discussed in the referenced responses, the DEIR noise analysis determined that this effect is negligible with respect to this project. In particular, heavy trucks will not circulate along the south property line of the site west of the proposed loading dock area. Therefore, the tunnel effect illustrated in the section plan from the Galt Walmart Project EIR and accompanying discussion of barrier degradation are irrelevant and misleading in the context of this project.

iii *Comment Noise C.1.b.iii: Additionally, sound will reflect off the part of the building that is higher than the top of the sound wall, creating a secondary, pseudo-source.*

Response Noise C.1.b.iii:
The issue of reflected sound is addressed fully in Responses Noise A.1 and Noise A.3.c. Again, the potential for noise reverberation was considered in the DEIR noise analysis and was found to have a negligible effect on noise levels for the reasons given.

iv *Comment Noise C.1.b.iv: Finally, the truck itself presents a large, flat, hard surface from which sound will both radiate and reflect.*

Response Noise C.1.b.iv:
The issue of reflected sound raised in this comment is addressed fully in Responses Noise A.1 and Noise A.3.c. As discussed in the referenced responses, the delivery truck circulation pattern would not approach near enough to other hard surfaces to result in the effect alluded to.

v *Comment Noise C.1.b.v: A delivery truck should not be treated as a point source in an open field as this is overly simplistic.*

Response Noise C.1.b.v:
The issue of reflected sound alluded to in this comment is addressed fully in Responses Noise A.1 and Noise A.3.c. As discussed in the referenced responses, the delivery truck circulation pattern would not approach near enough to other hard surfaces to result in noise reverberation.

c. *Comment Noise C.1.c: The 14' soundwall's barrier attenuation will not result "from a single diffraction of sound," as the EIR assumed. Consequently, it is unlikely that the noise analysis for the Walmart DEIR accounts for the degradation due to the real world conditions.*

Response Noise C.1.c:
The issue of reflected sound alluded to in this comment is addressed fully in Responses Noise A.1 and Noise A.3.c. As discussed in the referenced responses, the effect of reflected noise on the efficacy of the noise barrier is negligible.

3. Comment Noise C.3: The EIR's inadvertent references to a 17' southern boundary soundwall and an 8' planned southern soundwall have prevented the commenter from understanding what height was actually modeled.

Response Noise C.3:

Please refer to Response A.3.e above for a full response of this comment.

III. TRAFFIC COMMENTS / RESPONSES

A. Responses to May 16, 2011 Mark Wolfe traffic comments

1. **Comment Traffic A.1: The traffic analysis improperly assumes future improvements that have not yet been designed. Despite this assumption, according to the traffic analysis, the project will cause or aggravate service levels at numerous intersections in the vicinity.**

Response to Traffic A.1:

The Traffic Study utilizes existing conditions for the 2010 baseline and assumes completion of the Santa Fe Overcrossing, a bridge project under construction when the Traffic Study was being prepared. The 2015 baseline assumes mitigation measures G1, G2, G3, and G4, all of which will be funded by the Project, and two future improvements funded by the City and Caltrans (Ben Maddox Way/SR 198 Interchange Improvements and the Tulare Avenue Extension) that are not required to mitigate Project impacts.

Future improvements assumed in 2030 will all be paid for by the Project, as identified in the final version of the Mitigation Measures reflected in the FEIR. Because the improvements include Mitigation Measures funded by the Project, and City/Caltrans proposed improvements identified in the Circulation Element (not fair share contributions to impacts to which the Project adds a cumulatively considerable contribution) there is no requirement that the improvements be "designed" at the time of the EIR and TIS preparation, as suggested by the commenter. However, it is necessary to have adequately detailed information on the nature of the improvements, and this detailed information is provided in the TIS, the DEIR, and the FEIR.

2. **Comment Traffic A.2: Comments on the DEIR objected that the traffic mitigation was not adequately spelled out, and asked for specific information about that mitigation. Responses in the FEIR are incomplete and in some cases misleading.**

Response to Traffic A.2: The general claims regarding the adequacy of the impact analysis and mitigation measures are addressed in the responses that follow.

3. **Comment Traffic A.3: An impact analysis must be based on an existing conditions baseline, or there should be substantial evidence to justify the use of a different baseline. CEQA Guidelines § 15125(a).**

a. *Comment Traffic A.3.a: Here, the Traffic Analysis assumes that the proposed Lovers Lane / SR-198 Interchange Improvement Project will be in place by 2030, despite the fact that there is no approved design for this project, the project is not under the control of the City, and that the City's desired minimum set of improvements, including improvements to a number of adjacent Lover's Lane intersections, will be designed, approved, funded, and constructed.*

b. *Comment Traffic A.3.b: The arbitrary assumption that the Interchange Improvements will be constructed in a particular configuration substantially affects the determination of project impacts. The eventual design may be less comprehensive that assumed in the EIR, requiring more additional mitigation improvements than assumed by the EIR. Without knowing what the interchange project design will actually be, it is impossible to accurately determine the significance of this Project's impacts and its appropriate mitigation obligations.*

c. *Comment Traffic A.3.c: Despite this assumption, the Traffic Analysis concludes that service levels will remain unacceptable in 2030, and that improvements beyond the Interchange Improvements will be required to provide adequate levels of service.*

Response Traffic A.3.a:

This comment is premised on a misunderstanding of the Traffic Analysis. Although it alleges that the Traffic Analysis assumes the Lovers Lane Interchange improvement Project will be in place by 2030, that fact is mistaken. Actually, the Traffic Analysis assumes only minor improvements to the Lovers Lane Interchange assumed for 2030. As discussed in the DEIR at page 156, these relatively minor improvements were identified by the City as minimum capacity improvements (which were identified as interim improvements in a preliminary consultant report prepared on the Lovers Lane Interchange Improvement Project), and explicitly are not intended as a substitute for the full interchange reconstruction project.

Regarding the complete Lovers Lane Interchange reconstruction project, as stated on page 156 of the TIS, the City and Caltrans are currently working on the Project Study Report (PSR) for the Lovers Land/SR-198 Interchange Improvements project. It is currently anticipated that the PSR will be completed in 2012.

However, contrary to the commenter's claim, it is likely that a far greater level of improvements will be in place at the Lovers Lane / SR-198 interchange in 2030 than are assumed in the TIS and EIR.

Response Traffic A.3.b:

Contrary to the commenter's claim that the assumed improvements are "arbitrary," the decision to include minimal roadway improvements in the vicinity of the Lovers Lane Interchange as part of the baseline roadway network in the 2030 scenario was in fact based on prior review and concurrence by Caltrans and the City.

The specific set of improvements listed for the vicinity of the Lovers Lane Interchange, as set forth on page 156 of the DEIR, was based on recommendations contained in a report prepared by Omni-Means for the City of Visalia entitled *Short-Term Solutions and Cost Estimates for Lovers Lane, Mineral King Avenue, Noble Avenue, and State Route 198 (Final Report, March 2006)*, and were noted in a subsequent Memorandum of Assumptions prepared by Kimley-Horn and Associates, which was reviewed and approved by Caltrans. In a letter from Caltrans to the City Engineer dated December 22, 2006, Mr. Al Dias from Caltrans specifically recognized the Omni-Means report regarding the Lovers Lane Interchange as "a valid study," and approved its use as the basis for the traffic impact study for the Visalia Walmart Expansion EIR.

The *Draft 2011 Regional Transportation Plan (RTP)*, by the Tulare Council of Government (TCAG), identifies the full interchange improvement project as included in the Tulare Council of Government (TCAG) Draft 2011 Regional Transportation Plan (RTP) as a Measure R funded project to be completed by 2018 (see Draft 2011 RTP, Table 3-14, available at http://www.tularecog.org/rtp/2011%20RTP/TCAG%20Draft%202011%20RTP.pdf). However, the TIS and the EIR have assumed a more conservative time schedule. This conservative schedule, assumes only the minimum capacity improvements (excluding the ramp and bridge widening identified in the RTP and currently undergoing detailed planning in the PSR process) will be in place by 2030.

The commenter incorrectly implies that the minimum capacity improvements were included in the 2015 baseline scenario. Actually, they were only included in the 2030 baseline.

Response Traffic A.3.c:

The commenter's concern that "the traffic report concludes that (after completion of the minimum capacity improvements) service levels will remain unacceptable in 2030 and that additional improvements beyond the improvements in the interchange project will be required to ensure adequate service at these intersections" reflects his misunderstanding. Because the minimum capacity improvements do not constitute the entire Lovers Lane / SR 198 Interchange project, the additional planned improvements at the interchange will need to be completed as circumstances demand and funding permits.

In this context, it is worthwhile considering the relatively minor level of improvements assumed in the TIS for the Lovers Lane interchange for 2030. As listed on page 156 of the DEIR, these consist of minor roadway widenings, one signal installation, and several signal timing and phasing modifications. This falls far short of the full set of interchange improvements being planned, including ramp widenings and a major widening of the SR-198 bridge structure over Lovers Lane.

Furthermore, a portion of the interchange improvements assumed to be in place by 2030 were identified in the TIS as mitigation measures to be constructed by the applicant prior to project opening. These comprise Mitigations G6 and G7, which consist of widening two sections of Lovers Lane under the freeway bridge.

In summary, the TIS and EIR do not assume completion of the full interchange improvements for at Lovers Lane and SR-198, and the minimum capacity improvements listed in the TIS on page 59 does not consist of "comprehensive improvements" as claimed in this comment. Instead, the TIS and EIR conservatively assume relatively minor capacity improvements to be in place at the Lovers Lane interchange by 2030, well beyond the time when the full interchange improvements are anticipated to be completed. Thus, if anything, the TIS and EIR likely overstate the 2030 impacts associated with the project.

4. **Comment Traffic A.4: Fee-based mitigation under CEQA requires that the specific improvement projects actually be included in an adopted, enforceable plan or program, that the program include funding provisions that can be attained, and that the plan or program be enforceable by the lead agency. The Project's fee-based mitigation fails to meet CEQA's requirements.**

Response Traffic A.4:

As discussed at length in FEIR Responses E-1 through E-7, and in the Rebuttal Memo to the April 25th Comment Letters on the FEIR (Response A4), only two of the 18 traffic mitigation measures identified in the DEIR rely on the TIF fee program for funding. These mitigation measures include G11 and G14. As clarified in the FEIR, all other traffic mitigation measures identified in the TIS and EIR will either be constructed or funded by the project applicant, with provisions for reimbursement of costs in excess of the project's fair share where applicable. The TIF-funded improvements include: by 2030, the installation of signals at Noble and Pinkham and Tulare and Pinkham. These intersections are ranked 12th and 19th, respectively, on the City's 2010 Intersection Priority List for signal installation (the full Intersection Priority List is attached to the FEIR as Appendix B). This is clearly provided for in the revised mitigation language for each measure. The implementation of these traffic mitigations is mandated in the Conditions of Approval for the project adopted by the Planning Commission on April 25, 2011.

5. **Traffic Comment A.5: Funding for the DEIR's traffic mitigation measure is uncertain, and thus violate CEQA.**

   a. *Comment Traffic A.5.a: There is no identified source of funding for improvements required by Mitigation Measures G2, G6, G7, G9, G12, and G13. Measures G9, G12, and G13 require the project to pay its fair share of the cost of future lane improvements, not to fund or construct these improvements. No source of funding is identified for the balance of the cost of these three improvements.*

   b. *Comment Traffic A.5.b: Although the project must fully fund Mitigation Measures G2, G6, and G7 which require near-term improvements, no source of funding is identified for reimbursement of the project for amounts in excess of its fair share of the improvements which are not included in the City's CIP program..*

Response Traffic A.5.a:

Mitigation measures G9, G12, and G13 are all far-term mitigations to be implemented by 2030. Each of these mitigations involves minor lane restriping to provide incremental cap**a**city enhancements. The cost of such lane restriping is relatively small (i.e., less than $10,000 for each intersection). Since the intersections that are subject to these improvements are included in the General Plan Circulation Element, it is valid to assume that sufficient capacity-enhancing improvements would be implemented at these locations to achieve the General Plan Level of Service goals by the Circulation Element horizon year of 2026, which is well in advance of the 2030 study year when the mitigation is required. Given that the City's CIP planning process extends only 6 years into the future, there is no specific funding plan for these improvements other than a policy commitment as embodied in the Circulation Element. As noted elsewhere, the TIF ordinance itself states that its purpose is to provide a funding mechanism for implementation of the Circulation Element.

Response Traffic A.5.b:

Mitigations G2, G6, and G7 are to be constructed by the applicant prior to the project's opening day, as is clearly stated in the language of each of these mitigation measures (see FEIR, pages 97-98). The comment claims that the "ad hoc" improvements identified in G2, G6, and G7 are

not included in the current CIP program. Since these improvements are in fact mitigations for the proposed project, it is unclear upon what basis the City would have included these improvements in the CIP program prior to receiving the Traffic Impact Study that identified the need for these improvements in conjunction with the project in the near term. In any event, these improvements are to be constructed by the project applicant, as discussed above.

As to the question of the source of funding for Mitigation Measures G2, G6, and G7, beyond the project's fair share, it is first noted that the project will be responsible for constructing and paying for these improvements, subject to reimbursement from the City. The source of the reimbursement will be other cumulative projects which contribute to the deficiency, according to the fair-share responsibility of the each project. Tracking of fair-share contributions from other projects, and reimbursement to the original project that constructed the improvement, is a normal administrative function of the City of Visalia Engineering Department.

As with Mitigations G2, G6, and G7, the mitigation language has been revised to provide that the construction of these mitigation measures will be fully funded by the applicant. No provision for reimbursement of amounts paid beyond the project's fair share responsibility is included in the mitigation measure due to the long-term nature of the mitigation and the administrative burden that would be imposed on the City in tracking reimbursements from other projects which would benefit from these improvements beyond 2030.

6. **Comment Traffic A.6: There is no commitment to fund traffic mitigation measures G2, G6 and G7.**

   a. *Comment Traffic A.6.a: The requirement that the Project actually construct G2, G6, and G7 would only represent an adequate commitment to mitigation if there were available funding and an agreement from Caltrans. Regardless, there is clearly no enforceable commitment to construct mitigation pursuant to G9, G12, and G13.*

   b. *Comment Traffic A.6.b: Improvements for G9 and G13 are under Caltrans' jurisdiction, so the City is not in a position to make an enforceable commitment to construction of mitigation at these locations in any event*

   c. *Comment Traffic A.6.c: Finally, Mitigation Measures G9, G12, and G13 expressly permit the City to substitute "equivalent improvements to mitigate intersection deficiencies." This provision renders the mitigation even more uncertain and further demonstrates a lack of commitment to actual mitigation.*

Response Traffic A.6.a:

With respect to enforceable commitment to construct mitigation measures G9, G12, and G13 in 2030, the mitigation language has been revised to provide that the construction of these mitigation measures will be fully funded by the applicant. No provision for reimbursement beyond the project's fair share responsibility is included in the mitigation measure due to the long-term nature of the mitigation and the administrative burden that would be imposed on the City in tracking reimbursements from other projects which would benefit from these improvements beyond 2030.

Response Traffic A.6.b:

As to the jurisdictional question, the commenter wrongly claims that advance Caltrans' approval is required prior to the City's adoption of the cited mitigations. To the contrary, while some of the underlying facilities are in Caltrans ownership, in this case portions of the state highway and right-of-way, there is no prohibition on local agencies making improvements to state facilities. During these times of fiscal austerity, local funding and construction of improvements to state highways is actively encouraged in recognition of the fact

This is most evident in the many sales tax "measure" programs that have been in effect in many counties throughout the state going back 25 years. The Measure R program through which the Lovers Lane Interchange Reconstruction Project will be funded is a prime example of a local government acting as the lead agency for a major improvement project on a state highway.

Caltrans retains design approval authority, and cooperates closely with local agencies in the planning and construction of such improvements. Similarly, Caltrans cooperates closely with local governments that need to make minor local transportation network improvements that involve state highways.

Importantly, Caltrans has been involved in every step of the traffic impact analysis for the Visalia Walmart Expansion. This includes the detailed scoping meeting held on February 5th as well as numerous subsequent follow-up discussions. Caltrans staff also reviewed and concurred with the Memorandum of Assumptions for the TIS, the administrative draft TIS, and the Draft EIR (with only minor comments on technical details of the analysis – see FEIR Responses B-1 and B-2).

Therefore, the City of Visalia can and does plan roadway improvements that involve Caltrans, and that will include implementation of the cited mitigations.

Response Traffic A.6.c:

As to the question of "equivalent improvements" permitted in Mitigation Measures G9, G12, and G13, the complete language of these measures requires "equivalent improvements to mitigate intersection deficiencies at this location by 2030." This language merely reflects the fact that it is not possible to analyze, with absolute certainty, what traffic conditions will actually prevail in 2030, and recognizes that changed conditions that may occur by that time may indicate that other, currently unforeseeable improvements may be more appropriate as mitigation.

However, this added flexibility does not remove the project responsibility for mitigating the traffic impacts that are attributable to it. The use of the term "equivalent" provides flexibility as to the form of the improvement but not as to the requirement that it mitigate the project's impact. The implicit assumption is that the City engineering staff will remain competent to determine which specific improvements will be most appropriate to mitigate the impact, either the restriping as specified, or an equally effective improvement that may be more appropriate and logical under conditions that will prevail in 2030.

With respect to the far-term mitigations G9 and G13, the commenter claims that Caltrans involvement with improvements at these locations makes it difficult for the City to make an enforceable commitment with respect to these improvements. This fact further supports the City's position in allowing for flexibility of mitigation. The fact that Caltrans is a cooperating agency makes it incumbent upon the City to preserve sufficient flexibility to accommodate

changed conditions as well as Caltrans input at the engineering design stage in achieving the goal of mitigation.

7. **Comment Traffic A.7: The EIR defers formulation of mitigation measures by mitigation via "equivalent improvements".**

   The EIR contains no specification of when and how the determination would be made to substitute alternative mitigation in the form of "equivalent improvements." The commenter claims that there is no specification for the effectiveness of the equivalent mitigation, and that it could be interpreted to mean improvement up to acceptable service levels (LOS).

Response Traffic A.7:

The claim that the provision for "equivalent improvements" constitutes deferral of mitigation is misplaced, and simply erroneous. It is clear from the DEIR and FEIR that mitigation specified in Measures G9, G12, and G13 in the first instance, e.g., lane restriping, is intended to mitigate the project impact. There is no requirement in the CEQA statute, guidelines, or case law that projects must mitigate beyond the impacts attributable to them, and this is discussed at length in the FEIR. In fact, mitigation in excess of an identified impact is unconstitutional. [Dolan v. City of Tigard, 512 U.S. 374 (1994).] As such, there is no question or confusion, as claimed in the comment that the mitigation measures apply to project impacts only, and are not intended to improve intersection operations to a level better than pre-project conditions.

Additionally, the inclusion of a provision for "equivalent improvements" is not intended to remove the mitigation measure identified in the first instance, e.g., lane restriping, but merely to add flexibility in the long term when the improvements are required. Thus the claim that identification of the mitigation measure has been deferred does not make sense.

Neither is there any lack of clarity as to what the "equivalent improvements" would entail, since the word "equivalent" means "equal" as in an equal level of mitigation, but perhaps by different means, e.g., signal retiming, or other improvements that would restore operational functioning to pre-project levels. This is not the same as improving intersection operations to the jurisdiction's target LOS, since the project has no obligation to a higher LOS at intersections than existed under pre-project conditions. However, the mitigation will achieve the level of service needed to mitigate the project's impacts. Thus, performance standards exist – the Level of Service to be achieved by the mitigation. As discussed above, there is no doubt that City engineering staff remains qualified to make determinations as to what constitutes an equivalent level of mitigation.

Finally, contrary to the commenter's claim that the basis for providing for "equivalent mitigation" is not explained, a lengthy explanation was provided in FEIR Response E-9, which responded to the writer's original comments on this subject in his November 29th comment letter on the Draft EIR.

8. **Comment Traffic A.8: Proposed mitigation is unlikely to fulfilled and consequently Project will not pay its fair share of actual improvements required.**

   a. *Comment Traffic A.8.a: The commenter claims that the improvements actually identified in Mitigation Measures G9, G12, and G13 are unlikely to be constructed because they do not provide adequate service levels at the affected intersections. In all likelihood, the City would undertake*

more comprehensive improvements that would strive to provide adequate service levels. It appears that the lane improvements that are proposed are the minimum improvements that would be necessary to address just the delay caused by the project's incremental traffic – not to attain adequate service. This is further reason to expect that there is no real commitment to the identified improvements and that mitigation will not actually be constructed in that form.

b. *Comment Traffic A.8.b: The commenter claims that the Project's fair share should be a share of the total cost of attaining acceptable service levels, not just a small fraction of the cost of the lane restriping that would eliminate the Project's own incremental delay. The commenter also suggests that some portion of project impacts that would be mitigated by 2030 would arise prior to 2030 and therefore would be temporarily unmitigated project impacts. The commenter suggests this as a justification for having the project pay a larger share of the Lovers Lane Interchange Improvement project.*

Response Traffic A.8.a:

The commenter claims that Mitigation Measures G9, G12, and G13 are unlikely to be implemented because they are likely to be subsumed into a larger interchange improvement project. While this is a possible eventuality, it does not absolve the project from funding the improvements needed to mitigate the impacts attributable to the project.

In addition, the comment underscores the DEIR's intent to provide flexibility in the manner of far-term mitigation by 2030, by not necessarily confining mitigation to the lane restriping which would fully mitigate the project impacts in the absence of a larger improvement project intended to address a larger transportation system issue.

This comment also again claims that the project is responsible for complete restoration of service levels at the affected intersections, contrary to CEQA. This comment ignores the fact that existing and future deficiencies in the City's transportation system result from past and future urban development, exclusive of project-generated traffic. Moreover, this suggestion violates the well-established admonition against requiring such over-mitigation under CEQA, as discussed above and at length in FEIR Response E-1.

Response Traffic A.8.b:

As to the questions of incremental project impacts that may arise prior to the mitigation measures identified for 2030, it is important to understand that 2030 represents the analysis year, and not the year in which the mitigating improvements are to be completed. This is clear from the mitigation language that appears at the end of each traffic mitigation measure identified for 2030, as follows: "The City shall be solely responsible to implement these improvements in a time sufficient to mitigate these project impacts." Thus it is clear that these improvements are to be made at the time that the impact occurs during the period 2015 through 2030. With respect to Mitigation Measures G9, G12, and G13, it is noted that this language was added in conjunction with the revised mitigation language that specifies that the project is fully responsible for funding these mitigation measures.

To ensure that the specified mitigation measures are implemented in a timely manner, the City will monitor the roadways and intersections as noted in the Mitigation Monitoring and Reporting Program (MMRP). City of Visalia staff will make suitable adjustments to the traffic signal timing based upon the regularly measured traffic volumes and delay information from traffic studies conducted by the City. Similarly, appropriate adjustments to the striping and lane configurations will be completed based on these measured traffic volumes and delay information. (Chris Young, City of Visalia Community Development Director/City Engineer, June 9, 2011.)

9. <u>Comment Traffic A.9: The Project's fair share of improvements is not determined.</u>

a. <u>Comment Traffic A.9.a:</u> Neither the EIR nor the MMRP determines, or sets forth a procedure for determining, the actual impact fees in dollar terms. To do this, the City must be able to specify not just the fair share percentage, but the cost basis to which it will be applied. Because Mitigation Measures G9, G12, and G13 permit substitution of unspecified "equivalent improvements," the cost basis cannot be specified and the mitigation obligation remains opaque. Even if the lane restriping called for in the measures were ultimately implemented, there is a wide range of possible costs and the EIR does not provide any basis to determine the actual cost basis of this mitigation.

b. <u>Comment Traffic A.9.b</u>: The FEIR response to comments asking how the City could determine impact fees for unspecified "equivalent improvements" is disingenuous. The FEIR claims incorrectly that the "mitigation measures will be satisfied through [the Project's] payment of TIF fees." FEIR, p. 74. However, this simply ignores the fact that Mitigation Measures G9, G12, and G13 call for improvements that are not included in the TIF program.

<u>Response to Traffic A.9.a</u>:

For each specified mitigation measure which is not specifically identified as being covered through TIF impact fees, or for which the project is not wholly (100%) responsible, the Draft EIR identifies fair-share percentages of cost attributable to the project. This also applies to Mitigation Measures G9, G12, and G13. However, in order to remove any doubt regarding the funding of these far-term mitigations, the Applicant has agreed to fund the improvements prior to building permit issuance, and the City of Visalia has revised these mitigation measures accordingly. The MMRP includes these revised measures.

For each of the affected intersections, the cost of restriping will be determined by the City of Visalia Engineering Department prior to the issuance of a building permit; the costs of the restriping projects are estimated to be up to $10,000 per intersection. These costs will be converted to 2030 values through the application of accepted cost escalators, which will arrive at a final present cost of these far-term improvements. (Alternatively, the City could elect to deposit the funds in an interest an interest-bearing account which yields sufficient interest to cover the future cost of construction.)

Response Traffic A.9.b:

It is reasonable to assume that the cost of "equivalent improvements" will be very similar to the cost of the restriping specified for each of these far-term mitigations in the first instance. For example, if it is found that signal retiming is an equally effective and more appropriate mitigation 20 years hence, the cost of such signal retiming would also be less than $10,000 in today's dollars. Given the relative simplicity, very minor nature, and relatively low costs associated with Mitigations G9, G12, and G13, the range of costs associated with these "equivalent improvements" is quite narrow and clear, and not opaque as claimed by the commenter.

It is noted that the referenced discussion at the end of FEIR Response E-9 (FEIR) page 74) was inadvertently retained in from a previous draft of the FEIR document due to a clerical error. The final three sentences in Response E-9 have been deleted through the Errata memo included in the Staff Report to the City Council. The removal of these sentences has no material effect on the DEIR conclusions, the FEIR responses to comments, or the responses contained in this Rebuttal Memo or the Rebuttal Memo of May 11, 2011 responding to late comments on the FEIR received on April 25, 2011.

10. **Comment Traffic A.10: Summary of comments regarding Lover's Lane intersections: The commenter reiterates his assertions regarding the project impacts on intersections in the vicinity of the Lovers Lane interchange, and discusses again the project's purported duty to contribute a larger share to the solution of traffic congestion in the area.**

Response Traffic A.10:

The broad conclusory statements contained in this summary are addressed in detail in the responses provided above. These comments do not raise any new issues or facts which would result in any changes to the conclusions contained in the EIR with respect to the significance or severity of impacts associated with the proposed project.

11. **Comment Traffic A.11: There is no commitment to undertake mitigation.**

    a. *Comment Traffic A.11.a: The commenter claims that although the Mitigation Measures G8, G10, G15, G16, G17 and G18 call for the project to fully fund the signal optimization, there is no actual commitment to do so. The project is not conditioned on completion of this mitigation, which, in any case, would not take place in the near term. The City is unlikely to undertake such limited mitigation effort to address only this Project's delay or queuing impacts.*

    b. *Comment Traffic A.11.b: Further, Mitigation Measures G10, G15, G16, G17 and G18 each involve intersections under Caltrans' jurisdiction, so the City cannot unilaterally commit to this mitigation.*

Response Traffic A.11.a:

With respect to Mitigation Measures G8, G10, G15, G16, G17 and G18, these all relate to signal timing modifications required under far-term conditions. As with all mitigation measures identified in the EIR, these mitigations are required to be implemented as a condition of project approval. Since the signal timing modifications would be made in the far-term, the City's Engineering Department would calculate present cost of making the timing adjustments and then apply an escalator to determine costs in 2030.

Response to A.11.b:

As to the issue of Caltrans' jurisdiction over some of the affected intersections, Caltrans staff has specifically indicated that it would cooperate fully with any signal retiming efforts that would improve traffic operations in the City of Visalia. (David Deel, Caltrans District 6, March 11, 2010)

12. **Comment Traffic A.12: The EIR proposes unspecified, deferred mitigation that fails to provide a meaningful performance specification, a procedure for determining whether to substitute alternative mitigation, or identify who will approve such mitigation, or any reason for the deferral.**

Response Traffic A.12:

In each instance, the language that permits the City to undertake "equivalent improvements" is included for deficiencies that will be mitigated by 2030, up to 20 years in the future. First, there is no deferral with respect to identification of the mitigation measures in the first instance. Each measure identifies the mitigation to be completed, the source of funds, and the timing of completion. The allowance for "equivalent mitigation" merely recognizes that conditions may change between the date the project obtains a building permit, and 2030, such that a different form of mitigation may be more appropriate to achieve the stated criteria of restoring traffic operations to pre-project levels.

Since "equivalent" means "equal," the range of options available to achieve the same result is constrained. For example, instead of undertaking signal retiming in 2030, at a cost of less than $10,000 in today's dollars, it may be more appropriate to undertake minor lane restriping, also at a cost of less than $10,000 in today's money. The provision of this mitigation option implicitly and reasonably assumes that City of Visalia Engineering Department staff will remain competent to determine whether equivalent mitigation is called for in 2030, and determine whether such equivalent improvements would mitigate intersection deficiencies at the location in 2030 to the pre-project level.

13. **Comment Traffic A.13: The Proposed mitigation is unlikely and the Project will not pay its fair share of actual required improvements.**

As with the Lovers Lane intersections, the EIR has identified the absolute minimum improvements to address the delay or queuing increment caused by the Project. For the intersections covered by Mitigation Measures G10, G17, and G18, the mitigation would not actually result in acceptable service or queuing. Since neither Caltrans nor the City would be likely to undertake a program addressing only the Project's incremental impact, it is probable that

substantially more ambitious improvements will be required. The Project' fair share of these much more expensive improvements will likely exceed the amount the City may exact for signal optimization.

Response Traffic A.13:

In this objection, the commenter supposes that Caltrans and the City will object to mitigation measures G10, G17, and G18 because they only mitigate project-related impacts instead of addressing a larger impact. This argument challenges the constitutional mandate that mitigation be "roughly proportional" to a project's impacts. Further, the comment criticizes the project for not mitigating deficiencies that will not be caused by the project. The argument goes something like this – although the City has not planned or programmed a large-scale modification for an intersection, the project should anticipate one and offer to pay a fair share percentage of the larger improvement instead of tailoring its mitigation to impacts caused by the project. Mitigation measures G10, G17, and G18, are specifically tailored to mitigate project-level impacts. To require the project to mitigate pre-existing deficiencies is unconstitutional.

In addition to identifying mitigation measures for project impacts, an EIR must reasonably assume that feasible mitigation measures will be implemented as prescribed. In the absence of planned and programmed improvements that would subsume the identified mitigations, it would be inappropriately speculative to assume that the mitigation would actually become part of a larger project. It is noted that larger improvement projects typically receive the majority of their funding from sources other than impact fees, such as Measure R funding and State Gas Tax funding.

14. Comment Traffic A.14: The Project's impact fees are not determined.

a. Comment Traffic A.14.a: The EIR and MMRP do not determine the mitigation payments in dollar terms or provide any mechanism for doing so. The FEIR provides an 8-fold range of possible costs for signal optimization and explains that the actual cost will depend on traffic conditions immediately before the optimization is implemented. While this may justify deferring the cost determination for the near-term signal optimizations, since the City will not have any better information at the time building permits are issued. (FEIR, p. 73.) The FEIR's response to comments seeking information re: the fee determination fails to address the fee determination for the long-term mitigation measures.

b. Comment Traffic A.14.b: Again, the provision for "equivalent mitigation" renders determination of an impact fee uncertain. Again, the FEIR responses are inadequate because they do not explain on what basis the fees would be determined for the equivalent improvements. Instead, the FEIR claims incorrectly that the "mitigation measures will be satisfied through {the Project's] payment of TIF fees". FEIR. p. 74. However, this simply ignores the fact that Mitigation Measures G8, G10, G15, G16, G17, and G18 call for exactions outside the TIF program.

Response Traffic A.14.a.

The cost of far-term mitigation measures involving signal optimization would be determined in the same manner as near-term signal optimizations, which is described in FEIR Response E-8.

In addition, and as discussed above in Response A1-16 for lane restriping, the cost of each signal optimization would be estimated (i.e., less than $10,000 in today's dollars), and converted to 2030 values through the application of accepted cost escalators.

Response Traffic A.14.b.

It is reasonable to assume that the cost of "equivalent improvements" will be very similar to the cost of the signal modifications specified for each of these far-term mitigations. For example, 20 years hence, if the City determines that lane restriping is an equally effective and more appropriate mitigation than signal optimization, the cost of the restriping would also be less than $10,000 in today's dollars. As is evident from a reading of the language for each of the subject mitigation measures, there is no mention that their costs are covered by the TIF program. What is clear is that the applicant will pay the fair share costs of these mitigation measures, as calculated at the time the building permit is issued. The controlling factor is the language in the mitigation measure, which does not refer to the TIF program as a funding source for these mitigations.

It is noted again that the referenced discussion at the end of FEIR Response E-9 (FEIR) page 74) was inadvertently retained in from a previous draft of the FEIR document due to a clerical error. The final three sentences in Response E-9 have been deleted through the Errata memo included in the Staff Report to the City Council. The removal of these sentences has no material effect on the DEIR conclusions, the FEIR responses to comments, or the responses contained in this Rebuttal Memo or the Rebuttal Memo of May 11, 2011 responding to late comments on the FEIR received on April 25, 2011.

B. Responses to May 16, 2011 comments submitted by Tom Brohard

The comments contained in the traffic memo Tom Brohard duplicate Mr. Wolfe's comments in all but one instance, which is addressed below. The responses to these duplicative comments are all contained in the corresponding responses to Mr. Wolfe.

1. **Comment Traffic B.1: Agency jurisdiction for improvements at Lovers Lane and Noble Avenue is unclear.**

   Agency jurisdiction is unclear for Mitigation Measure G12 for improvements at Lovers Lane and Noble Avenue. Page 133 of the Draft EIR identifies Lovers Lane as State Route 216, subject to the jurisdiction of the Tulare County Association of Governments. However, page 101 of the Final EIR identifies the intersection as subject only to the jurisdiction of the City. If in fact the intersection is subject to another agency's jurisdiction, Mitigation Measure G12 is uncertain for that reason as well.

Response Traffic B.1:

Lovers Lane is State Route 216 north of State Route 198 only, so the state route does not extend south to the Lovers Lane/Noble Avenue intersection. Similarly, the designation of Lovers Lane as a Roadway of Regional Significance (and therefore subject to the planning jurisdiction of the Tulare County Association of Governments (TCAG) only applies to the roadway segments north of State Route 198, and does not extend south to the Lovers Lane/Noble Avenue intersection. The Lovers Lane and Noble Avenue intersection is solely owned by the City of Visalia, which has sole jurisdiction to make improvements to that intersection.

IV. URBAN DECAY COMMENTS/RESPONSES

A. Responses from The Natelson Dale Group (TNDG) to May 16, 2011 comments from Jim Watt.

1. Comment UD A.1: The TNDG analysis should have considered the pending applications for the second Walmart and remodeling of two Target stores in Visalia.

a. Comment UD A.1.a: Issues Regarding Urban Decay - Staff response A11 and A12 [in the May 11 Rebuttal Memo] deal with whether TNDG should have known about the pending applications for a second Wal-Mart and the internal expansion of the two existing Targets to full grocery/supermarket status at the time of their January 2010 report, or should have provided an updated analysis prior to the DEIR's release for public comment on October 14, 2010. The following covers the history on these two competitors.

Response UD A.1.a:

The cumulative impacts analysis in TNDG's original report (dated January 4, 2010) was based on a list of planned and pending retail projects provided by City staff at the time the DEIR was prepared. In response to Mark Wolfe's comment letter (dated November 29, 2011), City staff informed the EIR consultant that no applications for additional projects had been submitted and that there was therefore no basis for evaluating additional projects as part of the cumulative impacts analysis.

Notwithstanding the above, TNDG carefully considered the three projects in question as part of the response to comments submitted by Mark Wolfe and Jim Watt on April 25, 2011 (the date of the Planning Commission hearing for the proposed project). TNDG's responses are set forth in the Rebuttal Memo the City released for public review on May 12, 2011.

In those responses, TNDG specifically responded to Mr. Watt's April 25th comments and documented that the inclusion of the three newly identified projects would be more than offset by the withdrawal or downsizing of other projects that were included on the original cumulative projects list and evaluated in the EIR.

TNDG has again documented this fact in its responses to the memorandum prepared by Area Research Associates. Moreover, TNDG's Response UD A.2, below, documents that the inclusion of the three newly identified projects in the cumulative impacts analysis would not change the study's conclusions regarding the economic effects of the proposed project or the potential for the project to cause urban decay.

2. <u>Comment UD A.2: The TNDG analysis should have considered Target's plans to expand its line of fresh produce and meats at its two existing Visalia stores.</u>

a. *<u>Comment UD A.2.a</u>: Target – This comment goes into considerable detail about Target's program for expanding their offerings of supermarket type merchandise in existing stores. The comment notes that Target's plans to rollout groceries was mentioned in Mr. Wolfe's November 29, 2010 letter, and that TNDG failed to respond, claiming that without applications in the city these remodels would be speculative.*

b. <u>Comment UD A.2.b:</u> TNDG's response to DEIR comments claimed that without applications in the city these remodels would be speculative. But, but "knowledgeable grocery operators" including this author and Tom Gong ofFood-4Less have known these stores were candidates for a P-Fresh well before the release of the DEIR. As for what a P-Fresh would look like, TNDG only needed to find an existing, large Target like the Target Greatland in San Ramon that was converted in mid 2010 to estimate the amount of space that Target devotes to supermarket type merchandise.

<u>Response to UD A.2.a-b</u>:

Boiled down to its essence, Mr. Watt is claiming that the fact that a speculative future grocery addition to an existing Visalia Target is "mentioned" in a lengthy DEIR comment letter from one of the well-known Walmart opposition attorneys, it must be true and further independent investigation is required by CEQA.

Far from ignoring this Mr. Wolfe comment regarding the potential Target expansions raised his comments on the DEIR, the EIR consultant requested information about these potential projects from City staff. Staff indicated that no applications for these projects had been submitted and that there was otherwise no information that indicated that grocery sales should be assumed at the Target stores. As such, TNDG had no basis for evaluating them as part of the cumulative impacts analysis.

As Mr. Watt sees it, TNDG should have conducted its own investigation, even traveling to San Ramon California so it could "estimate the amount of space" that this particular Target decided to devote to supermarket type merchandise" – as if that would provide information regarding what may be occurring in Visalia at some unknown point in the future. If or when this may happen, no one of course knew. In fact, Mr. Wolfe's April 25, 2011 letter to the Planning Commission indicates that, at the time of his original (November 29, 2010) comments, he was "unable to verify" as fact **<u>any</u>** additional grocery projects in the City.

At bottom, Mr. Watt urges that CEQA be interpreted to require an EIR to be a continually evolving document, incorporating every potential change to the existing environment, no matter whether the source of such change is pure rumor and speculation, and cannot be verified by City staff – the source of information regarding cumulative projects that CEQA directs EIR preparers to consult. (Watt letter, pp. 2-5.) Were this the actual

standard imposed by CEQA on an EIR's presentation of an environmental baseline, Guidelines Section 15125(a) (baseline/NOP) would have no meaning.

The EIR preparers for the Visalia Expansion project did consult staff and reliable information sources when responding to Mr. Wolfe's DEIR comments. No more was required under CEQA, certainly not speculative analysis of rumored Target grocery projects that even the attorney raising the issue could not verify.

3. **Comment UD A.3: The TNDG analysis should consider both the existing Target grocery floor space and the proposed expansion to the grocery area.**

   a. *Comment UD A.3.a: For at least 50 years, shopping center use restrictions have often granted supermarkets the exclusive for the sale of fresh fruits, vegetables and meats; and the inclusion of these items is what differentiate a supermarket from other retailers. Therefore, the addition of these fresh items qualifies this aspect of the Target store to function as a supermarket similar to that of a Wal-Mart Supercenter. And, having transformed a portion of its store to function as a full service supermarket, the entire square footage devoted to supermarket type merchandise needs to be evaluated under supermarket impacts, similar to the approach taken for the expansion of the proposed Wal-Mart.*

Response UD A.3.a:

TNDG has evaluated the expansions of the two Target stores to determine if inclusion of these newly identified projects would alter the conclusions of the cumulative impacts analysis. Based on this evaluation, TNDG determined that inclusion of these projects would not change the study's conclusions regarding the economic effects of the proposed project or the potential for the project to cause urban decay.

TNDG strongly disagrees with the suggestion that evaluation of the Target expansions should include the entire square footage of merchandise devoted to "supermarket type merchandise." Since most of this space already exists at the two Target stores and is therefore part of the existing competitive environment, it would be illogical and incorrect to evaluate the existing areas devoted to "supermarket type merchandise" as "new" impacts. Consistent with standard analysis procedures for EIR economic studies, the analysis should only consider the net increase in grocery space at these two stores. Contrary to the assertion by the commenter, TNDG's analysis of the Walmart expansion does count the existing floor area devoted to supermarket-type merchandise.

4. **Comment UD A.4: The TNDG analysis should have considered Walmart's plans to open a second store with groceries on Mooney Boulevard.**

   a. *Comment UD A.4.a: The commenter states that there was publicly available information about a possible sale of the former Costco building to Walmart in the fall of 2010, and that plans for the Walmart occupancy*

of the former Costco space were submitted to the City in March 2011. Given the importance of measuring the impacts of two large Walmart Supercenters on existing grocery retailers, it is critical that this Mooney Boulevard Wal-Mart be evaluated as part of any meaningful analysis of trade area impacts. (NOTE: this represents a summary of Mr. Watt's lengthy comments on this topic).

b. *Comment UD A.4.b: During the Planning Commission hearing on April 25, 2011, Mr. Roger Dale of TNDG acknowledged that he had heard a rumor of a second Wal-Mart store but decided that if the second Wal-Mart and the two Target expansions were added it would increase grocery square footage by 80,000 square feet, but since four planned grocery stores had dropped out it would be a wash and would not change the report's findings. Such important information involving the changes of seven supermarket competitors, and one a second Wal-Mart, is not a matter to be dismissed without the benefit of public review. (NOTE: this represents a summary of Mr. Watt's lengthy comments on this topic).*

Response UD.A.4.a-b:

As noted previously, the cumulative impacts analysis in TNDG's original report (dated January 4, 2010) was based on a list of planned and pending retail projects provided by City staff at the time the DEIR was prepared. In response to Mark Wolfe's comment letter (dated November 29, 2010), City staff informed the EIR consultant that no applications for additional projects had been submitted and that there was therefore no basis for evaluating additional projects as part of the cumulative impacts analysis.

Mr. Dale's acknowledgment (at the April 25 Planning Commission hearing) that he was aware of a "rumor" regarding a second Walmart store (a rumor which City staff had no basis to confirm) was intended to reinforce the fact that there was no credible basis for including this project in a revised cumulative analysis at the time the EIR response to comments was prepared.

Mr. Watt's original comment letter was received late in the afternoon on the day of the Planning Commission hearing (April 25, 2011). In response to that letter and a similar comment received from Mark Wolfe on the same day, Mr. Dale and City staff conducted an initial analysis accounting for the new information on the three additional projects noted by the commenter, in light of the projects which had been reduced in size or dropped out since the time of the original analysis in January 2010.

The preliminary analysis results were presented at the Planning Commission hearing of April 25th. A refined and more detailed analysis of this issue was provided in the written response to comments (released on May 12, 2011).

5. **Comment UD A.5: The TNDG analysis should have considered the possibility of new Walmart Neighborhood Market in Visalia.**

In Visalia, the Planning Commission approved a parcel map application that subdivided 13.55 acres into four parcels at the neighborhood commercially zoned site at the southeast comer of West Houston Avenue and north Demaree Street. One of the parcels totals 3.57 acres and is shown on the accompanying site plan as designated for a 35,000 square foot grocery store. It is generally believed by sources that wish to remain unidentified that this parcel has been created for a future Wal-Mart grocery store, however city staff says the owner has not provided the name of the grocery tenant. . . . it is requested that Wal-Mart either affirm or deny its involvement in the Houston and Demaree location prior to a city council decision on the proposed expansion.

Response UD A.5:

Neither the City or TNDG have knowledge of a potential Walmart project on the southeast corner of west Houston Avenue and north Demaree Street. However, TNDG's original cumulative analysis assumed that a 72,000 square foot supermarket would be developed at that site. City staff now indicates that the latest application for the site calls for a 35,000 square foot supermarket. Thus, regardless of whether or not Walmart is planning to occupy this site, a supermarket use for that location has been included in TNDG's cumulative impacts analysis.

6. **Comment UD A.6: Commenter did not have adequate time to review new information released to the public.**

Comment UD A.6: Inadequate Time to Evaluate the New Information - I strongly object to the limited time provided to evaluate the significant amount of new information that was released to the public at around 5 pm on 5/12/2011. This left only Friday, 5/13/2011 to verify the new information provided about the revised status of various projects and to check other sources of information about the trade area.

Response UD A.6:

It is not evident how the commenter has been prejudiced in his ability to prepare detailed comments in response to the City and EIR consultants memo prepared to respond to his late comments submitted on April 25, 2011, at the Planning Commission hearing. Despite claiming to have had only one business day to "verify the new information", Mr. Watt submitted 22 pages of comments that included an analysis from the ARA group he had retained to conduct a detailed review of the EIR and the contents of the Rebuttal Memo.

The fact that Mr. Watt's May 16, 2011 comments were accompanied by the ARA analysis indicates either that (1) the Friday-Monday time period was adequate to review the Rebuttal Memo's response Mr. Watt's April 25th comments insisting that a Walmart takeover of the existing Costco and Target's addition of groceries to its existing stores

required "recirculation" of the EIR, or (2) that his late hit comments submitted on May 16, 2011 – including the ARA analysis – had been in the works long before the City's release of the May 12, 2011 Rebuttal Memo. Either scenario undermines his claim to have been prejudiced by a "limited time to evaluate the significant amount of new information" contained in the Rebuttal memo.

7. <u>Comment UD A.7: Other aspects of urban decay analysis not adequately addressed.</u>

Evaluation of other aspects of the TNDG Urban Decay Analysis - In addition to the competitive issues raised above, there are a number of other aspects of the TNDG urban decay study that were either inadequately answered during the response to comments, or need to be re-evaluated before a determination can be made about the potential for urban decay. These issues are discussed in a separate report prepared by Area Research Associates (ARA) and dated May 16, 2011 (attached). The ARA report concludes that due to multiple changes that have occurred since the TNDG study was completed, that the TNDG study should be revised and recirculated for public review. We concur with that assessment.

<u>Response UD A.7:</u>
TNDG has thoroughly reviewed the ARA memorandum and has provided detailed responses below. On the basis of this review, TNDG has determined that ARA has not provided any information what would cause TNDG to modify the EIR conclusions regarding the economic effects of the proposed project or the potential for the project to cause urban decay.

B. Responses from The Natelson Dale Group (TNDG) to May 16, 2011 comments from Jim Watt.

1. <u>Introductory comments</u>

a. <u>Comment UD B.1.a:</u> The purpose of this review is to provide expert opinion on the reasonableness of the methodology used in the EIR and to determine whether it is adequate for the purposes of predicting the likelihood of urban decay as a result of the proposed project. Given the very limited time provided between the release of Staff comments and the City Council meeting on May 16, 2011, we were not able to verify all of the information recently provided by Staff and TNDG. As such, we are only able to present a general summary of key findings at this time as well as provide a general indication of the extent to which any revised data would be likely to alter the conclusions of the EIR.

<u>Response UD B.1.a:</u>

The memorandum prepared by Area Research Associates (ARA) provides comments on: (a) the EIR's economic impact ("urban decay") analysis prepared by TNDG, and (b) TNDG's responses to M.R. Wolfe's written comments on the DEIR.

Contrary to the impression given by the ARA memorandum, the Final EIR and its responses to the DEIR comments (which, together with the original EIR analysis, provide the bulk of the material reviewed by ARA) was released on *April 15, 2011 – not May 12, 2011*. The Rebuttal Memo that the City released on May 12 was necessitated only due to late comments submitted by Mark Wolfe and Jim Watt just hours before the April 25, 2011 Planning Commission hearing.

b. Comment UD B.1.b: In essence, the ARA memorandum makes the following major assertions regarding TNDG's economic impact analysis (and subsequent responses to comments):

1. *TNDG's analysis overstates future population growth;*
2. *TNDG's analysis understates the potential cumulative impacts of the proposed project due to several new projects that were not evaluated in the EIR study;*
3. *TNDG's analysis overstates future retail demand because it utilizes base data from 2007 to calculate the retail expenditures potentials of trade area residents; and*
4. *The above issues are "significant enough to potentially alter the study's conclusions regarding urban decay."*

Response UD B.1.b:

TNDG's responses to ARA's assertions are detailed on a point-by-point basis below and are briefly summarized here:

- *ARA's Faulty Population Growth Assumptions:* Contrary to the substantial evidence provided in the FEIR (and further corroborated below), ARA makes the fallacious assumption that population growth will be severely constrained due to the current slowdown in residential construction.

- *The EIR's Urban Decay cumulative impact analysis requires no revision and recirculation:* As is noted in the May 12 responses to comments and further explained below, the additional retail projects proposed in the trade area are more than offset by previously-evaluated projects that have since been downsized or entirely withdrawn. Thus, an adjusted cumulative analysis would actually show potential impacts that are *less severe* than those described in the original cumulative analysis.

- *ARA's adjusted version of TNDG's model is internally inconsistent:* ARA projects severely restricted growth in population and resultant retail demand, while still assuming that future retail projects (in some cases projects for which no definite plans or tenants are known) will come on line over the next few years. This makes no economic sense and would seem to contradict the very concern that ARA is attempting to raise about the sluggish economic recovery.

- *TNDG's use of 2007 data does not overstate future retail demand:* As is documented in detail below, the sales expenditure factor derived by TNDG based on 2007 data corresponds very closely to long-term averages and therefore provides an appropriate basis for future projections. While it is true that retail expenditures declined in 2008 and 2009, available data for 2010 and the first part of 2011 provide clear evidence that the retail sector is recovering. Given that the proposed project would not open before 2012 and many of the cumulative projects would not likely be built until 2015 or later, it would be highly inappropriate to utilize 2009 expenditure factors as the basis for the study's retail demand projections.

In summary, TNDG disagrees with the points raised by ARA and believes that the EIR analysis provides a fully adequate basis on which to conclude that the proposed project will not result in urban decay. However, even if TNDG accepted ARA's revised assumptions as presented (which it does not), it is still TNDG's conclusion that the economic effects of the proposed project would not be severe enough to result in urban decay. There are several reasons why we can confidently make this assertion:

- TNDG's original study concluded that, under worst case conditions (i.e., under the "Delayed Growth" scenario considered in TNDG's analysis), the cumulative projects evaluated in the EIR could potentially result in the closure of up to six existing supermarkets in the trade area. Although the original study explains that it is unlikely that six supermarkets would actually close, it concludes that even if such closures did occur they would not result in urban decay.

TNDG's conclusion that six supermarkets could potentially close was based on an assumed sales volume threshold of $475 per square foot for the trade area's existing supermarkets. That is, the analysis assumed that supermarkets would be at risk of closure if the average sales volumes at the existing stores dropped below $475 per square foot. Under TNDG's Delayed Growth scenario, sales volumes at the existing supermarkets were projected to fall to a low of $330 per square foot, suggesting that the trade area would be overbuilt by 291,909 square feet of supermarket space (i.e., the equivalent of approximately six supermarkets).

Under ARA's adjusted assumptions, the sales impact to existing supermarkets changes only marginally. In fact, when corrected for errors in the ARA calculations (as described in detail in a subsequent response), the revised cumulative analysis shows impacts that are actually less severe (in terms of the worst case 2015 impact) than projected in TNDG's original study:

Table 1: Projected Sales per Square Foot
Existing Trade Area Supermarkets

	2015	2020
Original EIR Analysis (Delayed Growth Scenario)	$330	$376
ARA Analysis	$320	$344
ARA Analysis, corrected	$342	$368

Thus, ARA's adjusted growth forecasts do not materially differ from the Delayed Growth scenario evaluated in detail in the EIR.

Thus, as shown in Table 1 above, ARA's adjusted growth forecasts do not materially differ from the Delayed Growth scenario evaluated in detail in the EIR.

- It should be strongly emphasized that the TNDG analysis intentionally used a very conservative threshold for evaluating the potential for supermarket closures. As described at length on pages 24 and 25 of the original TNDG study, many supermarket chains in California survive at sales volumes substantially below the benchmark sales factor of $475 per square foot assumed in the report. Consistent with this fact, TNDG notes that an analysis prepared by ARA for a project in Elk Grove, California indicates that a sales volume of $300 per square foot "represents a level that is generally considered to put a store at significant risk of closure, with sales performance that is roughly 30% below the median for supermarkets in the Western U.S.A."[5] In the same report, ARA describes $300 per square foot as a "threshold" that "normally represents a store on the edge of profitability."

- ARA's reference to a threshold of $300 per square foot underscores how conservative the assumptions in TNDG's original analysis were. If the $300 benchmark had been utilized in TNDG's analysis, the conclusion would have been that *no supermarkets would be at risk of closure.* Even under the adjusted growth projections provided by ARA (which TNDG believes are based on unrealistically conservative growth assumptions), sales volumes at the existing supermarkets are projected to remain well above the $300 threshold.

The above discussion is not intended to imply that TNDG's analysis should be re-calculated based on the $300 per square foot threshold. The point is that, *by ARA's own standard, TNDG's original analysis was based on very conservative assumptions*. This conservative bias in TNDG's analysis provides, in effect, a "buffer" for variations in the conclusions based on ARA's suggested revisions to the population growth assumptions. This "buffer" would more than offset the relatively modest change in conclusions indicated by ARA's adjusted growth forecast (with which TNDG does not agree, at any rate).

- It is important to emphasize that ARA's adjusted version of TNDG's calculations relates to the cumulative impacts analysis. ARA does not specifically dispute the conclusions of TNDG's project-specific analysis. As a rule, EIR cumulative analyses are highly sensitive to the assumed timing of the planned and pending projects considered. In this regard, it is essential that the assumed timing of commercial growth is appropriately "matched" to the assumed timing of population growth. Whereas ARA has vigorously argued that population and retail demand growth in the trade area will be severely delayed for the rest of the decade, the ARA analysis has inexplicably assumed that, in the face of what they characterize as a low-growth trade area, all of the pending supermarket projects would be built by 2015.

[5] "Potential Impact of Walmart on Area Supermarkets, SEC of Bruceville Rd. & Whitelock Pkwy., Elk Grove, CA," Area Research Associates, June 2010, page 13 (a copy of this report is included as Attachment Urban Decay-1 to this Rebuttal Memo).

2. **Comment UD B.2: ARA's Conclusion – EIR contains errors and omissions regarding urban decay.**

   a. *UD B.2.a: The EIR generally utilizes good methodology and offers a comprehensive review of the many factors that impact the potential for urban decay in this trade area. However, it also has a number of key errors and omissions that are significant enough to potentially alter the study's conclusions regarding urban decay. Most significantly, these are:*

Response UD B.2.a:
ARA is incorrect in stating that TNDG's study "also has a number of key errors and omissions that are significant enough to alter the study's conclusions regarding urban decay". As discussed in the following points, many of ARA's conclusions result from misunderstanding of key aspects and the methodological approach of TNDG's analysis, in addition to a misunderstanding of TNDG's responses previously submitted to address comments provided by Mark Wolfe.

3. **Comment UD B.3: Population Growth is Overstated.**

   a. *Comment UD B.3.a: Neither of the alternate future population projections provided by TNDG accurately reflect current housing market conditions or make use of development data that was available at the time their report was prepared in January 2010. A comparison to growth statistics as recorded by recent building permits trends indicates that the baseline population projection in the EIR is about 100% higher than likely future household population growth while the "delayed growth" scenario overstates it by 68% At this rate, by the year 2020 there will be 5,783 fewer homes in the trade area than TNDG estimated in their "Delayed Growth" scenario and a total of approximately 18,500 fewer people. This means that the future growth in retail demand that was relied upon to mitigate the project's impacts on local competitors will fall far short of projections, resulting in proportionately higher impacts on these stores than predicted in the EIR.*

Response UD B.3.a:

Most of ARA's analysis rests on the assertion that TNDG's analysis overstated potential population growth under both the baseline and delayed growth scenarios presented in the report. ARA adjusts TNDG's retail demand model based on ARA's own demographic projections for the trade area. As described below, there are a number of problematic issues related to ARA's demographic projections, which lead to dubious conclusions in the ARA analysis.

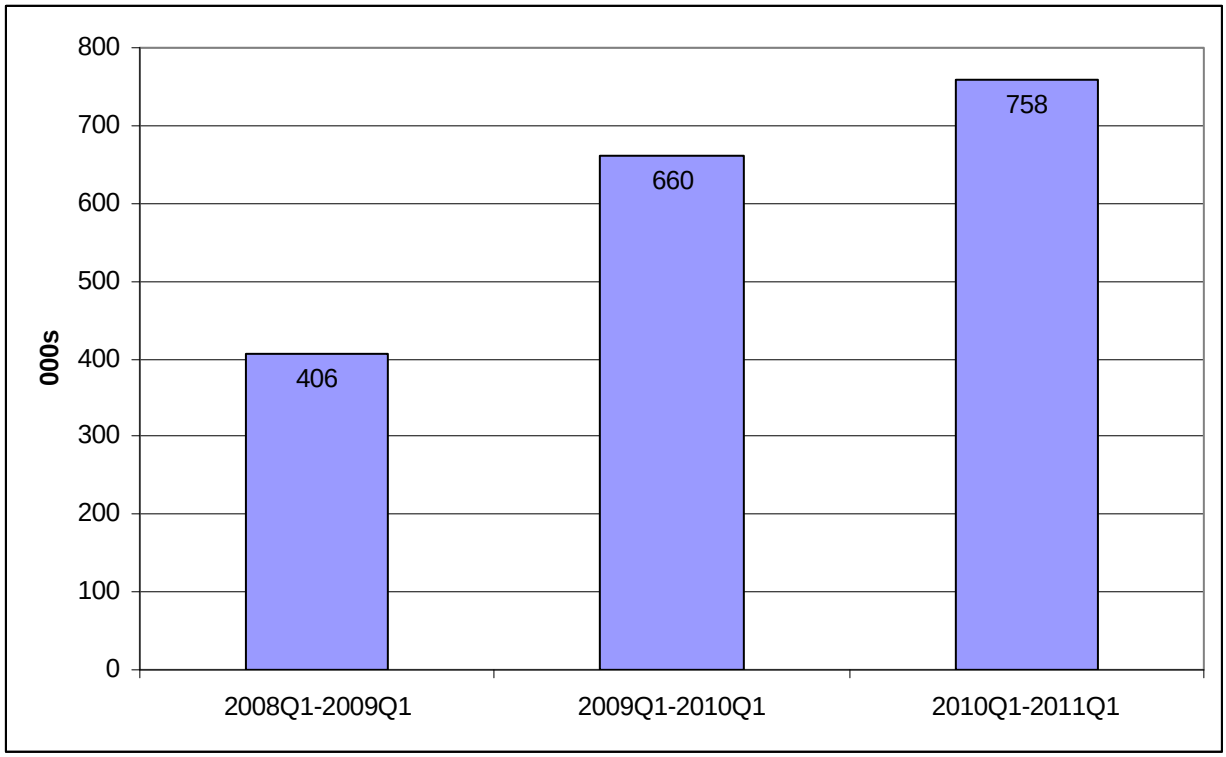
ARA's analysis assumes that there is a one-to-one relationship between the number of building permits issued and the change in the number of households. That is, ARA assumes that every building permit leads to the development of one new dwelling unit, which in turn leads to an increase in one new household. This assumption is incorrect. Changes in the number of households result from the formation of new households,

which can occur with or without new residential development. It has been well documented that residential development was overbuilt in the first part of the most recent decade, and there is now an overhang of excess housing units that will need to be absorbed before residential construction returns to normal historical levels[6]. But this does not imply that household formation rates will remain depressed during this depressed residential construction period.

In fact, the most recent data available on occupied housing units (which is equivalent to households, according the U.S. Census Bureau) show them growing at an increasing rate. As shown in Figure 1 below, between the 1st quarter of 2009 and 2010 (the most recent full-year data available), households increased by approximately 758,000, compared to 660,000 and 406,000 in the two most recent periods, respectively. The fact that the number of households is beginning to increase at a significant rate while residential construction remains depressed illustrates the fallacy of assuming a direct one-to-one relationship between housing starts (or building permits) and household formation rates.

Moreover, recent evidence suggests that the fledgling economic recovery is beginning to drive up household formation rates further; with employment picking up, many people that temporarily moved in with relatives or friends are beginning to move into their own residences – or form new households. For example, UBS Securities projects that approximately 1 million new households will be formed in the U.S. in 2011[7], which is well above the numbers shown over the last three years in as shown in Figure 1 below.

Figure 1: Increase in Occupied Housing Units (Households)
2008Q1 to 2011Q1



[6] See "As Lenders Hold Homes in Foreclosure, Sales Are Hurt", New York Times, May 22, 2011.
[7] See "Kids Moving Out are a Boon to the Economy", Bloomberg Businessweek, May 12, 2011.

Source: Current Population Survey/Housing Vacancy Survey, Series H-111, Bureau of the Census.

- It has been well documented that, in response to the recent severe recession and corresponding job losses, many people "doubled up", moving in with friends or family members. This phenomenon led to generational lows in household formation. Although Figure 1 shows 758,000 new households being formed for the most recent 1-year period in which data are available, this is still well below the long-term average in the U.S. For example, for the 2002-2007 period, household increases averaged 1.3 million per year.[8] However, as thoroughly detailed by TNDG in the FEIR, what really matters for purposes of projecting retail demand is the number of residents in the trade area, since demand for food, clothing, etc. increases with each individual resident added to the area, regardless of assumed household sizes.

In addition, TNDG provided a significant amount of evidence and data to support the reasonableness of the demographic projections in the Economic Impact Analysis. The only response to this from ARA was

> *"[i]n five pages of conflicting and highly questionable data, TNDG even claims that their 'delayed growth' projections, which insert a two-year period of zero growth, are actually too pessimistic since actual household growth between 2009 and 2011 was above zero (484/year)."*

ARA provides no evidence or explanation of what the "conflicting and highly questionable data" were, and never contests the fundamental point of TNDG's response – *that population growth has continued relatively unabated despite the slowdown in residential construction.* ARA's unsupported assertions do not undermine the fact that the conclusions set forth in the EIR's Urban Decay analysis are supported by substantial evidence; ARA has not shown any defect or error in TNDG's facts or methodology that would indicate otherwise.

- As discussed above, the shortcomings in ARA's demographic projections result from assuming one-to-one relationships in (1) changes in building permits and new household formations and (2) changes in households and population. This leads ARA to provide demographic projections that are difficult to reconcile with recent history, and that dramatically understate the likely population growth over the next decade. Table 1 below summarizes ARA's population projections provided in Table C (page 5) of the ARA memorandum. As shown in the table, ARA assumes that households will increase at a 0.8% annual rate between 2011 and 2015, increasing to 1.1% between 2018 and 2020. By using a constant household size factor of 3.2, he assumes that population would grow at an identical rate. Over the nine-year period from 2011 to 2020, ARA assumes that households and population would increase at an annual average rate of 1.0%.

[8] See "U.S. Household Formation is at a Record Low", HIS Global Insight: Country & Industry Forecasting, October 7, 2010.

Table 2: ARA's Demographic Projections

	2007	2009	2011	2013	2015	2018	2020
Trade Area	55,236	57,571	58,538	59,488	60,438	62,388	63,738
Increase in New Households		2,335	967	950	950	1,950	1,350
Annual Increase in New Households		1,168	484	475	475	650	675
Cumulative Increase in New Households		2,335	3,302	4,252	5,202	7,152	8,502
Annual % Change			***0.8%***	***0.8%***	***0.8%***	***1.1%***	***1.1%***

Source: Table C, ARA memorandum.

As a first check on the reasonableness of ARA's demographic projections, Table 3, on the following page, provides the population and household estimates, along with growth rates, for Tulare County between 2000 and 2010. The 2000 and 2010 numbers are from the decennial census, while the intervening years are from Census's American Community Survey (ACS), which provides population and household estimates on an annual basis. The data are provided at the county level of geography due to the potential effect of annexations at the city level of geography, making it difficult to do "apples-to-apples" comparisons for cities over this time period. As shown in the table, between 2000 and 2010, population in the county increased at an annual average rate of 2% while households grew at a 1.8% annual rate.

Thus, ARA assumes that between 2011 and 2020 the trade area's population will only increase at approximately 50% of the county rate experienced during the most recent decade, between 2000 and 2010. This projection, which diverges greatly from recent history, is based solely on the recent slowdown in building permits and anecdotal notes from a few local home builders. As shown in the table, the recent growth in households from 2009 and 2010 highlight the dubious nature of ARA's projections, with county population and households increasing at 2.9% and 3.1%, respectively.

Table 3:
Population and Household Estimates
Tulare County: 2000 - 2010

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Population	368,021	368,207	375,752	384,747	395,493	404,909	419,909	421,553	426,276	429,668	442,179
Absolute Change		186	7,545	8,995	10,746	9,416	15,000	1,644	4,723	3,392	12,511
Percentage Change		0.1%	2.0%	2.4%	2.8%	2.4%	3.7%	0.4%	1.1%	0.8%	2.9%
Absolute Change: 2000-10		74,158									
Percentage Change		20.2%									
Average Annual % Change		2.0%									

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Households	110,385	111,812	115,220	116,833	116,326	119,621	122,513	122,613	124,047	126,409	130,352
Absolute Change		1,427	3,408	1,613	-507	3,295	2,892	100	1,434	2,362	3,943
Percentage Change		1.3%	3.0%	1.4%	-0.4%	2.8%	2.4%	0.1%	1.2%	1.9%	3.1%
Absolute Change: 2000-10		19,967									
Percentage Change		18.1%									
Average Annual % Change		1.8%									

Source: Decennial Census, Bureau of the Census; American Community Survey (ACS), Bureau of the Census.

In addition to comparisons with the county's recent history, ARA's demographic projections are also completely divorced from the most recent 10-year growth rates of the geographic area, as measured by the census tracts that correspond to the trade area evaluated in TNDG's analysis, Table 4 below, shows the 2000 and 2010 population and number of households for the census tracts that correspond to the geographic boundaries of the retail trade area evaluated in TNDG's analysis.

Table 4:
Population and Households by Census Tract
2000 to 2010

	Households		Population	
Census Tract	**2000**	**2010**	**2000**	**2010**
Census Tract 1	1,965	2,082	4,921	5,142
Census Tract 7.01	732	761	2,630	2,635
Census Tract 7.02	1,323	1,481	4,869	5,391
Census Tract 8	2,029	2,083	7,300	7,416
Census Tract 9	1,560	1,870	6,749	8,171
Census Tract 10.03	1,859	5,893	6,512	19,732
Census Tract 10.04	1,707	1,885	7,553	8,235
Census Tract 10.05	649	1,031	1,634	2,733
Census Tract 10.06	2,217	2,248	5,601	5,765
Census Tract 11	1,865	1,845	7,527	6,983
Census Tract 12	530	570	1,242	1,337
Census Tract 13.01	2,217	2,482	6,987	8,013
Census Tract 13.02	1,817	2,512	5,774	8,037
Census Tract 14	1,391	1,758	4,290	5,581
Census Tract 15.01	1,571	1,811	4,455	5,258
Census Tract 15.02	1,646	1,844	5,357	5,918
Census Tract 16.01	1,239	1,320	5,146	5,587
Census Tract 16.02	1,508	1,575	5,724	5,745
Census Tract 17.01	2,210	2,133	6,208	6,117
Census Tract 17.03	2,026	2,473	5,715	7,149
Census Tract 17.04	875	2,318	2,296	6,500
Census Tract 18	1,851	1,808	4,673	4,689
Census Tract 19.01	1,108	1,216	3,000	3,390
Census Tract 19.02	1,422	1,437	4,196	4,016
Census Tract 20.02	1,688	1,699	4,446	4,830
Census Tract 20.03	2,044	2,065	5,705	5,663
Census Tract 20.04	1,733	1,839	4,598	4,910
Census Tract 20.06	1,331	1,545	3,960	4,378
Census Tract 20.07	1,401	2,850	3,470	8,185
Census Tract 20.08	1,025	1,063	2,784	2,769
Census Tract 20.09	1,668	1,611	4,495	4,376
TOTAL	48,207	59,108	149,817	184,651
Total Change		10,901		34,834
Average Annual % Change		2.3%		2.3%

Source: 2000 and 2010 Decennial Census, Bureau of the Census.

As shown in the table, both population and households, grew at a 2.3% annual average rate between 2000 and 2010. In contrast, ARA is projecting the trade area – which more or less corresponds to the geographic area of the above census tracts – to grow at less than one-half of the growth rate experienced in the most recent decade.

The evidence suggested above indicates that ARA's demographic projections significantly underestimate likely population growth in the trade area over the next 9 years. These understated projections, as discussed above, result from incorrectly basing future population growth on a temporarily depressed residential construction market.

4. **Comment UD B.4: Competitive changes have occurred which affect the cumulative analysis.**

*The competitive landscape has changed significantly since field work for the EIR was conducted and several key competitors were inappropriately omitted from the cumulative analysis. Most significantly, a second planned Wal-Mart that had evidently been in process on South Mooney Boulevard was not disclosed in the analysis and two Target stores currently adding a full supermarket selection were also not considered. In addition, two supermarkets have since closed in the trade area and a number of other competitive changes have occurred. All of this information only came to light after the close of the public comment period and thus did not enable the opportunity to properly evaluate the likely competitive impacts on local supermarkets. The EIR dismisses all of these market changes as a "wash" but provides no basis for the public to examine their reasoning. Furthermore, the addition of a second planned Wal*Mart to this trade area typically requires a special category of analysis that has not been met in this instance.*

Response UD B.4:

The ARA memorandum asserts that the "competitive landscape has changed significantly since field work for the EIR was conducted and several key competitors were inappropriately omitted from the cumulative analysis." This statement is factually incorrect. TNDG further objects to the statement that it provided "no basis for the public to examine [its] reasoning" for asserting that the three planned retail projects (announced after the DEIR was completed) are more than offset by reductions in other projects (that were included in the original EIR cumulative analysis.

TNDG's responses to Mark Wolfe's and Jim Watt's April 25, 2011 comment letters as well as Roger Dale's testimony at the April 25, 2011 Planning Commission hearing clearly explain the reasoning behind the conclusion that the newly identified projects offset by reductions in previously assumed projects. In particular, TNDG's responses explain that the previously evaluated supermarket projects have been reduced by a total of 104,117 square feet from the amount assumed in TNDG's original analysis. As is detailed in TNDG's response to the April 25 comments (and again below), this reduction in the original supermarket projects more than offsets the newly identified projects.

The cumulative analysis provided in the TNDG report considered all planned and

pending retail projects in the trade area as of the date of the report (January 4, 2010). In addition, at the time of response to comments on the DEIR, City of Visalia staff indicated to TNDG that no plans/applications for additional grocery space (i.e., additional projects beyond those already considered in the DEIR) had been submitted. Thus, there was no new information to evaluate in the Final EIR.

ARA's analysis included the following table, which adjusted the existing and planned square feet of supermarket space in the trade area that was estimated by TNDG.

Table 5:
ARA's Estimate of Existing and Planned Supermarket Square Feet

	2009	**2011**	**2013**	**2015**	**2018**	**2020**
Existing Supermarket Square Feet	659,519	659,519	659,519	659,519	659,519	659,519
--Vallarta Market		47,973				
--Adj. to Food 4 Less		6,750				
--Young's Market		(27,000)				
--El Mercado Progresso		(27,949)				
--Target-South Mooney		*26,600*				
--Target-Dinuba Hwy		*26,600*				
--Wal-Mart-South Mooney			*63,500*			
--Fresh & Easy-Caldwell				13,969		
--Supermarket. (Country Club)				35,000		
--Supermarket (Lovers Ln / Walnut Ave)				60,000		
--Supermarket (Village at Willow Creek)				52,000		
Adj. Exist, Planned, Closed	659,519	712,493	775,993	936,962	936,962	936,962
Square Feet In TNDG's report	*659,519*	*821,522*	*821,522*	*958,609*	*958,609*	*958,609*

Source: ARA's Analysis, May 16, 2011.

*Actual grocery area (gross) is estimated at 50,000 square feet. ARA increased the store's square feet by 27% based on the differential in per square foot sales (PSF) volumes between $475 (benchmark factor in TNDG's report) and $601 (sales volume projected for the Walmart grocery component). Thus, ARA estimates that the Walmart store's 50,000 square feet of grocery space would have the equivalent impact of a typical 63,500 square foot grocery store.

The stores listed in italics are the three new projects which were not included in the original EIR analysis. Although it is true that the three new projects will potentially add grocery space to the trade area, this addition of space to the cumulative list is more than offset by changes in status for several projects included on the original list. As shown in the table, even with the addition of these three projects, the square feet of existing and planned space estimated in ARA's analysis is less than the total square feet of space estimated in TNDG's report. This is partly a result from the following changes to the cumulative projects subsequent to the preparation of TNDG's report:

- The entitlement for the potential supermarket at the Country Club Shopping Center (Demaree & Houston) is for 35,000 square feet (compared to the 72,000 square assumed in TNDG's original analysis).

- The assumed 42,030 square foot supermarket at the Unnamed Center (Noble & Lovers Lane) was originally planned to be a Vallarta market. However, Vallarta has withdrawn from the project and no other supermarket application has been submitted for this site (this project is not included in ARA's analysis).

- The potential supermarket at the Unnamed Neighborhood Center (northwest corner of Walnut & Lovers Lane) has been reduced to 60,000 square feet (compared to the 71,118 square assumed in TNDG's original analysis).

There are also three errors in ARA's analysis that, when corrected, further reduce the total amount of existing and planned supermarket space. These are as follows:

- Per City staff, the Dinuba Highway Target project would result in a net increase of 3,900 square feet of grocery sales area and approximately 2,000 square feet of additional non-sales area related to the grocery expansion. Thus, the overall increase in grocery related space would be 5,900 square feet, and not the *26,600 square feet* indicated by ARA.

- Per City staff, the Mooney Boulevard Target project would result in a net increase of 3,200 square feet of grocery sales area and approximately 2,000 square feet of additional non-sales area related to the grocery expansion. Thus, the overall increase in grocery related space would be 5,200 square feet, and not the *26,600 square feet* indicated by ARA.

- The assumed 13,969 square foot Fresh & Easy store on the southwest corner of Court & Caldwell has not been built and the entitlement expired on March 10, 2010. Given that the entitlement has expired and no new application has been filed with the City, it would be speculative and inappropriate to now include this project on the cumulative list.

Table 6 provides an adjusted cumulative project lists, based on the information provided above, and the adjusted total square feet of existing and planned supermarket space.

Table 6
ARA's Estimate of Existing and Planned Supermarket Square Feet
(Adjusted for Errors)

	2009	2011	2013	2015	2018	2020
Existing Supermarket Square Feet	659,519	659,519	659,519	659,519	659,519	659,519
--Vallarta Market		47,973				
--Adj. to Food 4 Less		6,750				
--Young's Market		(27,000)				
--El Mercado Progresso		(27,949)				
--Target-South Mooney		*5,200*				
--Target-Dinuba Hwy		*5,900*				
--Wal-Mart-South Mooney			63,500			
--Fresh & Easy-Caldwell				*0*		
--Supermarket. (Country Club)				35,000		
--Supermarket (Lovers Ln / Walnut Ave)				60,000		
--Supermarket (Village at Willow Creek)				52,000		

Adj. Exist, Planned, Closed	659,519	670,393	733,893	880,893	880,893	880,893
Square Feet In TNDG's report	*659,519*	*821,522*	*821,522*	*958,609*	*958,609*	*958,609*

Source: ARA memorandum, May 16, 2011, with necessary adjustments made by TNDG.

As shown in Table 6, after making the necessary adjustments, the total amount of square feet of supermarket space would equal to approximately 880,893 by 2015, compared to the unadjusted and incorrect 936,962 square feet estimated in ARA's analysis.

Most importantly, the 74,600 square feet of new grocery projects identified above (the two Target stores and the second Wal-Mart store), would be more than offset by the reductions in previously assumed projects.

As shown in Table 7 on the following page, reproduces ARA's Table 6A, but corrects it for two errors discussed above, as follows:

1. First, there is a minor arithmetical error that leads to slightly understating the potential demand for supermarket sales. This error is a result of miscalculating the potential supermarket demand based on the projected incremental demand for Food sales that would be captured by supermarkets.

2. Second, as discussed above, ARA's analysis incorrectly estimates the sizes of the grocery components for both Target stores, in addition to including a planned supermarket for which entitlements have expired, and for which no new application has been filed with the City (Fresh and Easy). Thus, we have adjusted the potential square feet of supermarket inventory to correct these errors.

Table 7:
Table 6A from ARA Analysis
(with necessary adjustments made)

Demand Variable	2009	2011	2013	2015	2018	2020
Total Food Sales Demand (000's)	$441,554	$451,353	$461,759	$471,854	$487,450	$498,374
Supermarket Share						
-- Existing @	68%	70%	70%	70%	70%	70%
-- Increment @	0%	85%	85%	85%	85%	85%
Supermarket Sales						
--Sales from Existing	$300,257	$309,088	$309,088	$309,088	$309,088	$309,088
--Sales from Increment	$0	$8,329	$17,174	$25,755	$39,012	$48,297
Total Potential Supermarket Sales	$300,257	$317,417	$326,262	$334,843	$348,099	$357,385
Less Demand Absorbed by New Facilities 1/:						
--Wal-Mart Supercenter		($33,453)	($33,453)	($33,453)	($33,453)	($33,453)
Net Demand Available to Support						
Existing Supermarkets	$300,257	$283,963	$292,809	$301,389	$314,646	$323,931
Square Feet Added by New Facilities:						
--Vallarta Market		47,973				
--Adj. to Food 4 Less		6,750				
--Young's Market		-27,000				
--El Mercado Progresso		-27,949				
--Target-South Mooney		5,200				
--Target-Dinuba Hwy		5,900				
--Wal-Mart-South Mooney			63,500			
--Fresh & Easy-Caldwell				0		
--Supermarket (Country Club)				35,000		
--Supermarket (Lovers Ln / Walnut Ave)				60,000		
--Supermarket (Village at Willow Creek)				52,000		
Existing Supermarket Square Feet (SF)	659,519	659,519	659,519	659,519	659,519	659,519
Existing, Closed + Planned SF	659,519	670,393	733,893	880,893	880,893	880,893
Sales Per Square Foot						
Existing + Planned Supermarkets	*$455*	*$424*	*$399*	*$342*	*$357*	*$368*
Overvuilt SF @ benchmark						
Sales PSF Factor $475	*N/A*	*(72,575)*	*(117,454)*	*(246,389)*	*(218,481)*	*(198,932)*

1/ Sales per square foot - Walmart: $601

Based on the adjustments discussed above, ARA's estimated sales per square foot calculations would be as shown in Table 8.

Table 8
Estimated Sales Per Square Foot

Estimated Sales per Square Foot	2011	2013	2015	2018	2020
ARA's Analysis (adjusted)	$424	$399	$342	$357	$368
TNDG's report ("delayed growth" scenario)	$344	$364	$330	$358	$376
ARA (adjusted) / TNDG	123%	110%	104%	100%	98%

The table also provides TNDG's estimates of existing and planned supermarket sales volumes, based on all known planned and pending supermarket projects. As shown above, without making any changes to ARA's demographic projections (projections which TNDG believes are overly conservative), their analysis indicates that overall supermarket sales volumes through 2018 would actually be more than TNDG's estimates under the delayed growth scenario (by 2020, they would still be 98% of the total estimated by TNDG). This finding indicates that even using ARA's conservative demographic assumptions would not the change the bottom line findings in TNDG's report with respect to the potential for cumulative conditions to cause urban decay in the trade area.

It should also be noted that TNDG's inclusion of the Village at Willow Creek supermarket (52,000 square feet) in the cumulative list is likely a very conservative (worst case) assumption. According to information provided by City staff (Andy Chamberlain) in 2010, the supermarket was only identified as a potential use on an early conceptual site plan for the project site, and no official application had been submitted to develop a supermarket at the site. Moreover, given that the proposed Country Club shopping center's proposed supermarket project was further along in the entitlement process, City staff believed that it was unlikely that the Village at Willow Creek potential supermarket would go forward, as the two centers are in close proximity to one another. It was Mr. Chamberlain's understanding that development of one of these two proposed supermarkets would likely preclude development of the other in the short term.

The ARA memorandum notes that the developer of the Village at Willow Creek project has approved a supermarket "when growth resumes." However, as noted in a previous response above, ARA assumes that growth will remain depressed throughout the forecast period, from 2011 to 2020. It is difficult to reconcile ARA's assumption that this supermarket project will go forward ("when growth resumes") with ARA's own characterization of the trade area as having depressed growth for the rest of the decade. This contradiction highlights a fundamental flaw underlying much of ARA's analysis: ARA indicates that population growth will remain depressed over the next nine years, but at the same time assumes that all of the planned and pending supermarket projects would go forward on schedule.

In effect, ARA has mismatched the timing of commercial growth with ARA's own assumptions regarding population growth. Given that retail development is typically linked to population growth, it is unlikely that all of the proposed projects would be

developed ahead of the anticipated demand sources. Thus, if all the identified supermarket projects were to be developed according to the schedule listed above, either 1) ARA's analysis dramatically understates potential population/demand growth over the next nine years, or 2) developers are irrational, considering that they would be developing projects for which there was no link between retail development and the growth in retail demand.

At the end of the ARA letter, it states: "The EIR dismisses all of these market changes as "wash" but provides no basis for the public to examine their reasoning." It is not accurate that the EIR contains any such statement since the information that enabled that preliminary finding did not come to light until well after the DEIR and FEIR had been released.

5. **Comment UD B.5: Change in retail expenditure patterns are unaccounted for.**

   The EIR utilizes base data from 2007 to calculate retail expenditure potential for the trade area and assumes it will remain unchanged throughout the forecast period. In fact, this data reflects retail expenditure potential measured at the height of the "boom" period. More recent information provided by the California State Board of Equalization indicates that local shopping patterns have changed significantly in the interim, as retail sales dropped 14% from 2007 to 2009. A reduction in demand of this magnitude decreases the "pie" of available sales potential to existing stores, meaning that impacts from additional new competitors will be more severe than predicted in the EIR.

Response UD B.5:

ARA indicates that since TNDG's report relied on 2007 year taxable sales data, along with data from the 2007 Consumer Expenditure Survey (CES) and 2007 Income data from the Bureau of Economic Analysis (BEA), it overstates potential retail demand (2007 was the most recent year for which these data were available when the Draft EIR was completed). ARA bases this assertion on the fact that taxable retail sales declined in the City of Visalia from 2007 to 2008, and from 2008 to 2009. ARA's assertion is incorrect for the following reasons.

- In some respects, relying on 2007 taxable sales data actually understates the amount of residual demand to support new retail development in the trade area, given that, as noted by ARA, taxable retail sales were lower in 2008 and 2009 compared to 2007. Thus, using sale data from either of these two years would have resulted in the analysis showing *additional* market support in the non-grocery categories, as the difference between potential demand and actual sales would have been greater.

A table on page 11 of the ARA memorandum shows taxable retail sales for three categories in the City of Visalia: 1) Retail Stores (excluding gas stations and auto-related categories), 2) Total Retail Stores, and 3) Total All Outlets. Given that all three

categories have experienced declines during this time period, ARA indicates that it is incorrect to rely on 2007 data for purposes of estimating potential retail demand.

To illustrate the fallacy of ARA's assertion, we have replicated and extended ARA's approach in Table 9 below. The table provides the taxable retail sales for the same three taxable sales retail categories in Tulare County, along with aggregate personal income in the County.[9] However, instead of providing a limited sample of three years of data, our analysis provides 10 years of data, from 1999 to 2009. It is a basic proposition that when relying on historical data for forecasts, it is more appropriate to rely on longer-time series of historical data, as opposed to short time frames, to reduce the range of error in the projections.

ARA violates this basic principle of forecasting by *only providing three years of data*, and extrapolating from it to a long-term forecast. Along with providing the data discussed above, the table shows by year the share of income in the County allocated to the three taxable retail sales categories analyzed by ARA. These percentages are shown by year, in addition to the long-term average (1999-2009).

As shown in the table, the data for 2007 are very much in line with the long-term averages. In fact, the 2007 share of income spent on Retail Stores (excluding gas stations and auto-related sales), which ARA argues is the most relevant category, is slightly lower than the long-term average. If we instead relied on data from 2009, as ARA suggests, we would be using data that understate the amount retail demand relative to a longer-term time horizon.

As discussed above, ARA's analysis implies that retail sales would remain at the depressed 2009 levels for the following nine years, essentially implying that the economy will never experience a meaningful recovery over this time horizon. However, even the most recent data available over the past two years show that ARA's analysis is incorrect, and that ARA's approach would dramatically understate potential retail demand.

Although 2009 is the most recent year for which taxable sales data is available from the California State Board of Equalization (BOE), the Census Bureau provides estimates of national retail sales on a monthly basis as part of its Advance Monthly Retail Trade and Food Services Survey (MARTS).

These data show recent retail sales increasing on a national basis. Figures 2 through 4 show the annual percentage change in retail sales from 2007 to 2010 (the most recent year for which full-year data are available)[10]. As shown in the Figures, from 2007 to 2008, total retail sales were down 1.2% (excluding auto-related categories, they were up slightly at 2.1%). From 2008 to 2009, total retail sales were down significantly, declining by approximately 7.0% (excluding auto-related categories, they were down 5.5%). Table 9 shows the rebound in retail sales that occurred from 2009 to 2010, with all four categories posting gains.

[9] The data on this table are provided at the County level since that is the smallest area of geography for which reliable income data are provided on an annual basis.

[10] The annual totals equal the sum of the monthly estimates for the individual year.

These three charts illustrate the problem with relying on 2009 data for making long-term projections. On a national basis, retail sales appear to have bottomed out in 2009, and increased markedly from this low in 2010. The most recent data for the first four months of 2011 show a similar trend of increasing retail sales. As shown in Table 9, total retail sales in the January to April period represented an 8.1% increase over the same period in 2010 (excluding auto-related categories, retail sales were up 6.7%), an even stronger increase than the year-over-year numbers from 2009 to 2010.

At the national level, these data confirm that retail sales are starting to improve, and show that ARA's assertion that retail sales will remain depressed at 2009 levels is incorrect. We should also note that it is difficult, if not impossible, to reconcile ARA's conflicting claims that retailers – as shown in Table 5 above from ARA's analysis – would expand into a market characterized by flat retail demand with limited growth potential.

Table 9:
Personal Income and Taxable Retail Sales
Tulare County: 1999-2009

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average 1999-09
Personal Income	7,176,600	7,398,309	8,044,491	8,342,804	8,942,714	9,870,328	10,230,484	10,651,149	11,791,875	12,018,044	11,910,699	
Taxable Sales												
Retail Stores minus Service Stations, Motor vehicles & Parts	1,525,074	1,603,358	1,649,547	1,741,297	1,879,098	2,091,217	2,322,936	2,522,391	2,434,132	2,252,817	2,037,054	
Retail Stores Totals	2,035,989	2,177,037	2,245,016	2,361,547	2,531,026	2,822,466	3,168,465	3,402,713	3,396,619	3,157,194	2,802,055	
Totals All Outlets	3,030,137	3,222,069	3,251,399	3,422,476	3,641,577	4,001,207	4,486,607	4,844,476	4,897,164	4,755,406	4,145,502	
Income as Share of Taxable Sales												
Retail Stores minus Service Stations, Motor vehicles & Parts	21.3%	21.7%	20.5%	20.9%	21.0%	21.2%	22.7%	23.7%	20.6%	18.7%	17.1%	20.9%
Retail Stores Totals	28.4%	29.4%	27.9%	28.3%	28.3%	28.6%	31.0%	31.9%	28.8%	26.3%	23.5%	28.4%
Totals All Outlets	42.2%	43.6%	40.4%	41.0%	40.7%	40.5%	43.9%	45.5%	41.5%	39.6%	34.8%	41.2%

Source: California State Board of Equalization (BOE); Bureau of Labor Statistics (BLS).

Figure 2:
Percent Change in Retail Sales: 2007-2008

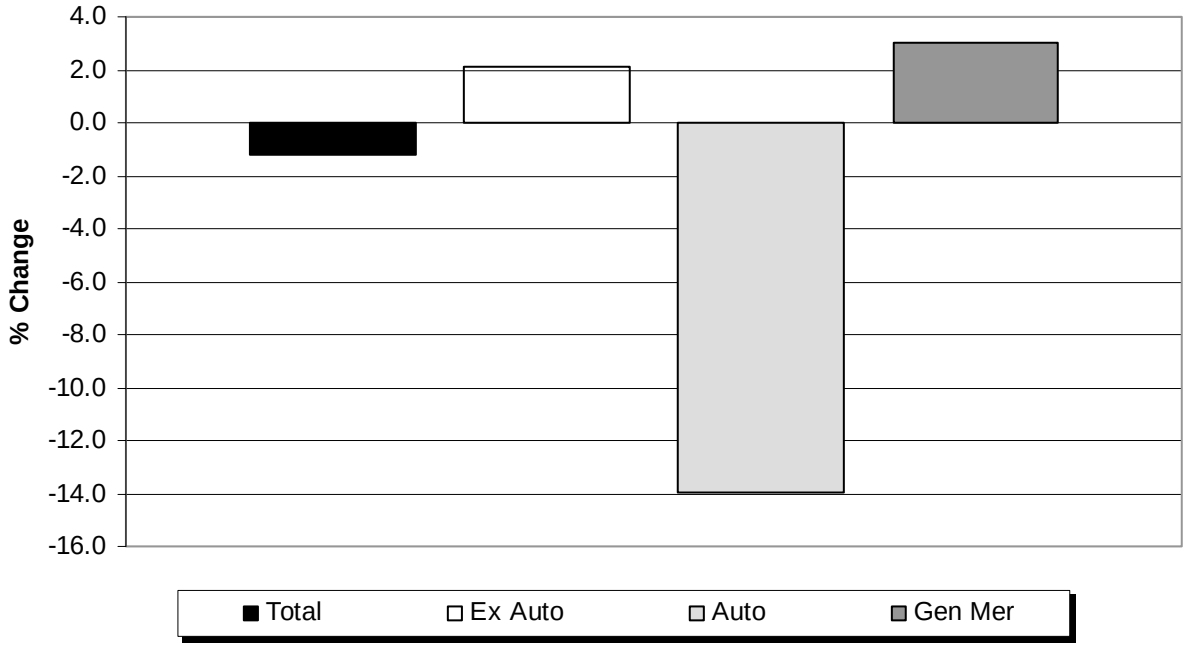


Figure 3:
Percent Change in Retail Sales: 2008-2009

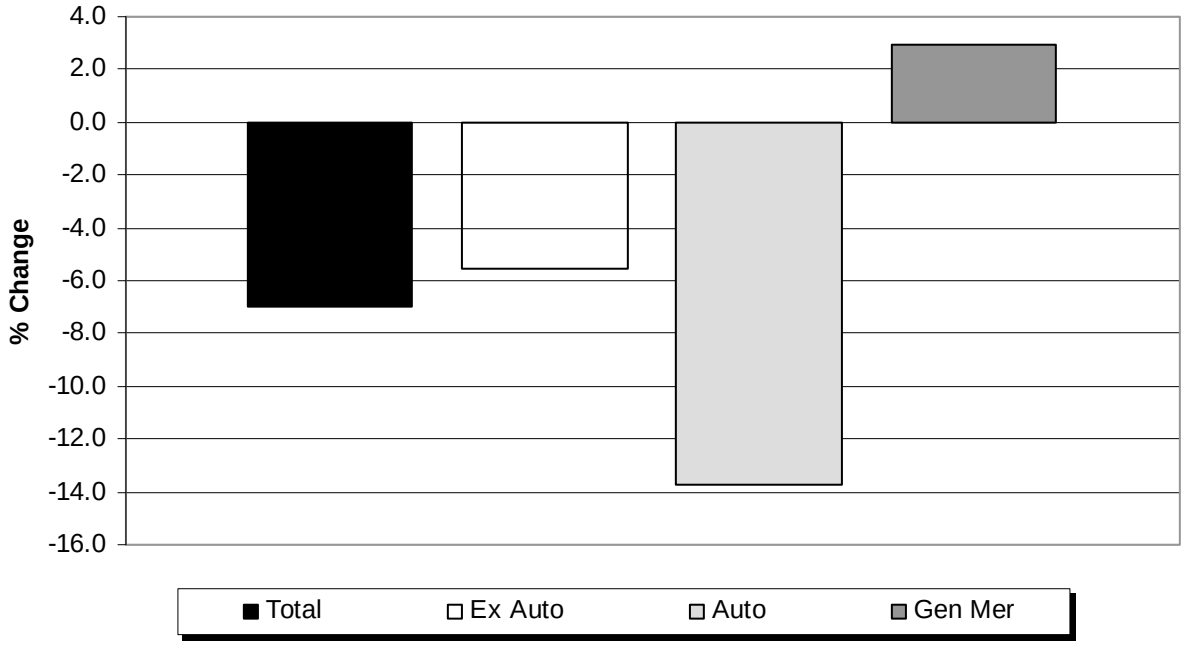


Figure 4:
Percent Change in Retail Sales: 2009-2010

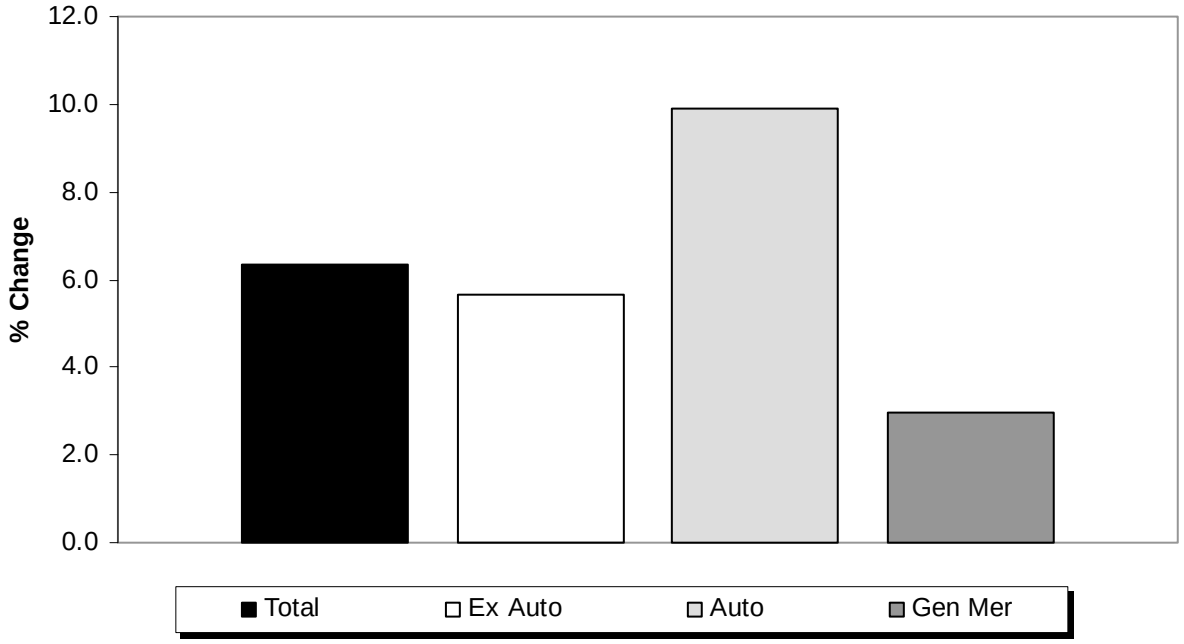
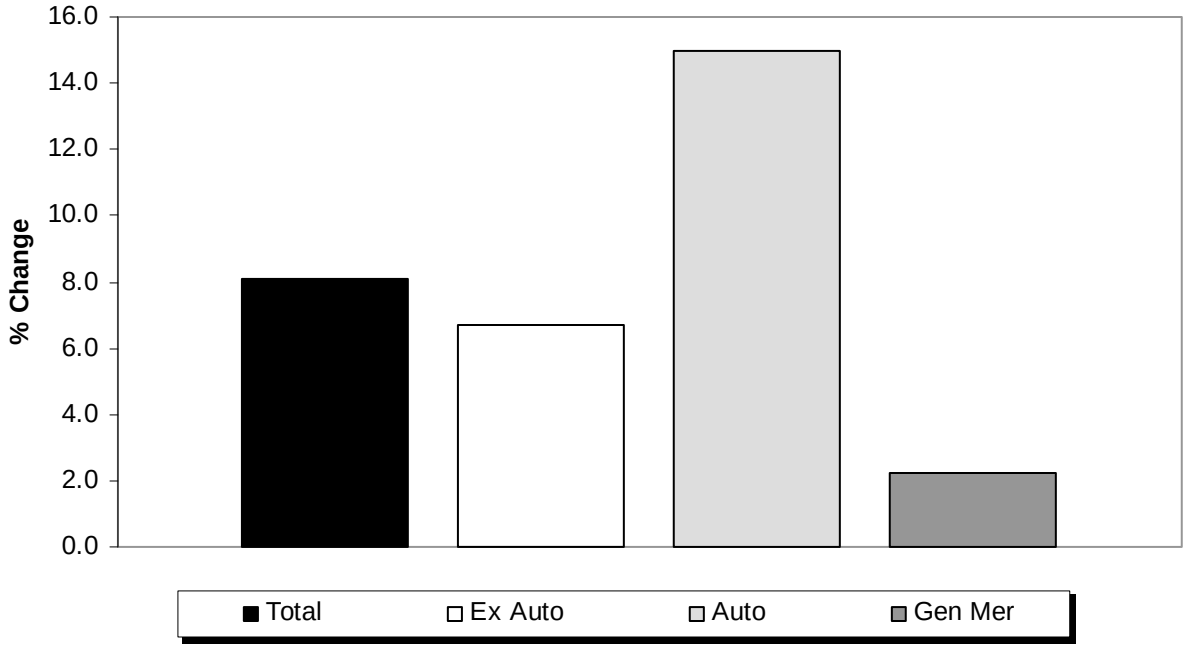


Figure 5:
Percent Change in Retail Sales from Previous Year
January – April 2011



Consistent with the information provided above, a number of recent articles in the business press highlight the recent increase in retail sales and general trend of consumers beginning to return to past retail expenditure patterns. Seven representative articles are referenced below. The article sources are provided below and transcripts of the full articles are attached for reference in Attachment Urban Decay-2 of this Rebuttal Memo.

- *The Urge to Splurge: Americans are spending again – whether they can afford to or not. So much for the "New Austerity"*, Newsweek, December 6, 2010.
- *Department Stores Are In Good Position After 1Q Resurgence*, Wall Street Journal, May 16, 2011.
- *DIY Stores Home Depot And Lowe's Make A Comeback*, Investor's Business Daily, May 10, 2011.
- *Retail Sales Probably Climbed in April: U.S. Economy Preview*, Bloomberg, http://www.bloomberg.com/news/2011-05-08/retail-sales-probably-rose-showing-u-s-consumers-bearing-higher-prices.html, May 7, 2011.
- *Consumers spending, retailers growing, conference told*, Shopping Center Today, ICSC, http://icsc.org/apps/news_item.php?id=2743, March 11, 2011.
- *Plans for Tax Refund Checks Hint at Better Mood*, CNBC.com, http://www.cnbc.com/id/41717387, February 22, 2011.
- *Kids Moving Out Are a Boon to the Economy*, Bloomberg Business week, May 12, 2011.

6. <u>Comment UD B.6: The EIR economic analysis provides an inadequate basis for urban decay conclusions.</u>

For the reasons presented above, the EIR economic impact analysis as presented does not reflect the current realities of the Visalia retail marketplace. Due to the use of outdated data, unrealistic future growth scenarios and an inadequate accounting of key competitive developments, no conclusions regarding urban decay can be reliably made. Furthermore, TNDG's definition of a 25% vacancy threshold for the onset of urban decay is unusually high. Considering that the EIR projected a 23% vacancy rate in 2015 under their "delayed growth" scenario, which has been shown to be extremely optimistic, it is very possible that a re-running of their tables with more accurate data could tip the project well over the threshold that they have defined as likely to cause urban decay, thus reversing their initial conclusions.

<u>Response UD B.6:</u>

The ARA assertion that TNDG defined a 25% vacancy threshold for the onset of urban decay is incorrect. Even a cursory reading of TNDG's report shows that this claim was

never made. In the context of explaining economic motivations for property owners to maintain the condition of vacant properties, TNDG's report stated the following:

> *"Very high vacancy rates (over 25%) that persist for long periods of time are more likely to lead to reduced maintenance expenditures and in turn to physical deterioration."*

The statement emphasizes that very high vacancy rates for long periods of time would lead to a higher probability of reduced maintenance expenditures and physical deterioration – not that a 25% vacancy rate represents a "hard and fast" threshold which causes the onset of Urban Decay.

Moreover, TNDG's analysis showed that even under worst-case assumptions of delayed growth conditions and all planned/pending projects being built, the vacancy rate would peak at approximately 23% in 2015 and then decline thereafter.

Finally, the ARA analysis has provided no convincing evidence or data to support the assertion TNDG's worst-case analysis is "too optimistic", or that the vacancy rate would ever actually reach above the worst-case 23% identified by TNDG. To the contrary, the reduced number of square feet of planned and pending square feet of supermarket space, based on more recent available information from the City, shows the cumulative impacts in TNDG's analysis would, if anything, likely be reduced. Thus, there is no basis to the claim that data presented in the ARA analysis would lead TNDG to reverse its conclusions in the DEIR.

7. Comment UD B.7: Urban decay analysis should be revised

> *In consideration of the significant changes mentioned above, the urban decay analysis needs to be substantially revised in order to account for this up-to-date information and the EIR re-circulated to provide the required comment from the public and Planning Commission staff.*

Response UD B.7:

Based on the detailed documentation provided above, TNDG does not believe that any of the comments provided by ARA warrant revision of the urban decay analysis. Moreover, as also explained above, even if TNDG did concur with ARA's suggested changes (which we do not), it would not change the study's conclusions nor the basis for its conclusions.

8. Comment UD B.8: EIR overstates population forecasts

> *TNDG bases its urban decay forecast on two alternate population growth assumptions – a "Baseline" Scenario and a "Delayed Growth" scenario. The "Baseline" scenario uses projections from Claritas for the years 2007 to 2013 and from the Tulare County Association of Governments from 2013 onward.*

The "Delayed Growth" scenario essentially uses the same set of assumptions, except that it assumes there will be zero household growth for the two year period from 2009 to 2011 as a way of accounting for the impact of the economic recession.

TNDG sometimes refers to the Delayed Growth scenario as the Worst Case scenario. However, based on the data outlined below, we believe that both of their growth scenarios significantly overestimate the prospects for future growth in the trade area. Current building permit and new construction data indicate that the EIR "Baseline" population projection overstates likely future growth by about 100% while the "delayed growth" scenario overstates it by 68%.

. . . .We believe TNDG's assumptions are far too optimistic due to their reliance on projections prepared by others, rather than analyzing the most current household population and building permit data available at the time the study was issued. . . . [NOTE: pages ____ of ARA report contain the remainder of this lengthy comment]

Response UD B.8:

The issue of Population Growth is discussed in detail under Response UD B.3.a above. This section provides additional responses to key points made in ARA's "Population Growth" section.

In paragraph 3, ARA states that "[i]n *five pages of conflicting and highly questionable data*, TNDG even claims that their "delayed growth" projections, which insert a two-year period of zero growth, are actually too pessimistic since actual household growth between 2009 and 2011 was above zero (484/year)." Again, ARA conclusory statement lack information or evidence pointing to what constitutes the "conflicting and highly questionable data," and never contests the fundamental point of TNDG's response to previous comments regarding demographic projections – that population growth has continued relatively unabated despite the slowdown in residential construction.

By assuming that population and household growth is constrained by the number of residential building permits, ARA states that "the rate of household increase in the 'delayed growth' scenario that TNDG claims understates trade area is 4-5 times higher than the actual growth that has occurred over the past several years." See Response UD.B.3 for a thorough discussion of the two key problems with this statement.

Briefly, this statement first assumes a mechanical one-to-one relationship between the change in households and the number of residential building permits. This relationship does not always exist, especially in cases where there is an excess overhang of housing inventory that will be absorbed by new household formations before residential construction (or building permit issuance) picks up by any significant amount. Second,

ARA does not consider the reality that even with household formation rates somewhat depressed, the population is still growing (e.g., as a result of so-called "doubling up").

Third, ARA does not address the fact that increases in population (not new homes constructed) are what ultimately drive demand for retail sales, since demand for food, clothing, etc. increases with each individual resident added to the area, regardless of assumed household sizes.

ARA's last paragraph on page 3 (sentence 3) states that "Mangano [a local homebuilder] indicated they were forecasting that the existing growth would not even begin to return for 3 to 5 years due to *the large number of foreclosures* and the *even larger shadow inventory of delinquent homeowners* [emphasis added]". This statement *confirms* one of TNDG's points – that the excess inventory of homes will be absorbed by new household formations before residential construction (or building permit issuance) picks up by any significant amount, and underscores the inherent weaknesses in relying on building permit data to project future household formation rates.

On page 4 of ARA's letter, the last sentence of paragraph 2, ARA projects that there will be 18,500 fewer people than projected in TNDG's "delayed growth" scenario. There are two problems with this calculation. Briefly, (detailed discussion found in Response UD B.3.a), this statement mistakenly assumes that 1) households will increase in a one-to-one relationship with a depressed number of building permits over the next nine years, and 2) it understates the likely amount of residential construction in that ARA assumes residential construction will remain depressed over the next nine years.

Finally, on page 6 of its letter, ARA claims its analysis "*significantly increases* the level of projected overbuilt supermarket square footage, potentially altering the conclusion of the EIR regarding the potential for urban decay [emphasis added]."
However, even if TNDG were to accept ARA's findings at face value, they hardly rise to the level of "significantly increasing the level of projected overbuilt supermarket square footage". Whereas TNDG's report projected the trade area would potentially be overbuilt by a maximum of 291,000 square feet in 2015 (under delayed growth conditions), ARA's analysis projects overbuilt square feet at approximately 305,600[11]. Thus, ARA's analysis indicates that the amount of overbuilt square feet of grocery space in the market area would be only about 5% higher than identified in TNDG's report, which hardly appears to rise to the level of "significantly increasing the level of projected overbuilt supermarket square footage, potentially altering the conclusion of the EIR regarding the potential for urban decay."

[11] It should be noted that this unadjusted estimate is taken directly from ARA's report, and does not account for the minor arithmetic error and the corrected amount of planned and pending square feet, as shown in Table 6 on page 13 of the ARA letter.

9. Comment UD B.9: Major changes have altered the competitive landscape for the cumulative analysis.

The charts below compare the cumulative competitive changes for supermarkets originally identified in the EIR with the changes that are now underway or pending: . . . Most significant, TNDG failed to incorporate the following major new competitors into their cumulative analysis:

- A 2nd planned Wal-Mart at South Mooney Blvd. with 50,000 square feet of total supermarket-related area. The Target on South Mooney is currently undergoing a conversion that will add 26,600 square feet of total supermarket-related area (see layout diagram on the following page). The Target on North Dinuba plans to add 26,600 square feet of total supermarket-related area later this year.

- The planned Wal-Mart on South Mooney will contain 50,000 square feet of grocery-related area but the information they provided regarding the Target grocery areas was incorrect. Rather than the 5,900 s.f. and 5,200 s.f. reported, the entire space devoted to supermarket-related merchandise needs to be modeled and this has been measured at 26,600 square feet (including a 70/30 factor for back room, office, etc.) as shown on the following page. In other words, neither the Planning Commission nor the public were given the opportunity to consider or evaluate this new information.

Response UD B.9:

In terms of responses to the "Major Competitive Changes" section, TNDG responded to the relevant issues raised in the ARA letter in Response UD B.4.a.

In addition, on page 4 (paragraph 1), ARA claims "these changes [the addition of a second planned Walmart center and two additional Target grocery expansions] have *considerably altered* the competitive landscape for supermarkets in Visalia". However, ARA neglects to mention the changed competitive landscape that includes the dropping of some projects in TNDG's analysis, in addition to the reduction of square feet in others. Taking this into account, along with correcting ARA's square footage numbers for the Target expansion and removing the project for which entitlements have expired, results in a *less competitive* landscape.

As discussed above and shown on Table 6, after making the necessary adjustments to correct ARA's analysis, the inventory of existing and planned/pending square feet of supermarket space is actually less than that estimated in TNDG's report.

In contrast to ARA's statement on page 9 paragraph 2 (last sentence) "that a substantially revised analysis should be conducted", the above evidence suggests that TNDG's cumulative analysis likely overstates competitive impacts. With the amount of future

potential competitive inventory less than that estimated in TNDG's report, based on the most recent information available from the City, the net effect is that the potential cumulative potential impact has been reduced.

With respect to the issue of the subtraction of some cumulative projects and the addition of the two Target expansions and the second Walmart project, ARA further states that "no information or data was provided to the City of Visalia or the public at that time [of the Planning Commission hearing on April 25, 2011] to explain the basis for this decision, i.e., which competitors were subtracted out and why…."

The comments (from Mark Wolfe and Jim Watt) on these projects were submitted on the day of the hearing. Thus, it was not practical, given time constraints, to provide a detailed response at the hearing itself. However, the comments were specifically addressed in the written responses released on May 12, 2011.

ARA indicates that the square footage assumed by TNDG for the two Target grocery expansions – 5,900 sq. ft. and 5,200 sq. ft. – is well below their estimate of 26,600 square feet for both stores. This is wrong, and it results from a misunderstanding of the existing Target stores' square feet allocated to grocery sales compared to the increment of grocery space (or new grocery space that will be added to the existing stores). The estimated expansion areas in TNDG's responses have been confirmed by the City. ARA's miscalculation results from measuring the total grocery area, and then adding this as new grocery space to the competitive inventory, when in fact all but 5,200 and 5,900 square feet this space already exists at these two Target stores. In effect, ARA is double counting the Target's grocery space by including the existing square feet of the Target stores' grocery areas as new grocery space in the trade area.

10. <u>Comment UD B.10: Retail expenditures have been reduced from the data base used in the EIR.</u>

The EIR utilizes base data from 2007 to calculate their retail expenditure potential for the trade area and has assumed that these will remain unchanged throughout the entire forecast period. This data reflects conditions that were present at the height of the housing boom when the trade area was rapidly expanding. Since that time, conditions in the trade area have been significantly altered by a severe economic recession that has produced a large drop in home prices and a wave of home foreclosures. Simultaneously, a major contraction in consumer spending has driven a number of major retail chains into bankruptcy.

<u>Response UD B.10:</u>
All necessary responses to this section – "Change in Retail Expenditure – have been provided in Response UD B.5.a.

V. GENERAL PLAN CONSISTENCYCOMMENTS AND RESPONSES

A. Responses to May 16, 2011 Mark Wolfe General Plan Consistency Comments

1. Comment GP A.1: The proposed project is not consistent with applicable General Plan designation.

The Project site's General Plan land use designation is Shopping/Office, and is correspondingly zoned Planned Shopping/Office. Under the Zoning Code, the purpose of this land use designation is: "to provide areas for a wide range of neighborhood and community level retail commercial and office uses." Because the Project will serve a regional market, it is inconsistent with the governing land use designation. Because the Project here plainly obstructs the attainment of the policies inherent in the General Plan's Shopping/Office land use designation, it is impermissible.

Response GP A.1:

There is no zoning change or general plan amendment required or proposed by this project since all of the goods or services proposed by the project are already allowed by the City zoning provisions and by the General Plan Land Use Element. In addition, the Draft EIR lists every General Plan policy applicable to the project, and discusses in detail how the project is consistent with each of those policies.

In this context it is important to note that the Conditional Use Permit for the project is not required in order to allow a proposed use that is only conditionally permitted. This is not the case since the proposed use in the expansion, primarily grocery sales, is permitted as of right in the governing C-S- O zoning district. The CUP is only required because the Zoning Ordinance stipulates CUPs for store expansions which are greater than 40,000 square feet in floor area, as is proposed here.

B. Responses to May 16, 2011 Jim Watt General Plan Consistency Comments

1. Comment GP B.1: The proposed project is not consistent with applicable General Plan designation.

The commenter agrees with Staff that WalMart is a regional serving retailer, but disagree that this Wal-Mart is "grandfathered" as a regional use because that use was allowed when the project was first approved. My reasons have already been provided during the planning commission hearing.

Response GP B.1:

Any attribution by City staff that the Walmart project is a "regional serving retailer" mischaracterizes City staff's position on the subject. Staff has pointed out on innumerable occassions that the existing and proposed uses of the project are allowed in the CSO zone which is not a zoning designation reserved for "regional retail" commercial uses.

2. **Comment GP B.2: The commenter disagrees with the City's reasons for concluding that the Project is consistent with the purposes of Section 17.18.010 of the Zoning Ordinance. This regional use is also not consistent with the existing general plan.**

   a. *Comment GP B.2.a: While the EIR states that this project will add 85 new jobs, no analysis has been done to determine the "net" increase in jobs after accounting for jobs that will be lost. A study prepared by the San Diego County Taxpayers Association entitled "The Potential Economic and Fiscal Impacts of Supercenters in San Diego: A Critical Analysis", estimates that 1.5 existing jobs will be lost for every job created by a supercenter. Thus, the job benefits are illusory, and will likely be a negative.*

Response GP B.2.a:

The referenced Zoning Ordinance Section 17.18.010 in full states as a purpose: *"Accommodate a variety of commercial activities to encourage new and existing businesses that will employ residents of the city and those of adjacent communities."* The project by definition encourages an existing business which the author's statement fails to recognize.

In addition, it is noted that CEQA requires that an EIR evaluate a proposed project's potentially significant physical impacts to the environment. The consideration of socio-economic factors, such as employment, is expressly excluded from consideration under CEQA except where a physical impact (e.g., urban decay) may result from a socio-economic effect (e.g., competitive effects resulting in store closures which may ultimately result in urban decay under conditions of prolonged vacancy and property neglect.).

   b. *Comment GP B.2.b: The Walmart property is not designated as a regional location, and Walmart's grocery expansion will place the viability of existing nearby retailers at risk of closure*

Response GP B.2.b:

The commenter's contention that the existing Walmart store's expansion and addition of a grocery comment somehow necessitates a regional retail site, yet correctly notes the site is not designated (zoned) as regional retail. In fact the Visalia Zoning Ordinance (Zoning

Use Matrix Line 727) does not allow grocery/supermarkets as a regional retail use. It does allow grocery/supermarket and general merchandise sales in the CSO zone which is the land use and zoning designation on the project site.

c. *Comment GP B.2.c: The purpose of the site's zoning is to promote accessibility and reduce trip lengths. Adding groceries will likely draw customers that presently shop for these items in communities east of Visalia, thereby extending trip lengths and discouraging these customers from shopping at more accessible locations.*

Response GP B.2.c:

The City cannot reasonably be expected to dictate where its residents or any residents of outlying communities are allowed to shop. The project's accessibility to residents of the Visalia community, outlying communities, or to travelers using State Highway 198 is a function of its location proximate to major streets and the state highway. Based upon substantial evidence in the record, including public comments and testimony, the ability of a consumer to purchase general merchandise and grocery items in a single location will actually reduce trips.

d. *Comment GP B.2.d: Since the Project is a "regional serving use," it must comply with Section 3.5.15 of the general plan which states: "Community and regional level commercial shall be master planned to provided for compatibility with the surrounding residential (multi-family as well as single-family). The use of buffering land uses, such as office uses between residential and high intensity commercial should be considered." Instead of buffering the adjacent residential to the south and east, this expansion will remove existing office uses and replace these existing office buffers with a very intensely used truck receiving and storage area just 15 feet from the property line of the adjacent residential properties (in some cases the distance is only 5 feet because the residential property wall was extended into the setback area to preserve existing oak trees). In return, these adjacent residents are being offered a 14 to15 foot high sound wall, that one resident at the planning commission meeting indicated did not prevent her from hearing loading activities all night long.*

Response GP B.2.d:

The project has been determined to be compatible with surrounding uses and zones and that it provides adequate buffering, screening, and mitigation of potentially adverse impacts. Refer to Section II of this memo which responds to comments related to Noise and addresses the commenter's reference to the Pettyjohn noise measurements purporting to measure existing noise levels adjacent to the existing loading docks area.

e. *Comment GP B.2.e: Section 17.18.020 Required Conditions states that in the P-C-SO zone; "all businesses, services and processes shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas, gasoline service stations, outdoor dining areas, nurseries, garden shops, Christmas tree sales lots, bus depots and transit stations, electric distribution substation, and recycling facilities." However, a review of the proposed site plan for the expanded Wal-Mart shows that it will include a location for a proposed compactor plus an existing partially enclosed mechanical area. Since these areas are to be fully enclosed, and because they are within the required 60-foot setback area for a building of this size and fire rating, these structures violate code required setbacks, unless the fire rating for the building is upgraded.*

Response GP B.2.e:

The proposed project is consistent with and not in conflict with the City of Visalia's accepted standards for application of this Zoning Ordinance section. Outdoor location of trash compactors and space for mechanical equipment is a standard feature of any significant retail operation, including the commenter's former employer Save Mart.

Regarding Building and Fire Code compliance noted above, pursuant to the 2010 California Building Code Section 507, address unlimited area buildings, Section 507.3 addresses sprinklered one story with 60-foot yards these 60 foot yards can be reduced to 40 feet per section 507.5 reduced open space provided all the requirements are met in this section. The final review of consistency with Building and Fire Code requirements is done at the time of building plan check.

VI. CONCLUSION

The comments submitted by Mssrs. Wolfe and Watt and their retained consultants on the eve of the May 16, 2011 City Council hearing on their appeal do not demonstrate the existence of a single significant impact or more severe impact that has not been fully and accurately identified, and mitigated to the extent feasible.

Likewise, the claimed EIR analytical deficiencies alleged by the commenters and their consultants have all been shown not to exist, in the detailed and good faith responses to both the April 25, 2011 and May 16, 2011 comments.

As such, revision and recirculation of the EIR is not warranted.

Attachments
to June 16, 2011 Rebuttal Memo

Attachment Air Quality-1 – Email Exchange of June 10, 2011 between San Joaquin Valley Air Pollution Control District and Dave Mitchell of MBA confirming the EIR analysis of TACs is correct - Referenced in Response Air A.2.a

Attachment Air Quality-2 – DEIR Appendix I – Replacements for Tables 3-1 through 3-12. Referenced in Response Air A.5

Attachment Noise-1 – Illingworth & Rodkin Example Noise Barrier Calculations – Referenced in Response Noise A.1.b

Attachment Noise-2 – Illingworth & Rodkin and Pettyjohn Noise Measurement Locations – Referenced in Response Noise A.2.h

Attachment Noise-3 – Illingworth & Rodkin Noise Measurement Data Graph – From DEIR Volume II, Appendix H, Figure 1 – Referenced in Response Noise B.4.c

Attachment Urban Decay-1 – ARA's Elk Grove Study – Contained in "Declaration Tom Brennan in Support of Petition for Writ of Mandate – Referenced in Response UD B.1.b (Note: The data cited in Response UD-B.1.b is found on page 13 of the ARA Elk Grove Study

Attachment Urban Decay-2 – Published Articles Cited in Response UD B.5.a.

Attachment Air Quality-1

Email Exchange of June 10, 2011 between
San Joaquin Valley Air Pollution Control District and
Dave Mitchell of MBA confirming EIR analysis of TACs is Correct

(Referenced in Response Air A.2.a)

Dave Mitchell - RE: HRA Analysis Policy

From: "Glenn Reed" <Glenn.Reed@valleyair.org>
To: "Dave Mitchell" <dmitchell@brandman.com>
Date: 6/10/2011 11:50 AM
Subject: RE: HRA Analysis Policy
CC: "Leland Villalvazo" <leland.villalvazo@valleyair.org>

Dave:

Your summary of District policy regarding cumulative analyses is correct. The District does not require additional background sources t be included in a risk assessment. The purpose of the health risk assessment (HRA) is to determine the risk resulting from project emissions to sensitive receptors. Thus, only the on-site project emission sources should be included. There are Type B projects where the project will locate new sensitive receptors in areas affected by existing sources. In those cases, the District requires that the risk to the new sensitive receptors from the existing sources. As you know, The District reserves the right to require additional analyses as appropriate for a specific project.

Glenn T. Reed

Senior Air Quality Specialist

San Joaquin Valley Unified Air Pollution Control District

1990 E Gettysburg Avenue, Fresno CA 93726

(559) 230-5923/ FAX (559) 230-6061

glenn.reed@valleyair.org

From: Dave Mitchell [mailto:dmitchell@brandman.com]
Sent: Tuesday, June 07, 2011 9:01 AM
To: Glenn Reed
Subject: HRA Analysis Policy

Hi Glenn,

Based on our phone conversation on 6/7/11, my understanding is that the District recommends analyzing only

on site sources of toxic air contaminants and not other large potential sources in the vicinity of the project site for comparison to the District's threshold for increased cancer risk of a 10 in a million. In addition, the District does not recommend cumulative analysis except for projects siting new sensitive receptors near large existing and planned sources of TACs.

Please confirm this information in a response to the this email.

Thanks.

Dave Mitchell

Branch Manager/Air Quality Services Manager

Michael Brandman Associates
2444 Main Street, Suite 150
Fresno, CA 93721
559.497.0310, Ext. 1304

Fax 559.497.0319
Cell 559.246.3732

www.brandman.com

Attachment Air Quality-2

DEIR Appendix I – Replacements for Tables 3-1 through 3-12.

(Referenced in Response Air A.5)

Table 3-1
Existing Visalia Walmart Store
Diesel PM Emissions From Vehicles During Operation

Vehicle/Trip Info and DPM Emission Rates			
Customer Vehicles			
Vehicle Type	**LDA & LDT**	**MDT**	**Total**
% Trips	98%	2%	100%
No. Trips (trips/day)	7,113	145	7,258
% Diesel Vehicles	1.35%	7.89%	9.24%
Project Diesel Trips (trips/day)	95.7	11.5	107.2
DPM Emis Factors (g/mi) at 15 mph	0.114	0.073	
Truck Deliveries			
Vehicle Type	**LHD1**	**HHD**	**Total**
No. Trips (trips/day)	16	16	32
% Diesel Vehicles	100%	100%	100%
Project Diesel Trips (trips/day)	16	16	32
DPM Emis Factors (g/mi) at 15 mph	0.067	0.119	
On-Site Vehicle Emissions*	**Customer Vehicles**	**Delivery** Trucks**	**Total**
Trip Length (mi)	0.25	-	
DPM Emissions (lb/day)	0.006	0.003	0.01
DPM Emissions (lb/year)	2.37	0.76	3.1

* On-site travel speed of 15 mph

** Delivery truck emissions include on-site truck and TRU travel & truck idling and TRU operation

Table 3-2
Existing Visalia Walmart Store
Summary of DPM Emission Rates Used For On Site Customer Vehicle Modeling

Activity	Annual DPM Emissions (pounds/year)	DPM Emissions (lb/hr)	DPM Emissions (g/s)	Modeled Area Name	Area Size (m^2)	Area Source Rate ($g/s/m^2$)
Customer On-Site Travel*	1.74E+00	4.77E-04	6.01E-05	PARK_1	14,743	4.08E-09
	3.54E-01	9.70E-05	1.22E-05	PARK_2	2,996	4.08E-09
	2.70E-01	7.40E-05	9.32E-06	PARK_3	2,284	4.08E-09
Total	2.4	6.48E-04	8.17E-05		20,023	

Notes:

** Hourly operation emissions assumed to occur 10 hours/day (9 am - 7 pm) for 365 days/year.
PARK_1 thru PARK_3 are area sources representing customer parking/travel areas.

Table 3-3
Existing Walmart Visalia Store
On-Site Truck Travel Emissions

On-Site Truck Delivery Emissions

Segment ID		Road Length (m)	Trip Period (hours)	4-Axle Trucks per day	2-Axle Trucks per day	No. TRUs	PM10 Emissions						
							4-Axle Emissions (g/day)	2-Axle Emissions (g/day)	Total Trucks (lb/day)	TRUs (lb/day)	Total Daily (lb/day)	Total Hourly (lb/hr)	Total Annual (lb/year)
Existing Store													
OS_HD	Truck Route to Loading Dock	250	10	8	0	0	0.15	0.00	3.26E-04	0.00E+00	3.26E-04	3.26E-05	0.12
OS_LHD	Truck route to Delivery Service Door	250	10	0	8	0	0.00	0.08	1.84E-04	0.00E+00	1.84E-04	1.84E-05	0.07
Total				**8**	**8**	**0**	**0.15**	**0.08**	**5.10E-04**	**0.00E+00**	**5.10E-04**	**5.10E-05**	**0.19**

Operation Days = 365
Wal-Mart Delivery Truck Hours (hrs/day) = 10
Delivery Truck Speed (mph) = 15

2010 Diesel Truck Emission Factors

4-Axle HHD (g/mi) = 0.119
2-Axle LHD1 (g/mi) = 0.067

4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.
Truck emissions for trucks based on EMFAC 2007 for 2010 Tulare Co. with truck speed of 15 mph and default vehicle mix for LHD1 and model years 2006 - 2010 for HHD.
Truck emissions (lb/hr) = EF (g/mi) * Road Length (mi) * No. Trips / Hours per day * conversion factors

TRU DPM Emission Factor (2010)

TRU Emission Rate[a] (g/hr) = 0.36
TRU engine (hp) = 34
TRU emission factor (g/hp-hr) = 0.02
TRU engine load factor (%) = 53%
TRU run time during travel (hr) = Road Length (mi)/Truck Speed (mph)
TRU emissions per link (g/day) = TRU Emission Rate (g/hr) x TRU run time during travel (hr) x # TRUs

Notes:
a TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor

Table 3-4

Existing Visalia Walmart - DPM Modeling - Off Site Vehicle DPM Modeling Roadway Links, Traffic Volumes, and DPM Emission Rates

Year = 2010

Link No.	Description	No. Lanes	Link Length (m)	Link Width (ft)	Link Width (m)	Vehicle Height (m)	Release Height (m)	Total Vehicle Trips	Daily Diesel Vehicle Trips	Average Speed (mph)	Vehicle Emission (g/mi)	TRU Emission (g/mi)	Link Emission Rate (g/s)
Customer Traffic													
N-W	Noble West of Ben Maddox	3	309	56	17.1	1.5	0.5	653	10	35	0.0586	-	3.02E-06
NE-1	Noble - Ben Maddox to 198 Exit	2	225	44	13.4	1.5	0.5	5,552	82	35	0.0586	-	1.87E-05
NE-2	Noble - 198 Exit to West Drive	2	240	44	13.4	1.5	0.5	6,460	95	35	0.0586	-	2.31E-05
NE-3	Noble - West to East Drive	2	105	44	13.4	1.5	0.5	3,629	54	25	0.0775	-	7.53E-06
NE-4	Noble - East Drive to Lovers Ln	2	651	44	13.4	1.5	0.5	798	12	35	0.0586	-	7.76E-06
BM-N	Ben Maddox - North of Noble	4	219	68	20.7	1.5	0.5	2,722	40	35	0.0586	-	8.90E-06
BM-S	Ben Maddox - South of Noble	4	706	68	20.7	1.5	0.5	2,177	32	35	0.0586	-	2.30E-05
198 E-1	198 East Prior to Exit	2	216	44	13.4	1.5	0.5	653	10	55	0.0426	-	1.53E-06
198 Exit	198 East - Exit to Noble	1	382	32	9.8	1.5	0.5	653	10	25	0.0775	-	4.93E-06
198 Entr	198 East - Noble Entrance to 198	1	406	32	9.8	1.5	0.5	181	3	25	0.0775	-	1.46E-06
198 E-2	198 East - East of Entrance	2	629	44	13.4	1.5	0.5	181	3	55	0.0426	-	1.24E-06
198 W-1	198 West - Prior to Exit to Mineral	2	705	44	13.4	1.5	0.5	181	3	55	0.0426	-	1.39E-06
198 W-2	198 West - Exit Segment	2	266	44	13.4	1.5	0.5	181	3	25	0.0775	-	9.54E-07
198 W-3	198 West - Entrance Segment	2	329	44	13.4	1.5	0.5	653	10	25	0.0775	-	4.25E-06
198 W-4	198 West - After Mineral Entrance	2	218	44	13.4	1.5	0.5	653	10	55	0.0426	-	1.55E-06
Delivery Truck Traffic													
N-W-T	Noble West of Ben Maddox	3	309	56	17.1	3.7	1.8	0	0	35	0.0740	0.0000	0.00E+00
NE-1-T	Noble - Ben Maddox to 198 Exit	2	225	44	13.4	3.7	1.8	8	8	35	0.0740	0.0000	2.30E-06
NE-2-T	Noble - 198 Exit to West Drive	2	240	44	13.4	3.7	1.8	24	24	35	0.0740	0.0000	7.36E-06
NE-3-T	Noble - West to East Drive	2	105	44	13.4	3.7	1.8	24	24	25	0.0760	0.0000	3.31E-06
NE-4-T	Noble - East Drive to Lovers Ln	2	651	44	13.4	3.7	1.8	8	8	35	0.0740	0.0000	6.65E-06
BM-N-T	Ben Maddox - North of Noble	4	219	68	20.7	3.7	1.8	8	8	35	0.0740	0.0000	2.24E-06
BM-S-T	Ben Maddox - South of Noble	4	706	68	20.7	3.7	1.8	0	0	35	0.0740	0.0000	0.00E+00
198 E-1-T	198 East Prior to Exit	2	216	44	13.4	3.7	1.8	8	8	55	0.1020	0.0000	3.04E-06
198 Exit-T	198 East - Exit to Noble	1	382	32	9.8	3.7	1.8	8	8	25	0.0760	0.0000	4.01E-06
198 Entr-T	198 East - Noble Entrance to 198	1	406	32	9.8	3.7	1.8	8	8	25	0.0760	0.0000	4.26E-06
198 E-2-T	198 East - East of Entrance	2	629	44	13.4	3.7	1.8	8	8	55	0.1020	0.0000	8.86E-06
198 W-1-T	198 West - Prior to Exit to Mineral	2	705	44	13.4	3.7	1.8	0	0	55	0.1020	0.0000	0.00E+00
198 W-2-T	198 West - Exit Segment	2	266	44	13.4	3.7	1.8	0	0	25	0.0760	0.0000	0.00E+00
198 W-3-T	198 West - Entrance Segment	2	329	44	13.4	3.7	1.8	0	0	25	0.0760	0.0000	0.00E+00
198 W-4-T	198 West - After Mineral Entrance	2	218	44	13.4	3.7	1.8	8	8	55	0.1020	0.0000	3.07E-06

Store Hours per Day 10 (9am - 7pm)

Number of TRUs per Day

Existing Store = 0

TRU DPM Emission Factor (2010)

TRU Emission Rate[a] (g/hr) = 0.36

TRU engine (hp) = 34

TRU emission factor (g/hp-hr) = 0.02

TRU engine load factor (%) = 53%

TRU run time during travel (hr) = Road Length (mi)/Truck Speed (mph)

TRU emissions per link (g/mi) = TRU Emission Rate (g/hr) /Vehicle Speed (mph)

Speed (mph)	2010 DPM Emission Factors (g/mi) LDA & LDT	MHD	LHD1	HDT[b]
25	0.0781	0.0506	0.046	0.106
35	0.0590	0.0379	0.035	0.113
55	0.0429	0.0275	0.025	0.179
% Diesel	1.35%	7.89%	100%	100%

Source: EMFAC2007 Model, Tulare County

Customer Vehicles	98%	2%	-	-
Delivery Trucks	-	0%	50%	50%

Link emission rate (g/s) = vehicle emission rate (g/s) + TRU emission rate (g/s)

Vehicle emission rate (g/s) = Vech EF (g/mi) * Link Length (mi) * No. Trips / Hours per day * conversion factors

4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.

TRU emission rate (g/s) = TRU EF (g/mi) * Link Length (mi) * No. TRUs / Hours per day * conversion factors

Notes:

[a] TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor

b Heavy duty diesel truck emission factors based on emission factors for model years 2006 - 2010 (Walmart fleet)

Table 3-5
Existing Visalia Walmart Store
Truck Deliveries and PM10 Emissions for Truck Idling & TRUs

	Daily Truck Deliveries					Oper. Time per Event (hour)	Daily PM10 (g/day)	Annual PM10 Emissions (lb/year)	Annual Daily Hours (hr)	Annual Model PM10 (g/sec)
Source Type	4+ Axle w/TRU*	4+ Axle w/o TRU	2 Axle	Total 4-Axle	Total 2-Axle					
Truck Idle	0	8	8	8	8	0.083	0.703	0.57	10	1.95E-05
TRU	0	-	-	-	-	0.5	0.000	0.00	10	0.00E+00
Totals	-	-	-	**8**	**8**	-	**0.7**	**0.57**		

* TRU = Transport Refrigeration Unit

Operation Days = 365
Hours per day = 10

LHD1 Truck Idle Emissions[b] (g/hr) = 0.781
HHD Truck Idle Emissions[b] (g/hr) = 0.274
TRU Emission Rate[a] (g/hr) = 0.36
TRU engine (hp) = 34
TRU PM emission factor (g/hp-hr) = 0.02
TRU engine load factor (%) = 53%
TRU run time (min) = 30
Truck idle time (min) = 5

Notes:

a TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor
TRUs assumed to run 30 min per truck per day

b Idle emissions for trucks based on EMFAC 2007 for 2010 Tulare Co. with truck speed of 0 mph and default vehicle mix for LHD1 and model years 2006 - 2010 for HHD trucks.
4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.
Trucks assumed to idle for a maximum of 5 min per truck per day

Table 3-6
Proposed Expanded Viaslia Walmart Store
Diesel PM Emissions From Vehicles During Operation

Vehicle/Trip Info and DPM Emission Rates			
Customer Vehicles			
Vehicle Type	**LDA & LDT**	**MDT**	**Total**
% Trips	98%	2%	100%
No. Trips (trips/day)	9,459	193	9,652
% Diesel Vehicles	1.35%	7.89%	9.24%
Project Diesel Trips (trips/day)	127.3	15.2	142.5
DPM Emis Factors (g/mi) at 15 mph	0.114	0.073	
Truck Deliveries			
Vehicle Type	**LHD1**	**HHD**	**Total**
No. Trips (trips/day)	24	22	46
% Diesel Vehicles	100%	100%	100%
Project Diesel Trips (trips/day)	24	22	46
DPM Emis Factors (g/mi) at 15 mph	0.067	0.119	
On-Site Vehicle Emissions*	**Customer Vehicles**	**Delivery** Trucks**	**Total**
Trip Length (mi)	0.25	-	
DPM Emissions (lb/day)	0.009	0.006	0.01
DPM Emissions (lb/year)	3.15	2.07	5.2

* On-site travel speed of 15 mph

** Delivery truck emissions include on-site truck and TRU travel & truck idling and TRU operation

Table 3-7
Proposed Expanded Viaslia Walmart Store
Summary of DPM Emission Rates Used For Construction and On Site Vehicle Modeling

Activity		Annual DPM Emissions (pounds/year)	DPM Emissions (lb/hr)	DPM Emissions (g/s)	Modeled Area Name	Area Size (m^2)	Area Source Rate ($g/s/m^2$)
Construction*							
		99.4	0.0272	0.0034	CON1	22,182	1.55E-07
		101.3	0.0278	0.0035	CON2	22,612	1.55E-07
		99.3	0.0272	0.0034	CON3	22,172	1.55E-07
	Total	300				66,966	
Customer On-Site Travel*		1.72E+00	1.96E-04	2.47E-05	PARK_1	15,537	1.59E-09
		1.43E+00	1.63E-04	2.05E-05	PARK_2	12,880	1.59E-09
	Total	3.1	3.59E-04	4.53E-05		28,417	

Notes:

* Hourly construction emissions assumed to occur 10 hours/day (7 am to 5 pm) for 365 days/year.
CON1 thru CON3 are area sources representing construction areas.

** Hourly operation emissions assumed to occur 24 hours/day for 365 days/year.
PARK_1 and PARK_2 are area sources representing customer parking/travel areas.

Table3-8
Proposed Expanded Walmart Visalia Store
On-Site Truck Travel Emissions

On-Site Truck Delivery Emissions

Segment ID		Road Length (m)	Trip Period (hours)	4-Axle Trucks per day	2-Axle Trucks per day	No. TRUs	PM10 Emissions						
							4-Axle Emissions (g/day)	2-Axle Emissions (g/day)	Total Trucks (lb/day)	TRUs (lb/day)	Total Daily (lb/day)	Total Hourly (lb/hr)	Total Annual (lb/year)
Proposed Project													
P_OS_HD	Truck Route to Loading Dock	833.7	24	11	0	2	0.68	0.00	1.49E-03	5.49E-05	1.55E-03	6.46E-05	0.57
P_OS_LHD	Truck route to Delivery Service Door	957.8	24	0	12	0	0.00	0.48	1.05E-03	0.00E+00	1.05E-03	4.40E-05	0.39
Total				**11**	**12**	**2**	**0.68**	**0.48**	**2.55E-03**	**5.49E-05**	**2.60E-03**	**1.09E-04**	**0.95**

Operation Days = 365
Wal-Mart Delivery Truck Hours (hrs/day) = 24
Delivery Truck Speed (mph) = 15

2010 Diesel Truck Emission Factors

4-Axle HHD (g/mi) = 0.119
2-Axle LHD1 (g/mi) = 0.067

4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.
Truck emissions for trucks based on EMFAC 2007 for 2010 Tulare Co. with truck speed of 15 mph and default vehicle mix for LHD1 and model years 2006 - 2010 for HHD.
Truck emissions (lb/hr) = EF (g/mi) * Road Length (mi) * No. Trips / Hours per day * conversion factors

TRU DPM Emission Factor (2010)

TRU Emission Rate[a] (g/hr) = 0.36
TRU engine (hp) = 34
TRU emission factor (g/hp-hr) = 0.02
TRU engine load factor (%) = 53%
TRU run time during travel (hr) = Road Length (mi)/Truck Speed (mph)
TRU emissions per link (g/day) = TRU Emission Rate (g/hr) x TRU run time during travel (hr) x # TRUs

Notes:
a TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor

Table 3-9

Proposed Expanded Visalia Walmart - DPM Modeling - Off Site Vehicle DPM Modeling Roadway Links, Traffic Volumes, and DPM Emission Rates
Year = 2010

Link No.	Description	No. Lanes	Link Length (m)	Link Width (ft)	Link Width (m)	Vehicle Height (m)	Release Height (m)	Total Vehicle Trips	Daily Diesel Vehicle Trips	Average Speed (mph)	Vehicle Emission (g/mi)	TRU Emission (g/mi)	Link Emission Rate (g/s)
Customer Traffic													
N-W	Noble West of Ben Maddox	3	309	56	17.1	1.5	0.5	869	13	35	0.0586	-	1.67E-06
NE-1	Noble - Ben Maddox to 198 Exit	2	225	44	13.4	1.5	0.5	7,384	109	35	0.0586	-	1.03E-05
NE-2	Noble - 198 Exit to West Drive	2	240	44	13.4	1.5	0.5	8,590	127	35	0.0586	-	1.28E-05
NE-3	Noble - West to East Drive	2	105	44	13.4	1.5	0.5	4,826	71	25	0.0775	-	4.17E-06
NE-4	Noble - East Drive to Lovers Ln	2	651	44	13.4	1.5	0.5	1,062	16	35	0.0586	-	4.30E-06
BM-N	Ben Maddox - North of Noble	4	219	68	20.7	1.5	0.5	3,620	53	35	0.0586	-	4.93E-06
BM-S	Ben Maddox - South of Noble	4	706	68	20.7	1.5	0.5	2,896	43	35	0.0586	-	1.27E-05
198 E-1	198 East Prior to Exit	2	216	44	13.4	1.5	0.5	869	13	55	0.0426	-	8.49E-07
198 Exit	198 East - Exit to Noble	1	382	32	9.8	1.5	0.5	869	13	25	0.0775	-	2.73E-06
198 Entr	198 East - Noble Entrance to 198	1	406	32	9.8	1.5	0.5	241	4	25	0.0775	-	8.07E-07
198 E-2	198 East - East of Entrance	2	629	44	13.4	1.5	0.5	241	4	55	0.0426	-	6.87E-07
198 W-1	198 West - Prior to Exit to Mineral	2	705	44	13.4	1.5	0.5	241	4	55	0.0426	-	7.70E-07
198 W-2	198 West - Exit Segment	2	266	44	13.4	1.5	0.5	241	4	25	0.0775	-	5.29E-07
198 W-3	198 West - Entrance Segment	2	329	44	13.4	1.5	0.5	869	13	25	0.0775	-	2.35E-06
198 W-4	198 West - After Mineral Entrance	2	218	44	13.4	1.5	0.5	869	13	55	0.0426	-	8.57E-07
Delivery Truck Traffic													
N-W-T	Noble West of Ben Maddox	3	309	56	17.1	3.7	1.8	0	0	35	0.0723	0.0103	0.00E+00
NE-1-T	Noble - Ben Maddox to 198 Exit	2	225	44	13.4	3.7	1.8	12	12	35	0.0723	0.0103	1.36E-06
NE-2-T	Noble - 198 Exit to West Drive	2	240	44	13.4	3.7	1.8	35	35	35	0.0723	0.0103	4.36E-06
NE-3-T	Noble - West to East Drive	2	105	44	13.4	3.7	1.8	35	35	25	0.0747	0.0144	1.98E-06
NE-4-T	Noble - East Drive to Lovers Ln	2	651	44	13.4	3.7	1.8	12	12	35	0.0723	0.0103	3.94E-06
BM-N-T	Ben Maddox - North of Noble	4	219	68	20.7	3.7	1.8	12	12	35	0.0723	0.0103	1.33E-06
BM-S-T	Ben Maddox - South of Noble	4	706	68	20.7	3.7	1.8	0	0	35	0.0723	0.0103	0.00E+00
198 E-1-T	198 East Prior to Exit	2	216	44	13.4	3.7	1.8	12	12	55	0.0987	0.0066	1.77E-06
198 Exit-T	198 East - Exit to Noble	1	382	32	9.8	3.7	1.8	12	12	25	0.0747	0.0144	2.40E-06
198 Entr-T	198 East - Noble Entrance to 198	1	406	32	9.8	3.7	1.8	12	12	25	0.0747	0.0144	2.55E-06
198 E-2-T	198 East - East of Entrance	2	629	44	13.4	3.7	1.8	12	12	55	0.0987	0.0066	5.16E-06
198 W-1-T	198 West - Prior to Exit to Mineral	2	705	44	13.4	3.7	1.8	0	0	55	0.0987	0.0066	0.00E+00
198 W-2-T	198 West - Exit Segment	2	266	44	13.4	3.7	1.8	0	0	25	0.0747	0.0144	0.00E+00
198 W-3-T	198 West - Entrance Segment	2	329	44	13.4	3.7	1.8	0	0	25	0.0747	0.0144	0.00E+00
198 W-4-T	198 West - After Mineral Entrance	2	218	44	13.4	3.7	1.8	12	12	55	0.0987	0.0066	1.79E-06

Store Hours per Day 24

Number of TRUs per Day

Proposed Expanded Store = 2

TRU DPM Emission Factor (2010)

TRU Emission Rate[a] (g/hr) = 0.36

TRU engine (hp) = 34

TRU emission factor (g/hp-hr) = 0.02

TRU engine load factor (%) = 53%

TRU run time during travel (hr) = Road Length (mi)/Truck Speed (mph)

TRU emissions per link (g/mi) = TRU Emission Rate (g/hr) /Vehicle Speed (mph)

Speed (mph)	2010 DPM Emission Factors (g/mi) LDA & LDT	MHD	LHD1	HDT[b]
25	0.0781	0.0506	0.046	0.106
35	0.0590	0.0379	0.035	0.113
55	0.0429	0.0275	0.025	0.179
% Diesel	1.35%	7.89%	100%	100%

Source: EMFAC2007 Model, Tulare County

Customer Vehicles	98%	2%	-	-
Delivery Trucks	-	0%	52%	48%

Link emission rate (g/s) = vehicle emission rate (g/s) + TRU emission rate (g/s)

Vehicle emission rate (g/s) = Vech EF (g/mi) * Link Length (mi) * No. Trips / Hours per day * conversion factors

4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.

TRU emission rate (g/s) = TRU EF (g/mi) * Link Length (mi) * No. TRUs / Hours per day * conversion factors

Notes:

a TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor

b Heavy duty diesel truck emission factors based on emission factors for model years 2006 - 2010 (Walmart fleet)

Table 3-10
Proposed Expanded Walmart Visalia Store
Truck Deliveries and PM10 Emissions for Truck Idling & TRUs

	Daily Truck Deliveries					Oper. Time	Daily	Annual		
Source Type	4+ Axle w/TRU*	4+ Axle w/o TRU	2 Axle	Total 4-Axle	Total 2-Axle	per Event (hour)	PM10 (g/day)	PM10 Emissions (lb/year)	Daily Hours (hr)	Model PM10 (g/sec)
Truck Idle	2	9	12	11	12	0.083	1.032	0.83	24	1.19E-05
TRU	2	-	-	-	-	0.5	0.360	0.29	24	4.17E-06
Totals	**-**	**-**	**-**	**11**	**12**	**-**	**1.4**	**1.12**		

* TRU = Transport Refrigeration Unit

Operation Days = 365
Hours per day = 24

LHD1 Truck Idle Emissions[b] (g/hr) = 0.781
HHD Truck Idle Emissions[b] (g/hr) = 0.274
TRU Emission Rate[a] (g/hr) = 0.36
TRU engine (hp) = 34
TRU PM emission factor (g/hp-hr) = 0.02
TRU engine load factor (%) = 53%
TRU run time (min) = 30
Truck idle time (min) = 5

Notes:

a TRU emission factor of 0.02 g/hp-hr (TRU emission standard, title 13 CCR, section 2477) and 34 hp engine with 53% load factor
TRUs assumed to run 30 min per truck per day

b Idle emissions for trucks based on EMFAC 2007 for 2010 Tulare Co. with truck speed of 0 mph and default vehicle mix for LHD1 and model years 2006 - 2010 for HHD trucks.
4-axle trucks assumed to be heavy duty diesel (HHD) and 2-axle trucks assumed to be light heavy duty diesel (LHD1) trucks.
Trucks assumed to idle for a maximum of 5 min per truck per day

Table 3-11
Visalia Walmart Project - Unit Risk Factor Calculation Methods

Cancer Risk Calculation Method

Inhalation Dose = C_{air} x DBR x A x EF x ED x 10^{-6} / AT

Where: C_{air} = concentration in air ($\mu g/m^3$)
DBR = daily breathing rate (L/kg body weight-day)
A = Inhalation absorption factor
EF = Exposure frequency (days/year)
ED = Exposure duration (years)
AT = Averaging time period over which exposure is averaged.
10^{-6} = Conversion factor

Inhalation Dose Factors

Exposure Type	Value[1]					
	DBR (L/kg BW-day	**A (-)**	**Exposure (hr/day)**	**EF (days/yr)**	**ED (Years)**	**AT (days)**
Residential (70-Year)	393	1	24	350	70	25,550
Off-Site Worker	149	1	8	245	40	25,550

[1] Default values recommended by OEHHA

Cancer Risk (per million) = CPF x Inhalation Dose x 1.0E6
= URF x Cair

Where: CPF = Cancer potency factor $(mg/kg\text{-}day)^{-1}$
URF =Unit risk factor (cancer risk per $\mu g/m^3$)

Diesel Particulate Matter Unit Risk Factors

Exposure Type	CPF $(mg/kg\text{-}day)^{-1}$	URF *(Risk/million/$\mu g/m^3$)*
Residential (70-Yr Exposure)	1.10E+00	414.5
Off-Site Worker	1.10E+00	62.9

Table 3-12
Visalia Walmart
Increased Cancer Risks at Nearby Residents and Workers From Project-Related DPM Emissions

Project Activity/Emission Source	Maximum Residential Cancer Risk		Maximum Off Site Worker Cancer Risk	
	Annual Concentration ($\mu g/m^3$)	Residential Cancer Risk (per million)	Annual Concentration ($\mu g/m3$)	Worker Cancer Risk (per million)
Expanded Store				
Construction - DPM[a]	0.17567	1.0	0.1952	0.31
Operation - DPM[b]	0.00862	3.6	0.0103	0.64
Subtotal		4.6		0.95
Existing Store	0.00292	1.2	0.0053	0.34
Net Increased Cancer Risk		**3.4**		**0.6**

a Cancer risk based on 1 year of exposure to construction emissions

b Cancer risk from operation activities based on 70-year exposure, located about 10 meters east of eastern project boundary

c Off-site worker maximum cancer risk occurred about 5 meters north of the northern project boundary in the commercial area south of East Noble Avenue.

DPM Unit Risk Factors (risk per million per $\mu g/m^3$) =

414.5	Residential Exposure
62.9	Worker Exposure

Attachment Noise-1

Illingworth & Rodkin Example Noise Barrier Calculations

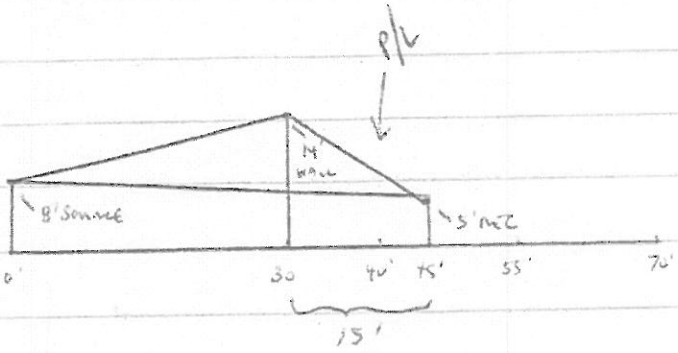
(Referenced in Response Noise A.1.b)

Traffic Calculation @ South

40' from PL / NCL @ 45'
(15' from proposed 14' wall)

Source = 72-77 Lmax @ 40'
= 71-76 Lmax @ 45'

1" = 20'



@ 500 Hz

$N = (2/2.854)[30.5 + 18 - 45]$
$N = (.887)[3.5]$
$N = 3.1045$

$IL_{BAR} = 10 \log[3 + 10(3.1045)]$
$= -15$ dB

@ 250 Hz

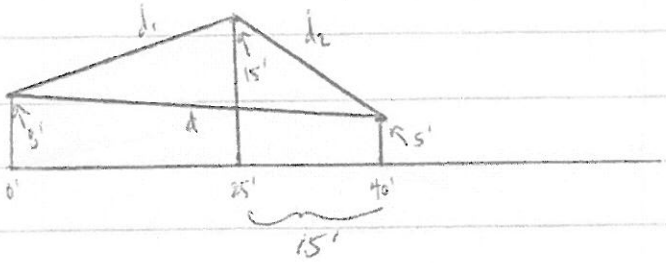
$N = (2/4.504)[30.5 + 18 - 45]$
$N = (.444)[3.5]$
$N = 1.554$

$IL_{BAR} = 10 \log[3 + 10(1.554)]$
$= -13$

Source	71 to 76 Lmax @ 45'	71 to 76 Lmax @ 45'
IL_{BAR}	-15 -15	-13 -13
	56 to 61 Lmax @ 45'	58 to 63 Lmax @ 45'

Truck Calculations @ East 15' from Proposed 15' wall

Source : 72-77 Lmax @ 40'



@ 500 Hz $N = (2/2.254)[25.5 + 15 - 40]$

$N = (.887)[+.5]$

$N = 3.9915$

$IL_{Barr} = 10 \log[3 + 10(3.9915)]$

$IL_{Barr} = -16$ dB

Source 72 to 77

-16 -16

54 to 61 Lmax

@ 250 Hz $N = (2/4.504)[25.5 + 15 - 40]$

$N = (.444)[+.5]$

$N = 1.995$

$IL_{Barr} = 10 \log[3 + 10(1.995)]$

$= -14$ dB

72 to 77

-14 -14

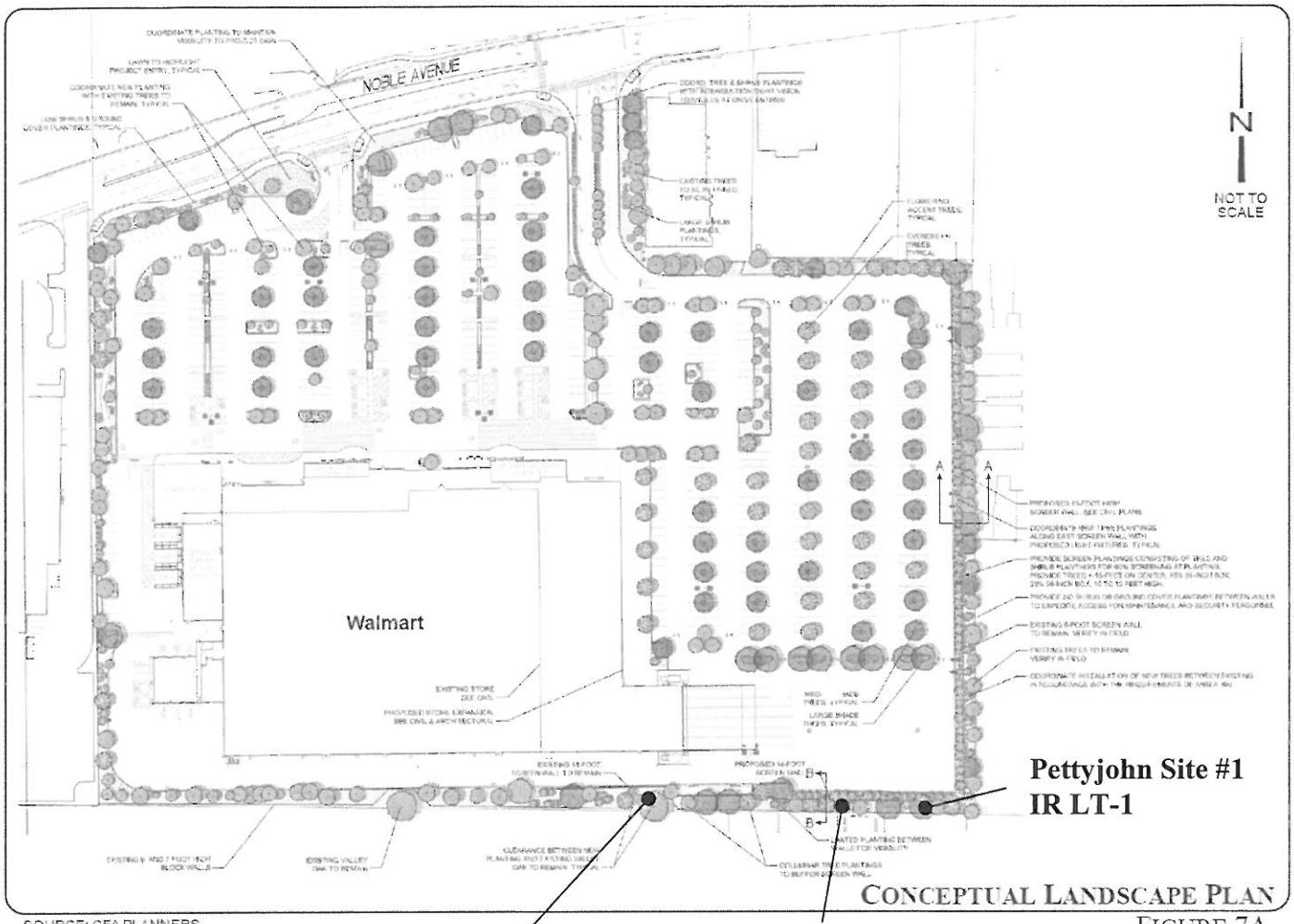
58 to 63 Lmax

Attachment Noise-2

Illingworth & Rodkin and Pettyjohn Noise Measurement Locations

(Referenced in Response Noise A.2.h)

Figure 1: Noise Measurement Locations



CONCEPTUAL LANDSCAPE PLAN

SOURCE: CFA PLANNERS

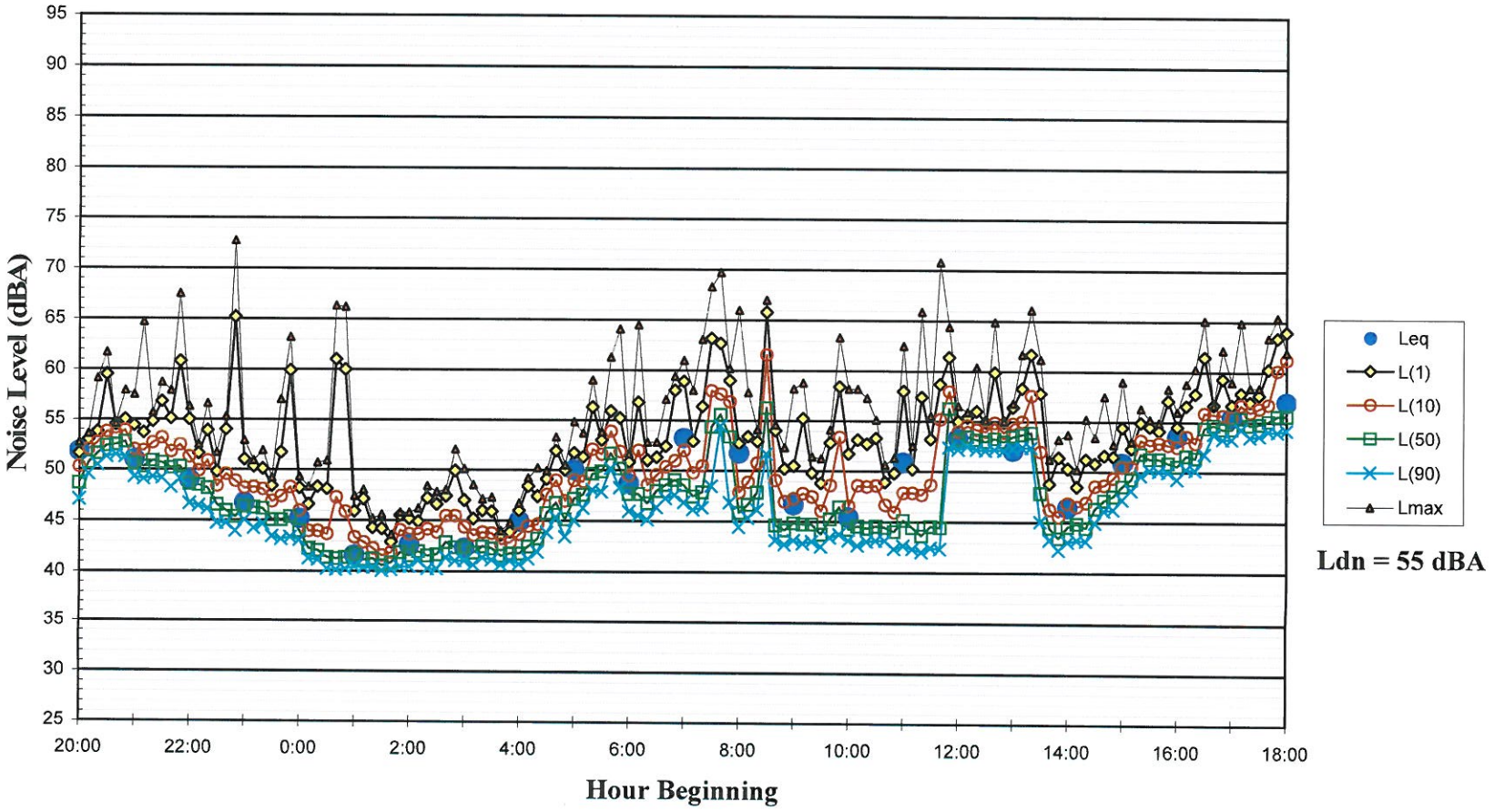
FIGURE 7A

Attachment Noise-3

Illingworth & Rodkin Noise Measurement Data Graph
From DEIR Volume II, Appendix H, Figure 1

(Referenced in Response Noise B.4.c)

Noise Levels at LT-1
Rear Yard of 744 Tracy Avenue
June 24, 2009 to June 25, 2009



Attachment Urban Decay-1

ARA's Elk Grove Study – Contained in "Declaration Tom Brennan in Support of Petition for Writ of Mandate"

(Referenced in Response UD B.1.b [Note: The data cited in Response UD-B.1.b is found on page 13 of the ARA])

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Attorneys for Petitioner Friends of Madeira

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

FRIENDS OF MADEIRA, an unincorporated association.

Petitioner,

vs.

CITY OF ELK GROVE, BY AND THROUGH THE CITY COUNCIL; and DOES I THROUGH XXX

Respondents.

WAL-MART STORES, INC., a Delaware corporation; and DOES XXXI-XXXXX, inclusive.

Real Parties in Interest.

Case No.: 34-2009-80000332-CU-WM-GDS

DECLARATION TOM BRENNAN IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Hearing Date: October 1, 2010
Time: 10:00 a.m.
Dept.: 33
Judge: Hon Lloyd G. Connelly

Petition Filed: September 22, 2009

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DECLARATION

I, Tom Brennan, declare as follows:

1. I am a principal with Area Research Associates, a national market research firm dedicated to providing state of the art site location and sales forecasting analysis to the retail and other convenience-oriented industries. I have served in that capacity since 1997. I received my Bachelor of Science degree in Psychology from Tufts University in 1977. I have been involved in the field of Site Location Research since 1977. A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit A.

2. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, could and would testify competently to those matters.

3. On or about June 15, 2010, I prepared a report entitled "Potential Impact of Wal Mart on Area Supermarkets SEC of Bruceville Road & Whitelock Pkway. Elk Grove, California." ("Report"). The Report was prepared for Brett Jolley, an attorney with the law firm of Herum Crabtree, counsel for Petitioner Friends of Madeira. The purpose of the Report was to determine the potential for store closures and potential urban decay and other potentially significant physical impacts following the opening of a proposed Wal-Mart Supercenter and other planned supermarket projects in the city of Elk Grove. A true and correct copy of the Report is attached hereto as Exhibit B.

4. For the purposes of the Report, I analyzed the sales impacts of the proposed Wal-Mart and other planned stores on existing stores in the vicinity, the future population growth in the Elk Grove trade area and the potential for urban decay as the result of store closures and long term vacancies. Report at p. 4-14. The factors and data considered are typically used and relied upon by market forecasting consultants such as myself to determine the potential for store closures and urban decay. In the course of my duties, I have conducted several similar studies in Rohnert Park, CA and Clovis, CA.

5. Based on the analysis contained in the Report, I concluded it is extremely likely that at least one supermarket will close if the Wal-Mart Supercenter opens at the site located at the South East Corner of Bruceville Road and Whitelock Parkway. I also concluded that two

supermarkets will close if Wal Mart and other reasonably foreseeable related competitors open. Report at p. 3. Either scenario will lead to closed anchor tenants and prolonged vacancies at existing shopping centers and create urban decay. Report at p. 14.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is executed at Tiburon, Marin County California on the 29th day of July, 2010.

Tom Brenn

TOM BRENNAN

ARA
area research associates

SITE SELECTION ***RETAIL SALES FORECASTING*** ***MARKET ANALYSIS***

BIOGRAPHY - TOM BRENNAN

Tom Brennan has been involved in the field of Site Location Research since 1977, when he began work for the A & P supermarket chain in New Jersey. Since that time, he has worked as a consultant to a number of national and international companies requiring services in facility sales forecasting, site selection, market strategy, consumer research and software development.

From 1980 to 1989, Tom worked as a consultant to Smith's Food & Drug of Salt Lake City and was responsible for identifying new opportunities for store development in major market areas of Arizona, New Mexico and Nevada. During that time, he also conducted extensive studies in consumer attitudes and shopping behavior in order to refine techniques in store location research. Assignments in the Middle East in the early 1980's led to the development of the first major Western-style supermarket in the Sultanate of Oman as well as new supermarket facilities in Dubai, United Arab Emirates.

While working with Retail Systems, Inc. in Minneapolis, Tom headed the Los Angeles office with primary responsibility for servicing retail and convenience-oriented clients in the western part of the United States. He has directed site location research for the northwestern division of Safeway, Inc. and has conducted market studies for all their remaining divisions. In addition to working with many major supermarket, retail and convenience-oriented chains across the United States, Tom's clients have included numerous real estate developers.

In 1997, Tom became a partner at Area Research Associates, a consulting firm with expertise in retail sales forecasting and site selection, primarily for the supermarket industry. During that time he was involved in the development of sales forecasting software for a variety of users, notably AJ's specialty food stores of Chandler, Arizona, Chevron Products Inc. of San Ramon, California and San Francisco Honda. Tom's model building expertise coupled with his hands-on location research background brings a unique combination of research capabilities to his clients. In 2007, he founded ARA Research and expanded his site selection services to include medical and dental care providers, including Kool Smiles of Atlanta, GA.

Tom holds a Bachelor of Science degree from Tufts University in Medford, Massachusetts.

EXHIBIT A

POTENTIAL IMPACT of WAL MART on AREA SUPERMARKETS
SEC of BRUCEVILLE RD. & WHITELOCK PKWY.
ELK GROVE, CALIFORNIA

Presented to:

Brett Jolley
Herum Crabtree, Attorneys at Law
Stockton, California

Prepared by:

Tom Brennan
ARA area research associates
AREA RESEARCH ASSOCIATES
Tiburon, California

June 2010

EXHIBIT B

INTRODUCTION

The current study was undertaken to determine the potential for store closures and possible urban decay following the opening of a proposed Wal Mart and other planned supermarket projects in the city of Elk Grove. Our analysis focused on the southern edge of the city and surrounding unincorporated area and only on those conventional supermarkets that are located in the immediate vicinity and thus are most likely to be impacted. The study was based on field observations, discussions with local supermarket personnel and data gathered on recent growth trends and planned competitive changes in the area.

The proposed project would consist of a Wal Mart Supercenter containing 99,585 total square feet that would be located on a vacant site at the SEC of Bruceville Road and Whitelock Parkway. In addition to the proposed Wal Mart, there are several other planned supermarket projects in the vicinity that will also impact sales at existing supermarkets. Fresh & Easy will open a new 14,000 square foot supermarket at the SEC of Bruceville Road & Elk Grove Boulevard, one mile north of the site. Henry's will also open a new supermarket containing 33,800 total square feet in the vacant Circuit City at the NEC of Laguna Boulevard and Big Horn Boulevard, 2.1 miles northeast of the site.

SUMMARY OF FINDINGS

Sales Impacts on Existing Stores in 2011 - We estimate that the proposed Wal Mart will generate $21.8 million in annual sales and that 30% of this amount ($6.7 million) will be captured from the three conventional supermarkets located closest to the site - Nugget (7101 Elk Grove Blvd., NWC of Bruceville & Elk Grove), Save Mart (7707 Laguna Blvd., NEC of Laguna & Bruceville) and Raley's (4900 Elk Grove Blvd., SEC of Elk Grove & Franklin). All three are barely profitable in the current market and expected impacts would drop their sales to below $300/square foot, an amount indicating a store is performing about 30% below median for supermarkets in the Western U.S.A. and generally considered to place a store at risk of closing. Under this scenario, there is a high likelihood that Nugget would be forced to close and some possibility that Save Mart would also close.

In the cumulative scenario, we project that all planned supermarkets will generate $41.8 million in annual sales and that 23% of this amount ($9.5 million) will come from Nugget, Save Mart and Raley's. At this point, sales performance at Nugget and Save Mart would be at least 40% below the median, sufficient to force both stores to close. There is also a slight chance that Raley's could also close at this point, since it would also be performing below $300/sq. ft.

Adjustments for Future Growth - We estimate that between 2009 and 2016, the population will increase by 6,300 in the trade area, adding about $12.8 million in new food expenditure. Therefore, by 2016, one to two existing supermarkets will remain closed, depending on whether just Wal Mart opens or all planned competitors open.

Potential for Significant Physical Impacts - The combination of the likely closing of two supermarkets, a weak economic climate and minimal new population growth creates the conditions for long term vacancies - generally acknowledged as a precursor of urban decay. The fact that both Nugget and Save Mart are primary tenants of their centers reduces prospects for the remaining adjacent satellite tenants as well, thus increasing the potential for urban decay. And because both Nugget and Save Mart are neighborhood-serving supermarkets surrounded by existing neighborhoods, displacing these close and convenient shopping opportunities would cause significant physical change to the existing environment that should be fully evaluated and mitigated if possible.

CONCLUSION

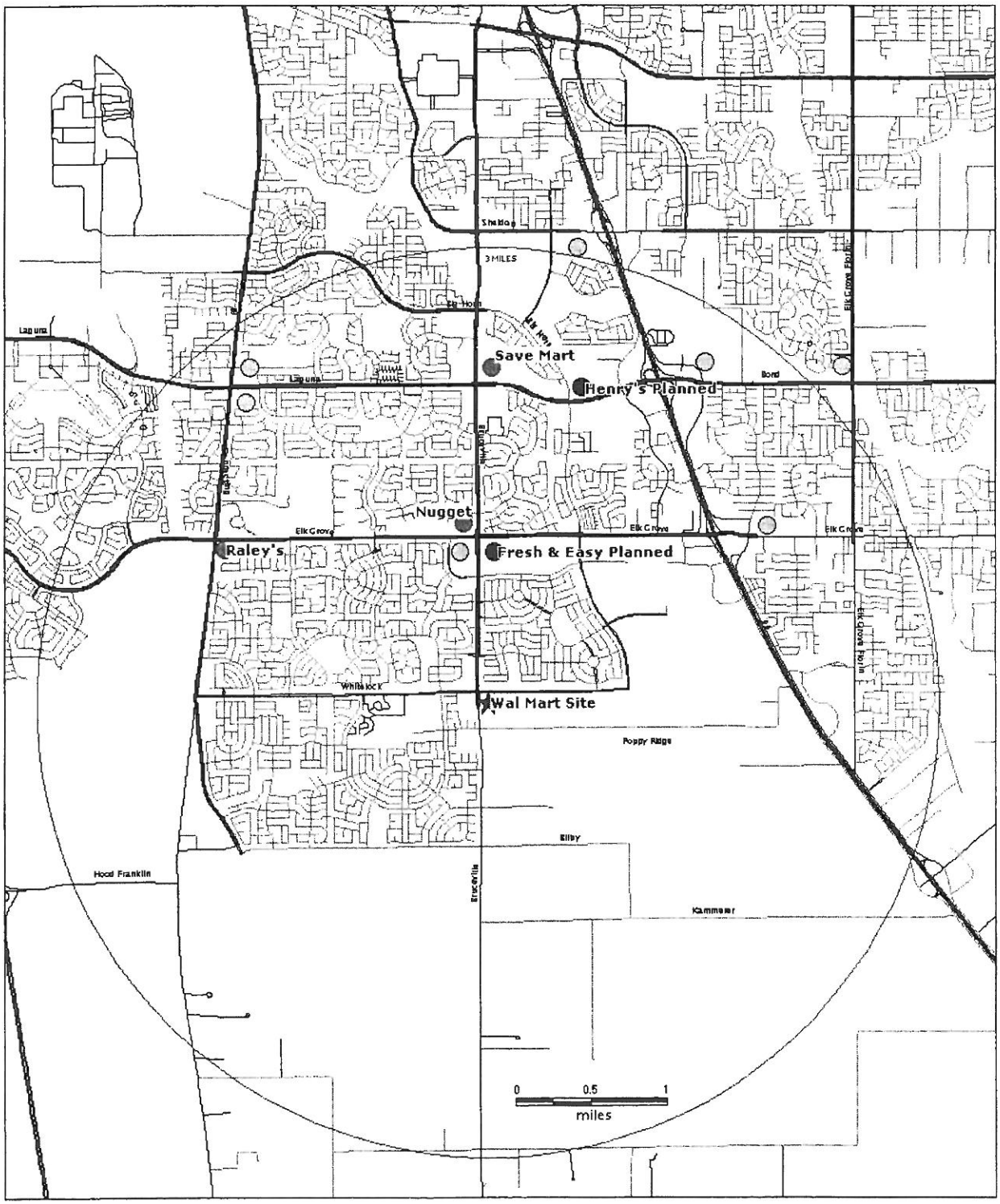
We believe it is extremely likely that at least one supermarket will close if Wal Mart opens and that two will close if Wal Mart and other planned competitors open. Based on our assessment of the existing supermarkets, we have assigned probabilities of an existing store closing as indicated below:

Probability of Store Closing

Store	With Wal Mart Alone	With All Planned Competitors
Nugget	75%	90%
Save Mart	65%	80%
Raley's	20%	30%

Either one of the above scenarios will lead to closed anchor tenants at existing shopping centers that will remain so for an extended period of time. Therefore, we believe there is sufficient evidence to conclude that the proposed Wal Mart and cumulative projects will create long-term vacancies resulting in urban decay and other significant physical effects to Elk Grove.

Directly Impacted (Blue), Planned (Red) and Other (Gray) Supermarkets
Vicinity of Proposed Wal Mart
SEC of Bruceville & Whitelock, Elk Grove, CA



POPULATION & SUPERMARKET POTENTIAL IN TRADE AREA

A general rule of thumb for supermarkets in neighborhood shopping centers is that the majority of their sales typically derive from residents living within an approximate two mile radius. However, since Wal Mart tends to draw customers over a greater distance than an average grocer, we determined than a three mile radius around the site would provide a more appropriate trade area definition. According to Claritas, a national demographic data provider, the population within the three mile radius trade area of the Wal Mart site is as follows:

2000 - 46,774

2009 - 79,302

Food expenditures for the trade area were based on information provided by the State Board of Equalization (BOE) for 2008. This BOE data indicates that taxable per capita food sales for California were $563.91. This expenditure has been adjusted to $1,880 to account for non-taxable sales since only 30% of all food store sales are typically taxable. Then, using the 2008 U.S. Bureau of Labor survey data that tracks how demographic factors influence spending on food, we compared per capita incomes and household size differences between the State and the trade area. This indicates food spending to be about 6% higher than average for the State of California. We made an additional upward adjustment to reflect inflation in food prices since 2008. This results in annual per capita supermarket expenditure of $2,031 for 2009.

Multiplying the annual per capita food expenditure of $2,031 times the trade area population of 79,302 yields total available food expenditures of $161,062,362. This figure represents total potential "demand" - the amount that trade area residents spend in all grocery stores annually, regardless of whether they are located in the trade area or not.

FUTURE POPULATION GROWTH

Claritas also provides population projections for the area as indicated below. However, company representatives indicate that the methodology for these projections do not fully take into account the current recession and major downturn in housing that has occurred throughout the USA, particularly in hard hit California.

Table 1- Unrevised Population Projections
Source: Claritas

Year		Population	Avg. Annual Increase versus Prev. Period
2000	-	46,774	
2009	-	79,302	3,614
2014	-	90,195	2,179

A comparison of annual building permit totals for new housing in the city of Elk Grove is shown below and indicates that development over the last two years has slowed dramatically:

Table 2
Elk Grove Building Permit Trends
New Residential Units by Year

Building Type	2002	2003	2004	2005	2006	2007	2008	2000-2008 Total	2000-2008 Avg.	2009	2010 1/
Single Family	804	3,716	4,049	2,603	614	693	257	12,736	1,819	201	240
2 Family	0	0	0	0	0	0	0	0	0	0	0
3 Family	0	0	0	0	0	0	0	0	0	0	0
5 or More Family	304	0	498	193	112	0	534	1,641	234	0	276
Total	1,108	3,716	4,547	2,796	726	693	791	14,377	2,054	201	516

1/ Projected based on first 5 months of year.

Building permit activity in Elk Grove for the years of 2009 and 2010 is less than 20% of the levels during the "boom" years earlier in the decade. The recent large drop in new housing development makes it very unlikely that the trade area will reach the population levels that Claritas had originally projected for the next five years. According to the March 2010 UCLA Anderson Forecast, the economic outlook for the balance of 2010 is for little or no growth in the state, with the economy picking up speed slightly by the beginning of 2011. Unemployment levels are still expected to remain about 10% into 2012 so job growth will be considerably more sluggish than during the early part of the last decade. In consideration of the UCLA forecast and current building permit trends in the trade area, we have assumed population growth that is 25% of the "boom years" of 2000 to 2008. Since the historical long term average population increase for the trade area has been about 3,600 people/year (32,500 people / 9 years), we have therefore projected trade area population growth as follows:

Table 3
KMIT Revised Population Projections

Year		Population	Avg. Ann. Increase versus Prev. Period
2000	-	46,774	
2009	-	79,302	3,614
2011	-	81,102	900
2016	-	85,602	900

Based on the foregoing, we estimate the total trade area population will increase 1,800 by 2011 and then by another 4,500 over the following five years to 2016. This produces the following amount of additional available food dollars in future years:

Table 3A

Period	Population Growth	Per Capita Food Expenditure	Additional Available Food Dollars
2009 - 2011	1,800	$2,031	$3,655,800
2011 - 2016	4,500	$2,031	$9,139,500

EXISTING SUPERMARKETS IN VICINITY OF SITE

The following table lists characteristics of the three major conventional supermarkets located closest to the Wal Mart site.

Table 4 - Existing Conventional Supermarkets near Wal Mart Site

Store Name	Location	Square Footage	Estimated Annual Sales	Sales per Sq. Ft.
Nugget	NWC of Brucevillle & Elk Grove	52,000	$17,000,000	$327
Save Mart	NEC Laguna & Bruceville	62,100	$19,000,000	$306
Raley's	SEC of Elk Grove & Franklin	61,000	$20,000,000	$328

During our field visit to the area, we spoke with personnel at the stores listed above in order to gather information on their existing sales performance, total square footage and resulting sales per square foot. The results were then compared to average performance for supermarkets in the Western U.S.A. using data from the Urban Land Institute (ULI) "Dollars & Cents of Shopping Centers/ The Score 2008." This comprehensive study publishes data for shopping centers and breaks it down by different retail categories, including supermarkets. The ULI report estimates that supermarkets in Community and Super Community Shopping Centers in the Western U.S. generate median sales per square foot of $418. Comparison with the subject stores indicates that all three are currently operating at 20% - 25% below the average of stores in the Western region. This confirms remarks made informally by supermarket personnel that their stores are currently operating on the edge of profitability.

PROJECTED SALES OF PLANNED NEW SUPERMARKETS

We used a combination of sources to project what the likely sales would be of planned new supermarkets in the trade area. Wal*Mart releases some data on store performance as indicated in the table below:

Table 5 - Wal Mart US Segment (Supercenters, Discount Stores & Neighborhood Markets)

Total # of Stores	3,708
Total Square Feet (,000)	602,908
Total Net Sales (,000)	$258,229,000
Average Sales/Sq Ft.	$428
Average % of Sales Grocery	51%

Source: United States Securities and Exchange Commission, Form 10-K
Wal*Mart Fiscal Year Ended January 31, 2010

Using this information, we estimated Wal*Mart supermarket sales in Elk Grove as follows:

Table 6 - Projected Elk Grove Wal*Mart Grocery Sales

Wal*Mart Square Footage	99,585
Wal*Mart Average Sales/Sq Ft.	$428
Total Supercenter Sales	$42,793,580
Grocery Portion (51%)	$21,824,726

Henry's and Fresh & Easy do not release sufficient information to estimate chain average supermarket sales. Therefore, for these stores we used the median sales/sq. ft. figure of $418 for supermarkets supplied by the Urban Land Institute figures as shown in Table 7.

After estimating the total supermarket sales that each new project was likely to generate, we then estimated the percentage of their total sales that were likely to come from the trade area alone. A summary of all sales projections for planned new supermarkets is shown in the table below:

Table 7 - Sales Projections for Planned New Supermarkets in Trade Area

Store	Net New Supermarket Square Footage Added	Sales per Square Foot	Estimated Total Sales	Estimated % of Sales From Trade Area	Estimated Trade Area Sales
Wal Mart	40,000	$546 1/	$21,824,726	90%	$19,642,253
Henry's	33,800	$418	$14,128,400	65%	$9,183,460
Fresh & Easy	14,000	$418	$5,852,000	95%	$5,559,400
		Total Net New Sales -	$41,805,126		$34,385,113

1/ Estimated Supermarket Sales / Grocery Sq. Ft.

The table below calculates the impacts on existing supermarkets from the proposed Wal Mart as well as the cumulative impacts for the years 2011 and 2016. For purposes of this analysis we have assumed that 2011 will be the first full year of operation following the opening of Wal Mart and all other projects. Impacts refer to average across the entire trade area and do not reflect sales losses at individual stores, which may be higher or lower.

TABLE 8 - TRADE AREA IMPACTS
WAL MART PROJECT ALONE / CUMULATIVE PROJECTS

Year	Total Supermarket Potential in Trade Area	Total Sales Generated by Project	Portion of Sales Captured from Trade Area	Remaining Supermarket Potential in Trade Area 1/	$ Change in Trade Area	% Change in Trade Area
		WITH PLANNED WAL MART OPEN				
2009 -	$161,062,000	$21,824,726	$19,642,253	$141,419,747	($19,642,253)	-12.2%
2011 -				$144,629,705	($16,432,295)	-10.2%
2016 -				$152,654,601	($8,407,399)	-5.2%
		WITH WAL MART AND ALL OTHER PLANNED SUPERMARKETS				
2009 -	$161,062,000	$41,805,126	$34,385,113	$126,676,887	($34,385,113)	-21.3%
2011 -				$129,201,551	($31,860,449)	-19.8%
2016 -				$136,389,860	($24,672,140)	-15.3%

1/ Future Years Change = Increase in Total Available Food Dollars from Table 3A less % captured by planned projects (i.e. Increase for Wal Mart alone from 2009-2011 = $3,655,800 less 12.2% = 3,209,958).

2/ $ Change in sales of Existing Stores divided by median sales/sq. ft. of $418.

PROJECTED IMPACTS

As shown in Table 8, the impact of Wal Mart alone in 2011 will reduce potential sales of trade area supermarkets as a whole by 10%. After 5 years of population growth, this amount is reduced to about a 5% impact. The cumulative effect of all planned new market entries will result in an approximate 20% drop in average sales potential. Factoring in population growth, we project that after five years the sales potential in the trade area will have been reduced by 15% from all cumulative projects.

The percentage change in sales at existing trade area supermarkets shown in Table 8 indicates the average impacts at all existing stores in the trade area and does not predict how individual stores will be impacted. Some stores may see little impact while others will experience steeper losses than average, depending on their market appeal, operational strength and their location relative to the planned new projects. Typically those supermarkets that are in close proximity to the planned new projects will experience higher than average impacts, as will those most similar in appeal to the new market entries or those that are already weak operators.

In order to predict impact on the individual stores around the site, we performed a geospatial analysis to project how grocery sales would be redistributed when additional new grocery square footage was added into the existing marketplace. Thus, based on a comparison of factors such as the travel distance and sales volume, we projected the amount of supermarket business that would be captured by each new entry and how that would impact sales at Nugget, Save Mart and Raley's.

The results of the geospatial projection of sales impacts are shown in Table 9.

Table 9 - Projected Impacts on Individual Stores
Wal Mart Project Alone / Cumulative Projects

	Nugget	Save Mart	Raley's
CURRENT MARKET			
Square Footage	52,000	62,100	61,000
Estimated Annual Sales	$17,000,000	$19,000,000	$20,000,000
Current Sales per Sq. Ft.	$327	$306	$328
YEAR 2011			
With Wal Mart Open			
Expected Impact	-17%	-10%	-9%
Resulting Annual Sales	$14,110,000	$17,100,000	$18,200,000
Resulting Sales per Sq. Ft.	$271	$275	$298
With Wal Mart & All Other Planned Supermarkets			
Expected Impact	-24%	-17%	-11%
Resulting Annual Sales	$12,920,000	$15,770,000	$17,800,000
Resulting Sales per Sq. Ft.	$248	$254	$292
YEAR 2016			
With Wal Mart Open			
Expected Impact	-9%	-5%	-5%
Resulting Annual Sales	$15,526,100	$18,031,000	$19,082,000
Resulting Sales per Sq. Ft.	$299	$290	$313
With Wal Mart & All Other Planned Supermarkets			
Expected Impact	-13%	-8%	-7%
Resulting Annual Sales	$14,766,030	$17,531,300	$18,608,600
Resulting Sales per Sq. Ft.	$284	$282	$305

Note: Future sales growth for all stores is proportionate to that projected in Table 8 on page 10.

STORES AT RISK OF CLOSURE

As indicated in Table 9, Nugget will be most impacted (-17% in 2011) by the proposed Wal Mart, since the Wal Mart store would be located only one mile away and would serve much of the same geographic area as Nugget. Save Mart (-10% in 2011) and Raley's (-9% in 2011) are comparable distances from the proposed Wal Mart but the operational appeal of Save Mart has slightly more overlap with Wal Mart than the more upscale Raley's operation.

Wal Mart alone would conservatively capture $6.7 million from Nugget, Save Mart and Raley's combined (30% of its total sales) while all cumulative projects would capture a combined $9.5 million from these stores (23% of their total sales).

Projected impacts from Wal Mart alone lower the sales per square foot performance of all three stores below $300 per square foot. This represents a level that is generally considered to put a store at significant risk of closure, with sales performance that is roughly 30% below the median for supermarkets in the Western U.S.A.

We believe that in the scenario with Wal Mart alone, there is a high likelihood that Nugget would be forced to close and some possibility that Save Mart would also close. Both stores would be operating at sales levels that are 35% below the median, but it is likely that Nugget has a newer lease than Save Mart and thus is more likely to have higher fixed costs of operation. Even after five years of population growth, both stores would still be below the threshold of $300/sq.ft. that normally represents a store on the edge of profitability. Thus they would have little incentive to hold on and wait for population growth to increase sales.

In the cumulative scenario, we believe that Nugget and Save Mart will close and that there is a slight chance that Raley's could also close. The two additional cumulative supermarket projects will impact the eastern portion of the trade area the most so Raley's will experience less direct impact from them than Nugget and Save Mart.

In Table 10, we have assigned estimated probabilities of existing stores closing:

Table 10
Probability of Store Closing

Store	With Wal Mart Alone	With All Planned Competitors
Nugget	75%	90%
Save Mart	65%	80%
Raley's	20%	30%

POTENTIAL FOR URBAN DECAY

Nugget, Save Mart and Raley's are all currently operating on the edge of profitability and expected impacts from Wal Mart and other projects will reduce their sales well below current levels. When this occurs, we anticipate that one to two stores will close as a result of either Wal Mart alone or Wal Mart and other planned supermarkets.

Given that population growth in the trade area has slowed dramatically as a result of the economy, these stores will have little incentive to wait for future population growth to rebuild lost sales. This also demonstrates a strong likelihood that other prospective tenants will be unlikely to re-lease this space. Therefore the resulting closed retail space is likely to remain so for an extended period of time. Since both Nugget and Save Mart are primary tenants in the shopping centers in which they are located, the ripple effect of closures will negatively impact the satellite stores as well, placing several entire shopping centers at risk of high vacancy.

Long-term vacancies are the single predictor of urban decay, especially when these vacancies consist of anchor stores in the shopping centers where they are located, acting as a draw for smaller tenants. For these reasons we believe either Wal Mart, or Wal Mart and other planned projects will create urban decay. In addition, even in the absence of urban decay, displacing existing supermarket anchors from existing neighborhood shopping centers changes the physical makeup and land use patterns of the community. Displacing existing close and convenient neighborhood retail - especially grocery retail - in favor of regional serving retail on the edge of development will significantly impact the value, and in turn maintenance of those existing neighborhoods which will become less desirable due to the lack of nearby shopping and services. This is a significant physical change which should be evaluated and mitigation proposed as applicable.

APPENDIX

Claritas Demographic and Income Profile

Bruceville & Whitelock, Elk Grove, CA

Area ID | **Description: 0-3 MILES**

Summary	2000	2009	2014	Annual Rate
Population	46,774	79,302	90,195	2.68%
Households	15,724	26,524	30,128	2.65%
Families	12,565	20,651	23,323	2.53%
Average Household Size	2.95	2.98	2.98	
Owner-occupied HUs	12,769	22,343	25,086	
Renter-occupied HUs	2,954	4,181	5,042	
Median Age	33.1	34.2	34.5	

	2000		2009		2014	
Households by Income	Number	Percent	Number	Percent	Number	Percent
<$15,000	794	5.0%	776	3.0%	794	2.7%
$15,000 - $24,999	777	4.9%	886	3.6%	733	2.6%
$25,000 - $34,999	1,169	7.4%	1,103	4.5%	812	3.0%
$35,000 - $49,999	2,442	15.5%	2,175	8.9%	1,621	5.9%
$50,000 - $74,999	4,366	27.6%	5,275	20.8%	4,788	16.6%
$75,000 - $99,999	2,927	18.5%	5,951	23.1%	5,848	20.0%
$100,000 - $149,999	2,550	16.1%	6,388	23.4%	8,174	26.6%
$150,000 - $199,999	466	3.0%	2,207	7.2%	4,019	12.4%
$200,000+	305	1.9%	1,763	5.6%	3,339	10.3%
Median Household Income	$64,683		$82,798		$102,016	
Average Household Income	$73,055		$103,885		$126,579	
Per Capita Income	$24,764		$35,366		$43,000	

	2000		2009		2014	
Population by	Number	Percent	Number	Percent	Number	Percent
0 - 4	3,917	8.4%	7,104	9.0%	8,074	9.0%
5 - 14	8,648	18.5%	13,556	17.2%	15,082	16.8%
15 - 19	3,561	7.6%	5,557	7.0%	6,300	7.0%
20 - 24	2,070	4.4%	3,779	4.8%	4,075	4.6%
25 - 34	6,663	14.2%	10,461	13.1%	12,153	13.4%
35 - 44	9,539	20.4%	13,997	18.1%	14,267	16.1%
45 - 54	6,390	13.7%	12,596	15.8%	14,812	16.3%
55 - 64	2,980	6.4%	7,260	8.9%	9,270	10.1%
65 - 74	1,755	3.8%	3,006	3.7%	3,835	4.2%
75 - 84	973	2.1%	1,469	1.8%	1,685	1.9%
85+	277	0.6%	516	0.6%	640	0.7%

	2000		2009		2014	
Race and Ethnicity	Number	Percent	Number	Percent	Number	Percent
White Alone	31,370	67.1%	43,989	56.5%	46,067	51.9%
Black Alone	3,344	7.1%	6,841	8.6%	7,916	8.7%
American Indian Alone	382	0.8%	524	0.7%	570	0.6%
Asian Alone	5,727	12.2%	13,386	16.5%	16,753	18.3%
Pacific Islander Alone	129	0.3%	273	0.3%	325	0.4%
Some Other Race Alone	2,603	5.6%	6,245	7.6%	8,045	8.7%
Two or More Races	3,221	6.9%	8,043	9.8%	10,518	11.4%
Hispanic Origin (Any Race)	6,513	13.9%	14,906	18.2%	19,091	20.7%

Source: ESRI, 2009 Estimates and Projections |

Attachment Urban Decay-2

Published Articles Cited in Response UD B.5.a.

Newsweek

The Urge to Splurge

Americans are spending again—whether they can afford to or not. So much for the 'New Austerity.'

by Stefan Theil (/authors/stefan-theil.html) **November 29, 2010**

Jeri Reichanadter / The Star Press-AP

Shoppers walk up New York's Fifth Avenue on Black Friday in 2009.

"No interest until 2014," read the massive red sign outside Big's Furniture in Henderson, Nev. It beckoned Diane Lewis to the store's year-end liquidation sale. "I had to pull in," she said as her sons frolicked on mattresses nearby. "We really need to get us a new bedroom set; their old one is kinda beat up. If we can get that financing deal, we can make it work." As with most in this hard-hit region, the economy hasn't been good to Lewis, whose husband just got a new job after being laid off for eight months.

They're two months behind on their mortgage, "but we're gonna catch up," and she figures the family probably owes about $20,000 on various credit cards. "I know I probably ought to wait a little longer," said Lewis, a hairdresser, "but this is a pretty good sale, so I think we might buy something if they'll approve us. I mean, 2014 is a long way off, you know?"

(/photo/2010/05/22/should-you-buy-that.html)

Justin Sullivan

Photos: Money Saving Answers to Every Day Spending Decisions

Quiz: Do You Really Want to Buy That? (/photo/2010/05/22/should-you-buy-that.html)

Old habits die hard. It was only last year that shell-shocked consumers were pledging their allegiance to the "New Frugality." Chastened by the brutal lessons of the worst economic downturn in decades, Americans swore off conspicuous consumption and resolved to embrace the thrifty ways of their grandparents who lived through the Great Depression. But as any dieter can tell you, resolutions are made to be broken.

Even as Americans are still struggling to meet mortgage payments, pay off credit cards, and replenish savings, they're also starting to spend again—whether they have the money or not. Last week, fresh numbers showed household spending rising for the fifth month in a row and consumer confidence reaching its highest level since June. Per capita retail sales are now back up to where they were in the fall of 2008, just before the collapse of Lehman Bros. tore the bottom out of the economy. If you factor out spending on cars, which is still 18 percent below its 2005 peak, Americans' total spending on goods and services has now passed pre-crisis highs.

"People are going through frugality fatigue," says Marshal Cohen, chief analyst at NPD Group, a market-research company. That's one reason retailers expect this holiday-shopping season to be the busiest since at least 2007, with a gain of 2.3 percent over last year's sales. Retailers are betting on pent-up demand for electronic gadgets, clothes, and luxury goods, not just the tightfisted bargain hunting that drove sales all during the downturn, says Cohen. Only 56 percent are offering heavy markdowns on their products, versus 96 percent a year ago.

It would be premature to herald the triumphant return of the American consumer as the engine of renewed economic growth, which is what

happened during the recoveries following the 1990 and 2001 recessions. There's still too much economic uncertainty—between unemployment that's nearly 10 percent, the rising cost of basics like medical bills and child care, and the renewed slide in home prices that began in recent weeks.

Video muted: click volume for sound Mark Fiore's 'Economic Fun Fair' The cartoonist on continued joblessness.

But neither are we witnessing the renaissance of the frugal American. Even though 89 percent of Americans tell Gallup they're watching their expenditures very closely, spending is heading back up anyway. "The story everybody wants to tell is that we've learned our lesson and will be thriftier going forward," says Karen Dynan, a household-finance economist at the Brookings Institution. "But I don't feel we have."

Yes, American households have pared their debt—from $12.5 trillion in 2008 to $11.6 trillion at the end of September, a drop of 7.6 percent. But the lion's share of the decline has come as a result of home foreclosures and defaults on credit-card debt—hardly an indicator of improved habits of personal finance. Yes, Americans are now putting away more money: 5.7 percent of disposable income, compared with just 0.8 percent in 2005. But that's already back down from 7.6 percent in early 2009, and still far below the 10 percent or more that Europeans and Asians save. Relative to income, debt is still near record levels, and twice as high per family as it was in the 1980s. If, as we've all been told, the nation's long-term economic health depends on boosting savings and paring debt—both at the personal and government level—then we haven't made very much headway. But how do we get back on course, or even agree on one? President Obama's fiscal commission set off a firestorm with its recent draft report proposing to eliminate the federal deficit by cutting entitlements and subsides while raising taxes. You can expect the controversy to flare up again when the final report is due out this week.

The truth is that spending may be hard to contain. Entire generations of consumers have grown up with the idea of instant gratification and the credit culture that comes with it. Ever since Henry Ford popularized the installment loan to sell his newly mass-produced cars, the idea of saving to buy something has nearly disappeared from the American financial vocabulary. "People change very slowly or not at all," says Claudiu Dimofte, a consumer-behavior professor at Georgetown University. "More often than not you just revert to your routine as soon as you get the chance." That's been the case for Harry Dugan, a respiratory therapist in Allamuchy, N.J. Dugan, 50, is underwater on his mortgage and has tried for two years now to be thrifty. But he's had a bit of a relapse, buying a $900 50-inch plasma TV and a $21,000 Toyota Prius. "It was an impulse buy," he says. "If I could go back, I'd get something cheaper."

The New Austerity is easier to talk about than it is to practice—and not just because Americans are hard-wired to buy stuff. For middle-class people already leveraged to the hilt and facing rising costs, where would they cut back? The mortgage is still due every month, as are the car payment, the doctor's bill, and the college tuition. Some of the biggest rises in consumer spending in 2010 have been on health care and education, hardly costs that can be slashed. And with all that money going out the door, how can a family even begin to squirrel away some cash? Five years ago, Crystal DiLuzio, 43, and her husband, Carmen, 50, had about $50,000 in their savings account, and they were easily able to meet the $1,300-a-month mortgage on their three-bedroom home in Wilmington, Dela. But things have gone downhill since then. Carmen lost his job and decided to get his trucking license, which cost $5,000, but the work he's landed since has paid considerably less than his old job. Crystal took a full-time job at an elementary school but then lost it last year, cutting the family's $50,000 income in half. Since the start of the recession, the DiLuzios have racked up more than $15,000 in debt—much of it from her husband's schooling and medical bills to treat their 9-year-old daughter's immune deficiency. They're looking at refinancing their mortgage in order to afford the monthly payments. "I don't put anything in savings anymore," says Crystal. "I don't even look at my bank statement. It's too stressful."

If anything, there's a rising class divide between savers and spenders. Upper-income confidence is rising fast. Luxury sales have jumped far above their crisis lows, if not yet to their pre-recession levels. In October, BMW's U.S. sales were up 17 percent over the same month in 2009, Porsche's up 61 percent, and Lexus's up 8 percent. Saks Fifth Avenue and Neiman Marcus reported sharp gains in October same-store sales of 8.1 and 11.5 percent, respectively, compared with the same month in 2009. Even plastic surgeons are seeing an uptick in nip-tuck. Park Avenue doctor Michael Fiorillo says clients who spent the last couple of years away from his office are now coming back to get work done. "People were really cutting back on the big stuff like face-lifts and nose jobs and doing the less expensive procedures like injectables and laser treatments," says Fiorillo. "Now I've personally noticed it's coming back. People are job hunting, and they want to look and feel better. I think that after such a long time of cutting back, many people are tired of depriving themselves."

It isn't just the rich who are indulging in a spending fix. Impatience with the painfully slow pace of economic recovery has, ironically, also sent some people who can least afford it back to the malls. "I keep waiting for things to get better and they just don't," says Maria Diaz, a 30-year-old cocktail waitress at a Las Vegas casino who was evicted from her apartment for not paying her rent in 2009 and is now living with her mother and stepfather. "After a while, I just decided, 'Screw it. I need some new clothes. I'm going to get them.' My mama's not happy, but I don't care. You stop spending and you stop living."

Although Americans have saved less, spent more, and racked up more debt than most Europeans or Asians, the urge to splurge isn't about innate cultural differences or moral turpitude. Habits of spending, saving, and credit are all about incentives, says Carmen Reinhart, a University of Maryland specialist on debt and financial crises. "When easy credit is given, it is usually taken," she says. Many of the practices that got Americans into trouble either don't exist or are expressly outlawed in most other countries, she says, including the home-equity loan, the zero-down mortgage, and the little-documented subprime mortgages that were targeted specifically at the poor. Those countries with similar "financial innovation" in lending, like Britain, also ended up with a U.S.-style credit bubble, along with a buy-now-pay-later consumer culture. In thrifty Germany, on the other hand, banks offer low-income households a "mortgage-savings contract" that combines a savings plan for a down payment with a follow-on mortgage. "People love to make moral judgments, but in countries where there is less access to credit, consumers save more to buy the things that they want," says Steve Blitz, chief economist at ITG research in New York. Before the viral spread of the home-equity loan, paying off a mortgage on a house—and having it all paid for after 30 years—was another way to save that's largely disappeared, says Richard Thaler, a behavioral economist at the University of Chicago. Some of these incentives are now beginning to change, following this year's legislation on Wall Street reform, including tighter lending standards and the establishment of the new Consumer Financial Protection Bureau.

What's more, America's tax code has massively promoted consumption and debt while punishing savings and investment, says David Rosenberg, chief economist at Gluskin Sheff. For most governments around the world, the biggest source of revenues is the consumption tax, while America puts a heavier burden on income. The home-mortgage-interest deduction, which most other countries have abandoned without damaging the rate of home ownership, literally rewards Americans for accumulating outsize debt. If some of these incentives aren't changed, then frugality will last only as long as the memory of the crisis, says Reinhart, whose ironically titled book *This Time Is Different* chronicles 250 credit bubbles and financial crises in economic history. If that history is any guide, she says, the next wave of easy credit will inevitably come—and inevitably lead to trouble.

If you believe that higher savings and a lower debt burden are the basis for a more stable economic future, then the to-do list for Washington

should be clear. Subsidies for racking up debt—such as the home-mortgage-interest deduction—need to be phased out, as the president's bipartisan deficit commission has proposed. (The phaseout would grandfather current mortgages.) Plans bogged down in Congress to create tax-free savings accounts need to be revived. Some taxation should be switched from income to consumption. Stricter underwriting and new bank limits on home-equity lines of credit should be cast into permanent regulation.

What goes for private households counts double for the government. Unless there is a credible game plan for Washington to cut the deficit, says Reinhart, consumers and businesses will remain nervous over future taxes and benefits. Resolving uncertainty over the public debt needn't mean immediate austerity that would risk plunging the U.S. economy back into recession but rather long-term moves, such as phasing in a higher retirement age and other curbs on entitlement spending. Ultimately—and most controversially—restoring consumer confidence may require fresh write-downs of bad lending. As long as there are still millions of Americans who clearly can't afford to repay their mortgages, as long as house prices continue to fall, and as long as all these bad loans remain on lenders' books, there will continue to be dead weight dragging down homeowners, the financial sector, and the economy at large. In past financial crises, it has been those countries that moved the fastest to clean up bad loans in their banks (like Sweden in the 1990s) that saw the quickest return to growth and consumer spending. Those that let zombie banks fester (most notoriously Japan) saw years, if not decades, of stagnation.

Until some of these things start to happen, there's limited comfort in knowing that consumers like Hope Good are helping to revive the retail sector. Before the recession, Good, who lives in Palm Beach, Fla., "had no problems buying 12 pairs of shoes at one time," dropping $400 a week on shopping and entertainment on a $33,000-a-year accountant's salary. In June 2009 she was laid off and had to take a lower-paying job, and so she started staying away from the mall and trying to reduce her $7,000-credit-card debt. But in August of this year, she got hired at a real-estate law firm, and her salary nearly doubled to $40,000. She has since gone on two vacations, to North Carolina and California, and is planning one to London for next year. She says she spends up to $300 a week on entertainment now. The shoe shopping is back, too. "I had been so frugal last year," she says. Did that year of frugality make her feel she needs to sock something away for a rainy day? "I am sure that if I wanted to save I could, but I feel like I am making more money, so let's have some fun," she says. Yes, spending is great fun, until the bill arrives. That's a lesson we've learned the hard way. Or maybe we haven't.

With William Underhill, R. M. Schneiderman, Joel Schectman, Steve Friess, Tara Weingarten, and Daniel Stone

MAY 16, 2011, 3:55 P.M. ET

Department Stores Are In Good Position After 1Q Resurgence

By Karen Talley
Of DOW JONES NEWSWIRES

NEW YORK (Dow Jones)--Department stores delivered in the first quarter, with their strong results reflecting initiatives, including more exclusive brands, that should aid them as the year progresses and conditions become more challenging.

The major midtier department chains all delivered solid earnings, with topline results showing their customers felt comfortable spending and their merchandise was compelling. While higher cotton costs and gasoline prices stand to weigh on upcoming results, department stores have positioned themselves well, analysts say.

"They have regained their footing as a place for customers," said John Long, retail strategist at Kurt Salmon. "That is certainly a positive going into what will likely to be a rocky period."

The major department stores, including Macy's Inc. (M), Kohl's Corp. (KSS), J.C. Penney (JCP) and Dillard's Inc. (DDS), are demonstrating a resurgence following the recession when some of them were forced to revamp their approach to selling. The group has emerged, in some cases, by putting a bigger focus on youth and wealthier customers. Their uniformly strong first-quarter results were issued ahead of teen and specialty retailers, many of which report this week and whose numbers may reflect dings from department stores, some analysts say.

Department stores have put more focus on younger customers by rolling out more exclusive lines, which are brands that only they carry and that often have designer or well-known names. Generally on the less expensive end are private label lines, which are the stores' own brands. Department stores also continue to carry a good deal of national brands, with the combination seen as offering something for everyone.

J.C. Penney is an example of a department store that has embraced exclusive merchandise in a big way, carrying the Liz Claiborne Inc. (LIZ) line and also continuing to set up in-store Sephora cosmetics departments. Penney is also expanding its MNG by Mango offering, which is a contemporary fashion line.

Exclusive lines are key to Penney's strategy, helping to boost overall store business, Penney Chief Executive Myron Ullman said Monday after the company posted a nearly 7% rise in first-quarter earnings.

Macy's, which reported very strong first-quarter earnings last week, is building business with exclusives and also its efforts to tailor merchandise and marketing to local tastes. The effort "has allowed Macy's to be more responsive and relevant than retailers that have approached selling only on a national level," Long said.

Macy's program is broad, "It's not merely about climate differences and income disparities between areas," Long said. "It's about brand preferences, sizing and ethnic configurations."

Department stores are also embracing online selling and, unlike specialty apparel retailers, benefit by being able to offer multiple brands and products. Department stores are in all facets of online marketing, and are clearly popular by at least one Internet measure. Kohl's Corp. has 4.5 million Facebook "likes." Macy's has 1.9 million and Penney has 1.7 million.

-By Karen Talley, Dow Jones Newswires; 212-416-2196; karen.talley@dowjones.com

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BUSINESS

DIY Stores Home Depot And Lowe's Make A Comeback

By MARILYN MUCH, INVESTOR'S BUSINESS DAILY
Posted 05/10/2011 03:11 PM ET

Plants and lawn care products have boosted home improvement chains' sales. So have big-ticket items like appliances. View Enlarged Image

After a two-year slump, top home improvement chains moved back onto the fast track last year as consumers began spending more freely on items to fix up their dwellings.

At No. 1 Home Depot (HD), profits have grown by double-digit rates the past five quarters. Rival Lowe's (LOW) has seen double-digit profit gains for three of the past five quarters.

Still, sales growth remains modest at single-digit rates for both firms. But at least they're growing again after a tough stretch. Wall Street Strategies analyst Brian Sozzi says sales of smaller-ticket items like plants and lawn care products did well throughout 2010. Sales of bigger-ticket items, like appliances, began to "move a little better" in the year's second half, amid pent-up demand for products like high-priced power tools.

In Home Depot's fourth-quarter conference call, CEO Frank Blake noted that "the overall picture is one of a stabilizing business."

Craig Menear, executive vice president for merchandising, said transactions to big-ticket items of $900 and above rose 9.4% in the fourth quarter, driven by sales of products like windows and appliances.

First-Quarter Results

Sozzi expects both companies to report solid results when they issue first-quarter reports in the coming days as they benefit from a "mildly improved" housing market and strong expense controls.

Analysts polled by Thomson Reuters peg Home Depot's first-quarter earnings at 50 cents a share, up 11% from a year earlier. For Lowe's, they forecast a 9% gain to 37 cents a share.

"The first-quarter bottom-line trends are surprisingly strong," Sozzi said. Consumers have "come back after a bad, harsh winter and looked for items to spruce up their homes."

Sozzi says he wouldn't be surprised if both Home Depot and Lowe's beat Wall Street forecasts for sales and earnings.

BMO Capital Markets analyst Wayne Hood looks for Home Depot's first-quarter same-store sales to rise 0.5% vs. a year earlier against a difficult comparison last year when those sales jumped 4.8%.

He expects Lowe's first-quarter same-store sales to be flat against last year's strong increase of 2.4%.

"Adverse weather likely stalled the sales of outdoor seasonal merchandise and lawn and garden" during the first quarter for both companies, Hood said via email.

Last year, he says, the favorable weather helped "facilitate" some of the first-quarter growth.

Sozzi says both Lowe's and Home Depot are getting a lift from internal efforts. Recognizing that market conditions would be more challenging, Home Depot closed stores and cut jobs.

It's also taken steps to become more efficient. That includes rolling out so-called rapid deployment centers that make it easier for stores to keep the right products in stock when customers need them. Large quantities of goods from suppliers flow into these facilities and are quickly sorted and distributed to various stores.

Lowe's has implemented a "go local" strategy, by which it tailors its assortments to each market it serves. The company also throws local market customer-appreciation events. It selects markets where it sees the opportunity to gain share and invites commercial customers to an event to showcase what it can offer them through product demonstrations from key vendors.

IBD classifies Tractor Supply (TSCO) as part of IBD's Retail-Wholesale Building Products industry group (along with Lowe's and Home Depot). But the company serves a different niche and customer base.

Tractor Supply is the largest retail farm and ranch chain in the U.S. Its customers are typically hobby farmers living one or two counties away from a city who have a garden, own land and a home, and keep animals, says spokesman Randy Guiler.

Tractor Supply also serves the maintenance needs of tradesmen and small businesses. Stores offer products like pet and small-animal products, hardware, truck accessories and tools.

The company has been on a roll with double-digit sales and earnings gains the past four quarters. In the first quarter reported April 20, earnings popped 85% to 24 cents a share, topping views. Sales grew 18% to $836.6 million. Same-store sales increased 10.7%.

"We continue to have strong traffic in our stores," Guiler said. "The primary driver is the continued strength of what we call consumable, usable and edible products."

These are products customers need to support their everyday rural lifestyle: animal feed, work clothes, pet supplies.

These categories have performed well over the past few years, says Guiler, and have driven new and current customers into the stores more frequently.

To improve business and drive repeated customer visits as the economy turned south in 2008, Tractor Supply shifted gears. It switched its focus from big-ticket discretionary items like riding lawn mowers for $2,000-$5,000 to a bigger mix of lower-priced items people purchase every day.

Pet Products

As a result, animal and pet products increased to 39% of 2010 sales from 33% in 2007, according to Guiler.

"They've done a great job of managing their merchandise mix," Hood says. "A bigger piece of their business is coming from pet and livestock food, and that creates some stability in traffic and that carried them through the downturn."

Analysts polled by Thomson Reuters expect the company to stay on the fast track. They see second-quarter earnings rising 16% to $1.19 a share, with full-year earnings climbing 22% to $2.75 a share.

"We're very confident in our business," Guiler said. "We'll continue to watch closely the overall macro (environment) and gas prices. "We feel very good about about our performance over the last three years, and getting new customers and customers visiting more frequently. We're very optimistic about the business and the future."

Hood calls the environment for Lowe's and Home Depot "stable."

"They will be able to produce what I describe as slight or modest same-store sales growth," he said, "absent another downturn in the economy or a sharp increase in unemployment."

Hood sees Home Depot's 2011 same-store sales rising 2.6% from 2010, against last year's 2.9% gain.

He expects Lowe's 2011 same-store sales to rise 1.1% against last year's 1.3% increase.

Bloomberg

Retail Sales Probably Climbed in April: U.S. Economy Preview

By Shobhana Chandra - May 8, 2011

Sales at U.S. retailers probably climbed in April, reinforcing evidence that employment gains are allowing Americans to weather higher fuel costs, economists said before reports this week.

The projected 0.6 percent gain in purchases would follow a 0.4 percent increase in March, according to the median forecast in a Bloomberg News survey ahead of Commerce Department figures May 12. Another report may show the cost of living increased.

Demand at chains including Limited Brands Inc. and Macy's Inc. (M) topped analysts' estimates last month as payrolls nationally increased more than projected. While mounting fuel and food costs are pinching household budgets, improving job prospects mean consumer spending, which accounts for about 70 percent of the economy, can keep growing.

"We're seeing a pretty resilient consumer, even with the headwinds from higher fuel prices," said Omair Sharif, an economist at RBS Securities Inc. in Stamford, Connecticut. "What's driving this is the pickup in employment. The labor market will continue to improve and sustain consumer spending."

The retail sales figures, which aren't adjusted for inflation, probably got a boost from receipts at service stations that reflected higher gasoline costs. Regular fuel averaged $3.81 a gallon in April, up from $3.54 the prior month. The price reached $3.99 on May 4, the highest since July 2008, according to AAA, the nation's biggest motoring organization.

Payrolls grew by 244,000 last month, the seventh straight monthly gain, after increasing a revised 221,000 the prior month, the Labor Department reported on May 6. Nonetheless, the jobless rate climbed to 9 percent, the first increase since November, a separate survey of households showed.

Same-Store Sales

More hiring helps explain the better-than-forecast retailer results for April. Sales at stores open at least a year rose 8.7 percent from the same month last year, the 20th straight gain, a report from Retail Metrics Inc. showed last week.

Limited, the Columbus, Ohio-based operator of Victoria's Secret, reported a 20 percent jump in same-store sales, almost double the average estimate of analysts compiled by Retail Metrics, which tracks more than two dozen U.S. chains. Sales at Cincinnati-based Macy's, the second-largest U.S. department store chain, rose 10.8 percent, also surpassing projections.

The Standard & Poor's Supercomposite Retailing Index has risen 3.7 percent from the end of March through May 6, outpacing the broader S&P 500, which advanced 1.1 percent.

Autos, Gasoline

The retail report may also show sales excluding automobiles and service stations rose 0.5 percent last month after rising 0.6 percent in March, economists said.

Industrywide light-vehicle sales ran at a seasonally adjusted annual rate of 13.2 million in April, topping the 13 million pace for the third straight month, according to researcher Autodata Corp. Detroit-based General Motors Co. (GM)'s U.S. deliveries jumped 26 percent, while Dearborn, Michigan- based Ford Motor Co. (F) had a 13 percent gain.

"We continue to believe that the economy will stay on the current steady recovery course," Don Johnson, GM's vice president of U.S. sales operations, said on a May 3 conference call.

Labor Department figures due May 13 may show the cost of living index rose 0.4 percent in April after a 0.5 percent gain the prior month, and was up 3.1 percent from April 2010, according to the Bloomberg survey median. Core prices, which exclude volatile food and fuel, may have climbed 0.2 percent in April from a month earlier.

The consumer-price index is the broadest of three monthly price gauges the Labor Department releases. Figures earlier in the week may show wholesale prices and the cost of goods imported into the U.S. also rose in April.

Confidence Stagnant

Bigger grocery and fuel bills are limiting confidence. The Thomson Reuters/University of Michigan preliminary index of consumer sentiment rose to 70 in May from 69.8 in April, according to the Bloomberg survey median ahead of the May 13 report.

Federal Reserve Chairman Ben S. Bernanke and his chief deputies have said in recent speeches that the threat from accelerating prices will prove

"transitory."

"The broader economy is in a moderate recovery, and we have recently seen some welcome, if gradual, improvement in the labor market," Bernanke said in an April 29 speech in Arlington, Virginia.

Also this week, Commerce Department figures may show the trade deficit widened in March from the prior month, reflecting costlier oil imports, according to the Bloomberg survey median.

Bloomberg Survey

Indicator	Release Date	Period	Prior Value	Median Forecast
Import Prices MOM%	5/10	April	2.7%	1.8%
Trade Balance $ Blns	5/11	March	-45.8	-47.0
Retail Sales MOM%	5/12	April	0.4%	0.6%
Retail ex-autos MOM%	5/12	April	0.8%	0.6%
Retail exauto/gas MOM%	5/12	April	0.6%	0.5%
PPI MOM%	5/12	April	0.7%	0.6%
Core PPI MOM%	5/12	April	0.3%	0.2%
PPI YOY%	5/12	April	5.8%	6.5%
Core PPI YOY%	5/12	April	1.9%	2.1%
Initial Claims ,000's	5/12	7-May	474	420
CPI MOM%	5/13	April	0.5%	0.4%
Core CPI MOM%	5/13	April	0.1%	0.2%
CPI YOY%	5/13	April	2.7%	3.1%
Core CPI YOY%	5/13	April	1.2%	1.3%
U of Mich Conf. Index	5/13	May P	69.8	70.0

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SCT News

Consumers spending, retailers growing, conference told

In his industry update speech Thursday, William Taubman, ICSC chairman and chief operating officer of Taubman Centers, said shoppers "have had enough of frugality and are starting to spend again. The recovery by the upscale side of the business has been outstanding." While much of retail's recovery has been pinned on the fate of the still-struggling housing market, Taubman stressed that 10 percent of this country's consumers accounts for 50 percent of its retail spending. "That group is impacted by the stock market, which has been doing well," he said.

Mall sales were up 5.6 percent in 2010, "but it was not so good for open-air centers," he said. Supermarkets struggled in 2011 with a modest 1.8 percent sales increase, he noted.

Taubmann said the financial ills of Borders Books will force the industry to further address the challenges of too-large superstores and multiple competing sales channels. "You are going to see changes across the board on store size, configuration and number of units," he said. "But brands won't go away. They are alive and consumers will continue to support them."

Meanwhile, retailers spoke more optimistically about growth plans at the Dallas meeting than they did at the past few Open Air Conference meetings. David Zoba, senior vice president of real estate for Gap Inc., said the retailer's concepts will continue to grow, but more internationally than domestically. Gap Inc. plans up to 100 stores internationally, mostly in China and Italy, he said. "In fact, two of our stores in Milan — a Banana Republic and Gap — may be our top performers in the world." Gap's active-wear concept, Athleta, which debuted in 2010 in San Francisco, will expand to 25 total stores in the next year, Zoba said.

Target Corp. will open 21 U.S. stores this year and about the same number in 2012, said Scott Nelson, senior vice president of real estate for Target. Several of those units will be constructed using an urban format of less than 100,000 square feet.

J. Crew will open 12 Madewell stores, a new concept specializing in young women's clothing, by year-end 2011, said Holly Cohen, senior vice president of planning and construction. It will also expand its men's selections at existing stores, she said.

Seth Geldzahler, vice president of real estate for Bed, Bath & Beyond, said there are abundant opportunities for growth in the retailer's existing stores and online, "but not on the real estate side. We are not going to grow for the sake of growing."

Compiled by the staff of *Shopping Centers Today*.

CNBC.com

Plans for Tax Refund Checks Hint at Better Mood

TAX REFUNDS, INCOME TAXES, APRIL 15, NATIONAL RETAIL FEDERATION, NRF, CONSUMER, ECONOMY, STORES, SHOPPING, SPENDING, CONSUMER PRODUCTS
Posted By: Christina Cheddar Berk | News Editor
CNBC.com| 22 Feb 2011 | 12:09 PM ET

As **consumer confidence rises to a three-year high**, the National Retail Federation offers yet another sign of a more upbeat consumer.

The retail industry trade group is out with a survey that says more Americans are planning to splurge a little if they receive a tax refund this year.

About 13.2 percent of Americans said they will spend their refund on a big ticket item such as a television set or furniture, up from 12.5 percent last year.

About 11.9 percent are earmarking the money for a vacation, compared with 10.0 percent last year who eyed a trip.

About 29.7 percent of Americans say they will use the money on everyday items. That's also higher than last year, when 28.8 percent of those surveyed said the money would be spent on day-to-day expenses.

"Despite the difficult unemployment situation across the country, Americans receiving a tax refund this year seem eager to plough this money back into the economy," said NRF President and CEO Matthew Shay. "With sales momentum continuing to build, NRF is becoming more bullish about the economic recovery."

Still, there are a good number of people who will be squirreling their tax refunds away for a rainy day. About 42.1 percent of those surveyed by BIGresearch — who did the survery for NRF — said they would put their refund in savings. That's also higher than last year, when 40.3 percent said they would save it.

Fewer people will take the money and pay off debt. About 41.9 percent said that's where their refund money would go, compared with last year when 43.9 percent said debt reduction was the plan.

The economic boost from tax refunds should be felt soon. According to the survey, 63.9 percent of Americans will have filed their taxes by the end of February, meaning that some returns have already been received or are on their way.

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GLOBAL ECONOMICS May 12, 2011, 5:00PM EST

Kids Moving Out Are a Boon to the Economy

As employment picks up, more young people are setting up house. That's lifting consumer spending

By Steve Matthews

Shelby Webb rented her first apartment on Apr. 9 after landing a job translating ads for a Spanish-language newspaper in Chattanooga. About the same time, 24-year-old Anna Stokkebye, who was hired full-time in January as a website designer, closed on a $155,000 two-bedroom condominium in Charlotte. Both left their parents' homes to move into their new digs. "I love my parents, but I didn't want to live with them anymore," says Webb, 22.

The two women are at the forefront of a trend that could help boost consumer spending and lift housing out of the funk it's been in for the past four years. During the recession, millions of young people moved back in with their parents or delayed leaving them because they couldn't find jobs. As employment picks up, more of them will strike out on their own—forming a "household," in demographic parlance, and creating demand for housing and a broad range of consumer goods.

About 20 million adult children in the U.S. live with their parents, and most are eager to move, says Peter Francese, a demographic analyst for advertising agency Ogilvy & Mather. "Most guys who live at home beyond some young age walk around with a great big 'L' [for "loser"] on their forehead," Francese says. "As more young people feel they will be able to keep a job, bingo, they're gone."

This year, nearly 1 million new households will be created, UBS Securities (UBS) predicts, up from the 357,000 in the year ended March 2010, the lowest number for a 12-month period on record since the Census Bureau started tracking household starts in 1960. New households will help increase housing starts to about 648,000 this year and to nearly 900,000 in 2012, vs. 586,800 last year, estimates researcher Metrostudy. U.S. household formation in the three years ended March 2010 was roughly 40 percent of the long-term average, or about 500,000 annually, according to Census data. "Household-formation rates are already tipping back upward" as job gains allow some people "to spread out," says Brad Hunter, Metrostudy's chief economist. "The demographic component of housing demand is strong; it's just the economic and psychological components that are holding things back."

When people move into a new home, they tend to spend. A typical new renter spends $600 to $1,900 on furniture, appliances, and other stuff related to setting up housekeeping in the first six months, says C. Britt Beemer, chairman of America's Research Group in Charleston, S.C. Although Webb bought most of her furniture and a washer-dryer combo at yard sales or from classified ads, she did lay out some cash at Wal-Mart for new housewares. And Stokkebye has bought several hundred dollars' worth of paint, tools, dishes, and other supplies. "I just cleaned out Ikea on Sunday," she says.

A Bloomberg survey of 59 economists in early April predicts that consumer spending will rise 2.8 percent both this year and next, vs. an average of 1.8 percent in the last eight quarters. Jim O'Sullivan, chief economist at MF Global Holdings in New York, is more bullish, predicting increases of 3.2 percent for 2011 and 3.4 percent next year. Young people leaving their parents' homes "have the ability to spend, and they spend on all of the things associated with setting up a household," O'Sullivan says.

Another demographic shift should play a role as well: more divorces, which also create new households. The number of divorces dropped to 6.8 per 1,000 people in 2009 from 7.4 in 2006, prior to the recession, government figures show. A survey this year by the National Marriage Project at the University of Virginia found that 38 percent of people considering a divorce or separation put aside those plans because of the recession. St. Louis-based divorce-law specialist Cordell & Cordell says its customer count rose by about 20 percent in the first quarter. "We see things moving in a positive direction, from our perspective," says principal partner Joseph E. Cordell.

The bottom line: *Some young adults are finally leaving the nest and creating new households, spending up to $1,900 on furnishings.*

Matthews is a reporter for Bloomberg News.

MITIGATION MONITORING AND REPORTING PROGRAM

VISALIA WALMART EXPANSION

EAST NOBLE AVENUE
VISALIA, CALIFORNIA

JUNE 16, 2011

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
B. GEOLOGY AND SOILS					
B1.	Seismic Ground Shaking. Prior to the issuance of grading permits, the project applicant shall provide documentation to the City of Visalia demonstrating that all project structures are designed in accordance with the seismic design criteria of the California Building Code. The project applicant shall also implement all recommendations of the project geotechnical engineer with respect to grading, soil preparation, building foundation design, pavement design, excavations, and other construction considerations.	Developer and construction contractor.	City of Visalia, Community Development Department, Building Safety Division; Engineering Department, Development Services Division.	Verify that project plans/ specifications comply with seismic requirements of CBC and recommendations of geo-technical engineer. Conduct compliance inspections.	Prior to issuance of grading permits. During grading and construction.
B2.	Seismic Settlement. If subsequent geotechnical studies indicate unacceptable levels of potential seismic settlement, potential damage resulting from such settlements shall be minimized by implementing recommendations of the geotechnical engineer, and may include removal of soils from below the bottom of footings and replacement of the soils with engineered fill, or other measures as recommended by the geotechnical engineer.	Developer and construction contractor.	City of Visalia, Community Development Department, Building Safety Division; Engineering Department, Development Services Division.	Verify that project plans and specifications comply with recommendations of geo-technical engineer. Conduct compliance inspections.	Prior to issuance of grading permits. During grading and construction.
B3.	Expansive Soils. If subsequent project-specific geotechnical studies indicate the presence of expansive soils, the potential for damage due to soils expansion shall be minimized by implementing recommendations of the geotechnical engineer, and may include extending foundations below the zone of shrink and swell and providing non-expansive fill below slabs, or chemically treating the soils with quicklime, or other measures as may be recommended by the geotechnical engineer.	Developer and construction contractor.	City of Visalia, Community Development Department, Building Safety Division; Engineering Department, Development Services Division.	Verify that project plans and specifications comply with recommendations of geo-technical engineer. Conduct compliance inspections.	Prior to issuance of grading permits. During grading and construction.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
B. GEOLOGY AND SOILS (CONT'D)					
B4.	Soil Corrosivity. Potential damage to underground steel structures due to highly corrosive soils to steel shall be minimized by implementing recommendations of the geotechnical engineer, and may include the use of corrosion resistant materials, coatings, and cathodic protection for buried steel.	Developer and construction contractor.	City of Visalia, Community Development Department, Building Safety Division; Engineering Department, Development Services Division.	Verify that project plans and specifications comply with recommendations of geo-technical engineer. Conduct compliance inspections.	Prior to issuance of grading permits. During grading and construction.
C. HYDROLOGY AND WATER QUALITY					
C3.	Construction-Related Impacts to Water Quality. A comprehensive erosion control and water pollution prevention program shall be carried out during site clearing, grading, and construction. This program shall follow the detailed Best Management Practices (BMPs) specified in the Storm Water Pollution Prevention Plan (SWPPP) for the project to provide for runoff and sediment control, soil stabilization, protection of storm drains and sensitive areas, and other storm drainage control measures to be specified in the SWPPP. The SWPPP shall be prepared by the applicant and implemented and complied with during and after project grading and construction, as required under State law.	Developer and construction contractor.	City of Visalia, Engineering Department, Development Services Division.	Verify completion of an adequate SWPPP for project. Conduct compliance inspections during construction.	Prior to issuance of grading, demolition, and building permits. During grading and construction.

MITIGATION MONITORING AND REPORTING

	Mitigation Measure	Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
D. BIOLOGICAL RESOURCES					
D3.	Disturbance to Native Wildlife Nursery Sites. The following measures shall be implemented to avoid any impacts to active raptor (e.g., hawks, falcons, etc.) nests: • If possible, trees planned for removal should be removed during the non-breeding season (September 1 through January 31). However, if it is not possible to avoid such disturbance during the breeding season (February 1 through August 31), a qualified ornithologist shall conduct a pre-construction survey for tree-nesting raptors in all trees on and adjacent to the project site within 30 days of the onset of ground disturbance, if such disturbance will occur during the breeding season (February 1 through August 31). If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (up to 250 feet) will be determined at that time and may vary depending on location and species. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents. Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors, as they are expected to abandon their roosts during construction.	Developer	City of Visalia, Community Development Department, Planning Division; Engineering Department, Development Services Division.	Verify completion of pre-construction surveys. If active nests are found, verify implementat-ion of specified mitigation measures.	Prior to issuance of grading permit.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
E. CULTURAL RESOURCES					
E1.	<u>Disturbance to Buried Archaeological Resources.</u> Implementation of the following measures will mitigate any potential impacts to archaeological resources. • If any prehistoric or historic artifacts, or other indications of archaeological resources are found once project construction is underway, all work within 25 feet of the find must stop and the City shall be immediately notified. An archaeologist meeting the Secretary of Interior's Professional Qualifications Standards in prehistoric or historical archaeology, as appropriate, shall be retained to evaluate the find and recommend appropriate mitigation measures for the discovered cultural resources. Mitigation for historic and prehistoric materials may include monitoring combined with data retrieval, or may require a program of hand excavation to record and/or remove materials for further analysis. • If human remains are discovered, all work must stop in the immediate vicinity of the find, and the Tulare County Coroner must be notified, according to Section 7050.5 of California's Health and Safety Code. If the remains are determined to be Native American, the coroner will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.	Developer and construction contractor.	City of Visalia, Community Development Department, Planning Division.	Approve selection of archaeologist and review field protocols to be provided by archaeologist. Supply contractors with contact information for city staff and archaeologist to call if resources found. If suspected artifacts or burials are encountered, suspend work within specified distance of find/burial until all statutory requirements have been fulfilled, as determined by the Community Development Director in consultation with the archaeologist.	Prior to issuance of grading permits. During grading and construction.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
E. CULTURAL RESOURCES (CONT'D)					
E1.	<u>Disturbance to Paleontological Resources.</u> Implementation of the following measure will mitigate any potential impacts to paleontological resources. • In the event any paleontological resources are exposed or discovered during subsurface construction, ground-disturbing operations shall stop within 25 feet of the find and a qualified professional paleontologist, as recognized by the Museum of Paleontology at U.C. Berkeley, shall be contacted for evaluation and further recommendations. Treatment sufficient to reduce the impact to paleontological resources shall be implemented as determined in coordination with the City of Visalia Community Development Department.	Developer and construction contractor.	City of Visalia, Community Development Department, Planning Division.	Approve selection of paleontologist. Supply contractors with contact information for city staff and paleontologist to call if resources found. If and when suspected fossils are encountered, suspend work within specified distance of find until any paleontological resources have been properly removed, as determined by the Community Development Director in consultation with the paleontologist.	Prior to issuance of grading permits. During grading and construction.

MITIGATION MONITORING AND REPORTING

	Mitigation Measure	Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION					
G1.	Near-Term (2010) plus Project – Mineral King Avenue at SR-198 Westbound Ramps (Near Ben Maddox Way. Prior to the City's issuance of the project building permit, the applicant shall install stop control on Mineral King Avenue to make the intersection of Mineral King Avenue at SR-198 Westbound Ramps (near Ben Maddox Way) operate as an all-way (3-way) stop-controlled intersection. The installation of the all-way stop fully mitigates the project impacts to this intersection. Since this intersection is not included in the TIF program or other local funding programs, the applicant will be responsible for installation of the mitigation. Although the all-way stop control will fully mitigate the project impact under CEQA, the signal warrant analysis indicated that signalization of this intersection is warranted. Because the project does not trigger the impact but adds to the unacceptable operation, the project shall only be responsible for a proportionate share of the signal installation costs. The project's equitable share is 3.5 percent based on the Caltrans methodology contained in their *Guide for the Preparation of Traffic Impact Studies*, as set forth in the EIR's traffic study.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify installation of stop controls. Verify payment of fair share cost of signal installation.	Prior to issuance of building permit.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G2.	Near-Term (2010) plus Project – Mineral King Avenue at Lovers Lane. Prior to the City's issuance of the Certificate of Occupancy for the project, the applicant shall construct an exclusive northbound right turn lane and also restripe the existing northbound through-shared-right lane to a through lane at the intersection of Mineral King Avenue and Lovers Lane, subject to Caltrans' design review and approval. The project's equitable share of the improvement cost is 0.5 percent based on the Caltrans methodology contained in their *Guide for the Preparation of Traffic Impact Studies*. The applicant shall be reimbursed by the City for costs beyond its fair share amount of 0.5 percent. Prior to the issuance of the project building permit, the applicant and City of Visalia shall enter an agreement to reimburse the applicant for improvement costs that exceed the project's fair share amount.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify execution of reimbursement agreement. Verify completion of intersection improvements.	Prior to issuance of building permit. Prior to opening day of project.
G3.	Near-Term (2010) plus Project – Noble Avenue at Ben Maddox Way. Prior to the City's issuance of the project building permit, the applicant shall pay the City $10,000, the amount the City determined is required to modify the signal phasing such that the southbound left turn split movement at this location is increased by 10 seconds. The City shall implement the signal phasing modification prior to the opening day of the project.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. Prior to opening day of project.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G4.	Near-Term (2010) plus Project – Noble Avenue at East Project Driveway. Prior to the City's issuance of the project building permit, the applicant shall pay the City $10,000, the amount the City determined is required to optimize cycle length of the signal timing during the PM peak hour at this location, with the signal optimization to be completed prior to opening day of the project.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. Prior to opening day of project.
G5.	Near-Term (2015) plus Project – Noble Avenue at Ben Maddox Way. Prior to the City's issuance of the project building permit, the applicant shall pay the City the funds necessary for the City to optimize the signal timing during the PM peak hour at this location, or to make other improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, at the time the City determines the signal timing optimization (or other equivalent improvements) is warranted, based upon the City's assessment of traffic conditions resulting from future development and project growth, and the corresponding need for restriping or equivalent improvements, but in no event later than 2015. The funds shall represent the present cost to optimize the signal timing at this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $12,000.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2015.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G6.	Near-Term (2015) plus Project – Noble Avenue at Lovers Lane. Prior to the City's issuance of the Certificate of Occupancy for the project, the applicant shall construct a northbound through-shared-right lane and remove the northbound right turn lane at the Noble Avenue/Lovers Lane intersection. The project's equitable share of the improvement cost is 7.1 percent, based on the Caltrans methodology contained in their *Guide for the Preparation of Traffic Impact Studies* as set forth in the traffic study included in the EIR. Prior to the issuance of the project building permit, the applicant and City of Visalia shall enter an agreement for reimbursement of the costs the applicant incurred in constructing the improvements that exceeded the project's fair share amount.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify execution of reimbursement agreement. Verify completion of intersection improvements.	Prior to issuance of building permit. Prior to issuance of Certificate of Occupancy.
G7.	Near-Term (2015) plus Project – Lovers Lane at SR-198 Eastbound Ramps. Prior to the City's issuance of the Certificate of Occupancy for the project, the applicant shall construct a third northbound through lane at the intersection of Lovers Lane and the SR-198 Eastbound Ramps, subject to Caltrans' design review and approval. The project's equitable share of the improvement cost is 1.2 percent based on the Caltrans methodology contained in their *Guide for the Preparation of Traffic Impact Studies*. Prior to the issuance of the project building permit, the applicant and City of Visalia shall enter an agreement to reimburse the applicant for improvement costs that exceed the project's fair share amount.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify execution of reimbursement agreement. Verify completion of intersection improvements.	Prior to issuance of building permit. Prior to issuance of Certificate of Occupancy.

MITIGATION MONITORING AND REPORTING

	Mitigation Measure	Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G8.	Far-Term (2030) plus Project – Mineral King Avenue at Ben Maddox Way. Prior to the City's issuance of the project building permit, the applicant shall pay the City the funds necessary for the City to optimize the signal timing during the PM peak hour at this location, or to make other improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, subject to Caltrans' design review and approval, at the time the City determines the signal timing optimization (or other equivalent improvements) is warranted but in no event later than 2030. This determination shall be based upon the City's assessment of traffic conditions resulting from future development and growth, and the corresponding need for signal optimization (or equivalent improvements). The funds shall represent the present cost to optimize the signal timing at this intersection ($10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G9.	Far-Term (2030) plus Project – Mineral King Avenue at Lovers Lane. Prior to the City's issuance of the project building permit, the applicant shall pay the City funds necessary for the City to restripe the eastbound approach at the Mineral King Avenue/Lovers Lane intersection to modify the existing through-shared-right lane to become a through lane and a right lane, or undertake improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, at the time the City determines the restriping or other equivalent improvements are warranted, based upon the City's assessment of traffic conditions resulting from future development and project growth and the corresponding need for restriping (or equivalent improvements), but in event later than 2030. The funds shall represent the present cost to restripe this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds ~~fair share cost~~. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G10.	Far-Term (2030) plus Project – Noble Avenue at SR-198 Eastbound Ramps (near Ben Maddox Way). Prior to the City's issuance of the project building permit, the applicant shall pay the City the funds necessary to optimize the cycle length in the signal timing at this location during the PM peak hour, or undertake equivalent improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location subject to Caltrans' design review and approval, at the time the City determines the signal timing optimization (or other equivalent improvements are warranted), based upon the City's assessment of traffic conditions resulting from future development and project growth and the corresponding need for restriping or equivalent improvements, but in event later than by 2030. The funds shall represent the present cost to optimize signal timing at this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G11.	Far-Term (2030) plus Project – Noble Avenue at Pinkham Street. Prior to the City's issuance of the project building permit, the applicant shall contribute the required project fees to the TIF Program to provide the City with the revenue needed to signalize the intersection, or undertake equivalent improvements to mitigate intersection deficiencies at this location by 2030. The City shall be solely responsible to implement these improvements in a time sufficient to mitigate these project impacts using TIF Program revenue.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of fees to TIF Program. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G12.	Far-Term (2030) plus Project – Noble Avenue at Lovers Lane. Prior to the City's issuance of the project building permit, the applicant shall pay the City the funds necessary for the City to restripe the eastbound through-shared-right lane to a through lane and a right turn lane at the Noble Avenue/Lovers Lane intersection, or undertake equivalent improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, at the time the City determines the restriping or other equivalent improvements are warranted, based upon the City's assessment of traffic conditions resulting from future development and project growth and the corresponding need for restriping or equivalent improvements, but in event later than by 2030, subject to Caltrans' design review and approval. The funds shall represent the present cost to restripe this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds ~~fair share cost~~. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G13.	Far-Term (2030) plus Project – Lovers Lane at SR-198 Eastbound Ramps. Prior to the City's issuance of the project building permit, the applicant shall pay the City the funds necessary for the City to restripe the eastbound all-shared lane to a through-shared-right lane at the intersection of Lovers Lane and the SR-198 Eastbound Ramps, or undertake equivalent improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, at the time the City determines the restriping or other equivalent improvements are warranted, based upon the City's assessment of traffic conditions resulting from future development and project growth and the corresponding need for restriping or equivalent improvements, but in event later than by 2030, subject to Caltrans' design review and approval. The funds shall represent the present cost to restripe this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds ~~fair share cost~~. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G14.	Far-Term (2030) plus Project – Tulare Avenue at Pinkham Street. Prior to the City's issuance of the project building permit, the applicant shall contribute the required project fees to the City's TIF Program to provide the City with the revenue needed to install a signal at this location, or undertake equivalent improvements to mitigate intersection deficiencies at this location by 2030. The City shall be solely responsible to implement these improvements in a time sufficient to mitigate these project impacts using TIF Program revenue.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of fees to TIF Program. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G15.	Far-Term (2030) plus Project – Court Street at Acequia Avenue. Prior to the City's issuance of the project building permit, the applicant shall pay the funds necessary for the City to optimize the intersection signal timing at this location during the PM peak-hour, or undertake equivalent improvements that the City has determined to be equally able to mitigate the project-related intersection deficiencies identified in the EIR at this location, at the time the City determines the signal timing optimization or other equivalent improvements are warranted, based upon the City's assessment of traffic conditions resulting from future development and project growth and the corresponding need for restriping or equivalent improvements, but in event later than by 2030, subject to Caltrans' design review and approval. The funds shall represent the present cost to optimize signal timing at this intersection (approximately $10,000) with an inflationary adjustment that brings the total amount to be paid to $16,500..	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G16.	Far-Term (2030) plus Project – Court Street at Mineral King Avenue. Prior to the City's issuance of the project building permit, the applicant shall contribute the funds needed, as determined by the City, to optimize the intersection signal timing at this location during the AM peak-hour, or undertake equivalent improvements to mitigate intersection deficiencies at this location by 2030. The City shall be solely responsible to implement these improvements in a time sufficient to mitigate the project impacts.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G17.	Far-Term (2030) plus Project – Court Street at Noble Avenue. Prior to the City's issuance of the project building permit, the applicant shall contribute the funds needed, as determined by the City, to optimize the intersection signal timing at this location during the PM peak-hour, or undertake equivalent improvements to mitigate intersection deficiencies at this location by 2030. The City shall be solely responsible to implement these improvements in a time sufficient to mitigate the project impacts.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.
G18.	Far-Term (2030) plus Project – Noble Avenue at Ben Maddox Way. Prior to the City's issuance of the project building permit, the applicant shall contribute the funds needed, as determined by the City, to optimize the cycle length in the signal timing at this location during the AM peak-hour, or undertake equivalent improvements to mitigate intersection deficiencies at this location by 2030. The City shall be solely responsible to implement these improvements in a time sufficient to mitigate the project impacts.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify payment of improvement funds. Verify completion of intersection improvements.	Prior to issuance of building permit. By 2030.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
G. TRAFFIC AND CIRCULATION (CONT'D)					
G19.	Construction Traffic – Hazards. Prior to the issuance of grading permits for the project, the applicant shall prepare a traffic control plan for construction and shall obtain approval from the Engineering Division for implementation of such a plan. The traffic control plan shall be prepared in accordance with the traffic control provisions of the City of Visalia Standard Specifications and Engineering Improvement Standards and shall include final information about times of construction, the haul routes, delivery times for heavy equipment, and any other particulars as required by the City.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify preparation and City approval of traffic control plan. Verify inclusion of approved traffic control plan in construction contract documents for project. Verify implementation of traffic control plan.	Prior to issuance of demolition and grading permits. During grading and construction.
G20.	Construction Traffic – Level of Service Impacts. Prior to the commencement of project demolition, grading, and construction activity, the applicant shall install 3-way stop control at this intersection, as specified in Mitigation G1 above.	Developer.	City of Visalia, Engineering Department, Development Services Division.	Verify installation of stop controls.	Prior to issuance of demolition and grading permits.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
H. NOISE					
H3.	Noise from Project Activity. The following measures shall be implemented to achieve project operational noise levels that are in conformance with applicable City noise criteria and standards: *Delivery, Loading, and Parking Lot Noise* There are two distinct sets of mitigation measures available to reduce noise generated by delivery trucks, TRUs, and parking lot activity. The selection of one of these sets of measures is required reduce the project delivery, loading, and parking lot noise impacts to less-than-significant levels and ensure that resulting noise levels are kept within the applicable City noise standards. The two sets of mitigation options are as follows: Mitigation Option 1 – Restricted Hours and Locations of Delivery, Loading, and Parking Lot Activity • Truck circulation shall be prohibited within 200 feet of the east boundary of the project site between the hours of 7:00 p.m. and 6:00 a.m. Trucks shall be routed to the loading dock area along the third parking drive aisle from the east project boundary. Delivery truck drivers shall be directed to follow the nighttime delivery route by temporary directional signs to be posted along the truck circulation route. (Continued on next page.)	Developer.	City of Visalia, Community Development Department, Planning Division, and Building Safety Division; Engineering Department, Development Services Division.	Verify completion of noise wall.	Prior to opening day of project.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
H. NOISE (CONT'D)					
H3.	(Continued from preceding page.) • Parking of vehicles and parking area cleaning shall be prohibited within 100 feet of the east boundary of the site, between the hours of 7:00 p.m. and 6:00 a.m. Entry of vehicles to the restricted parking area shall be blocked during the evening and nighttime hours by cones or similar means. <u>Mitigation Option 2 – Increase the Height of Planned Masonry Walls Along the Eastern Project Boundary</u> • The 8-foot high masonry block wall planned along the eastern project boundary shall be increased in height to a planned height of 15 feet along the northerly 450 feet of this wall. [Note: Mitigation Option 2 has been adopted by the applicant and incorporated into the project plans. However, instead of raising the wall on the east project boundary, a new soundwall meeting the above specifications is planned to be located 15 feet inboard of the existing boundary wall.]	Developer.	City of Visalia, Community Development Department, Planning Division, and Building Safety Division; Engineering Department, Development Services Division.	Verify completion of noise wall.	Prior to opening day of project.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
H. NOISE (CONT'D)					
H4.	Construction Noise. The following measures shall be implemented to reduce project construction noise to the extent feasible: • In accordance with the City's Municipal Code, construction activities shall be limited to weekdays between 6:00 am to 7:00 pm, and weekend days between 9:00 a.m. and 7:00 p.m. • The permanent noise barriers proposed along the south and east boundaries of the site shall be constructed prior to engaging in any site development activities, including site clearing, demolition, building expansion and remodeling, and parking area expansion, reconstruction or rehabilitation. If this is not feasible, temporary noise barriers (minimum 10-feet high) shall be erected at the start of construction activities to shield heavy construction areas from adjacent residential receptors. The temporary noise barriers shall either be constructed of a minimum 0.5-inch plywood (without holes or gaps) or utilize acoustical blankets with a minimum Sound Transmission Class of 12. The temporary barriers shall remain in place until all exterior construction activity is completed. • All equipment driven by internal combustion engines shall be equipped with mufflers which are in good condition and appropriate for the equipment. • The construction contractor shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. • Unnecessary idling of internal combustion engines shall be prohibited. (Continued on next page.)	Developer and construction contractor.	City of Visalia, Community Development Department, Planning Division and Building Safety Division; Engineering Department, Development Services Division.	Conduct regular site visits to verify compliance with Municipal Code construction hours. Verify completion temporary noise barriers. Conduct regular site visits to verify implementation of equipment noise measures.	During grading, demolition, and construction inspections. Prior to issuance of grading and demolition permits. During grading, demolition, and construction inspections.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
H. NOISE (CONT'D)					
H4.	(Continued from preceding page.) • At all times during project grading and construction, stationary noise-generating equipment shall be located as far as practicable from sensitive receptors. • All stationary construction equipment shall be placed so that the emitted noise is directed away from sensitive receptors nearest the project site. • Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. • Owners and occupants of residential and non-residential properties located within 300 feet of the construction site shall be notified of the construction schedule in writing. • The construction contractor shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and institute reasonable measures as warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.	Developer and construction contractor.	City of Visalia, Community Development Department, Planning Division and Building Safety Division; Engineering Department, Development Services Division.	Verify noticing completed. Verify posting of contact information for disturbance coordinator. Respond to noise complaints. Record each site visit and noise complaint.	One week prior to start of grading and construction activity. One week prior to start of grading and construction activity.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
I. AIR QUALITY					
I1.	Construction Dust. In addition to the required dust control measures under SJVAPCD Regulation VIII, the following enhanced dust control measures shall be included in project construction contracts to control fugitive dust emissions during construction: • Limit traffic speeds on unpaved roads to 15 mph. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Landscape or replant vegetation in disturbed areas as quickly as possible. • Limit access to the construction sites, so tracking of mud or dirt onto public roadways can be prevented. If necessary, use wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site. • Suspend grading activity when winds (instantaneous gusts) exceed 25 mph or dust clouds cannot be prevented from extending beyond the site.	Developer and construction contractor.	City of Visalia, Community Development Department, Planning Division and Building Safety Division; Engineering Department, Development Services Division.	Verify that all required dust control measures are included in construction contract documents for project. Conduct compliance investigations during construction to verify that fugitive dust is controlled according to mitigation specifications.	Prior to issuance of grading and demolition permits. During grading and construction.
I6.	Odors. Prior to issuance of a Certificates of Occupancy, the owner/operator of the relocated restaurant in the project shall have installed kitchen exhaust vents in accordance with accepted engineering practice, and shall install a exhaust filtration system or other accepted method of odor reduction.	Developer.	City of Visalia, Community Development Department, Building Safety Division.	Confirm installation of specified odor control devices.	Prior to issuance of Certificates of Occupancy.

MITIGATION MONITORING AND REPORTING

Mitigation Measure		Responsibility for Implementation	Responsibility for Monitoring	Action by Monitor	Timing
J. HAZARDOUS MATERIALS					
J1.	Release of Potential Contaminants During Demolition and Remodeling. The removal and disposal of potential contaminant sources from the vacant office building and the remodeled portion of the Walmart store shall be carried out in accordance with applicable federal, state, and local regulations.	Developer and construction contractor.	City of Visalia, Community Development Department, Building Safety Division.	Verify that developer or construction contractor has retained a hazardous waste contractor to properly remove all hazardous materials in accordance with applicable laws and regulations. Upon completion of removal and disposal, verify that developer or construction contractor has provided documentation to the City of Visalia demonstrating that the required removals and disposal were successfully completed as required by applicable laws and regulations.	Prior to issuance of demolition permits. Prior to issuance of building permits.

RESOLUTION NO. 2011-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT SCH # 2008121133, FOR CONDITIONAL USE PERMIT NO. 2007-17 AND VARIANCE NO. 2011-06 FOR THE EXPANSION OF THE WALMART STORE LOCATED AT 1819 E. NOBLE AVENUE

WHEREAS, the City Council of the City of Visalia has reviewed and considered the Final Environmental Impact Report prepared for the Project which consists of the expansion of the existing Walmart store from 133,206 square feet up to 190,000 square feet, located at 1819 E. Noble Avenue (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038); and,

WHEREAS, the Draft Environmental Impact Report (Draft EIR) was released on October 14, 2010, for circulation through November 29, 2010; and,

WHEREAS, the Final Environmental Impact Report (Final EIR) was released on April 15, 2011, and consists of the Draft EIR and the revisions of, and additions to, the Draft EIR; the written comments and recommendations received on the Draft EIR; the written responses of the City of Visalia to significant environmental points raised in the review and consultation process; errata to the foregoing; and other information added by the City of Visalia as specified in the record; and,

WHEREAS, the Planning Commission of the City of Visalia, after ten (10) days published notice held a public hearing to consider approval of the Project, and certification of the Final EIR on April 25, 2011, and voted to approve the Project and certify the Final EIR; and

WHEREAS, as required by the California Environmental Quality Act (CEQA), the Planning Commission adopted Findings of Fact and a Statement of Overriding Considerations due to the Final EIR's identification of a significant and unavoidable Construction Noise impact;

WHEREAS, an appeal from M.R. Wolfe & Associates of the Planning Commission's approval of Project and certification of the Final EIR was received on May 5, 2011; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing on May 16, 2011 to consider the appeal of the Planning Commission's approval of Project and certification of the Final EIR; and

WHEREAS, immediately prior to the May 16, 2011 City Council hearing to consider the appeal of the Planning Commission's approval of Project and certification of the Final EIR, the City received 218 pages of comments from M.R. Wolfe & Associates and his retailed consultants and approximately 22 pages of additional comments opposing the Project from Mr. James Watt; and

WHEREAS, after hearing presentations regarding the appeal from Staff, the Appellant and the Applicant, and public testimony regarding the appeal, the City Council closed the public hearing, directed Staff to return at a subsequent hearing date originally

set for June 6, 2011 to present responses to the late comments submitted by Mssrs. Wolfe and Watt; and

WHEREAS, on June 6, 2011, the City Council granted Staff's request to continue the hearing on of appeal of the Planning Commission's approval of Project and certification of the Final EIR to June 20, 2011 to provide adequate time for Staff and the City's EIR consultant to respond to the detailed comments submitted by appellant M.R. Wolfe and Mr. Jim Watt on May 16, 2011;

WHEREAS, at a public hearing on June 20, 2011, the City Council of the City of Visalia received presentations from Planning Staff and the EIR Consultant regarding the May 16, 2011 comments and the detailed responses presented in the Rebuttal Memo prepared to address those comments. The Council further considered the May 5, 2011 appeal of the Planning Commission's approval of Project and certification of the Final EIR, and voted to deny the appeal of the Planning Commission's April 25, 2011 approval of the Project and certification of the Final EIR.

WHEREAS, as required by the California Environmental Quality Act (CEQA), the City Council adopted Findings of Fact and a Statement of Overriding Considerations due to the Final EIR's identification of a significant and unavoidable Construction Noise impact;

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the Project, Final Environmental Impact Report, SCH# 2004061090 was prepared in compliance with CEQA and the City of Visalia Environmental Guidelines.

BE IT FURTHER RESOLVED that the City Council certifies Final Environmental Impact Report, SCH# 2008121133, for the Project, based on the findings contained in Attachment "A" hereto, the following specific findings, and the evidence in the record:

1. That full and fair public hearings have been held on the Final Environmental Impact Report and the City Council having considered all comments received thereon, said Final Environmental Impact Report is hereby determined to be adequate and complete; and said Environmental Impact Report, SCH# 2008121133, is hereby incorporated herein by reference.

2. That the City Council hereby determines that the Final Environmental Impact Report, SCH# 2008121133, for the Project has been prepared in compliance with (CEQA) and the state and local environmental guidelines and regulations; that it has independently reviewed and analyzed the information contained therein, including the written comments received during and after the EIR review period and the oral comments received at the public hearing; and that the Final EIR reflects the independent judgment of the City of Visalia, as Lead Agency for the project.

3. That the City Council does hereby find and recognize that the Final Environmental Impact Report, SCH# 2008121133, contains additions, clarifications, modifications and other information in its responses to comments on the Draft EIR and also incorporates text changes to the EIR based on information obtained by the City since the Draft EIR was issued. The City Council does hereby find and determine that such changes and additional information is not significant new information as that

term is defined under the provisions of CEQA because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the Draft EIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the Draft EIR have been proposed that would lessen the significant environmental impacts of the project.

4. That the City Council does hereby make the following findings attached to this Resolution as Attachment "A" which includes a Statement of Overriding Considerations due to the unavoidable significant Construction Noise impacts resulting from the project, as identified in the Final Environmental Impact Report, SCH# 2008121133, with the stipulation that all information in these findings is intended as a summary of the administrative proceedings and record supporting the City Council's certification of the Final Environmental Impact Report.

5. **MITIGATION MONITORING PROGRAM:**

   Attachment A to this Resolution includes an "Exhibit B," which is the Mitigation and Monitoring Program for the Project ("MMRP"). The MMRP identifies impacts of the Project and corresponding mitigation, and designates responsibility for monitoring the implementation of the identified mitigation measures to ensure they are carried out as intended. The MMRP is incorporated and adopted as part of this Resolution, specifically as Attachment B to the attached Findings of Fact and Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the City Council adopts the Statement of Overriding Considerations for the Project contained in Attachment "A" Section V. In adopting the Statement of Overriding Consideration, the City Council hereby finds that the Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant unavoidable Construction Noise impacts resulting from the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the Construction Noise impacts identified in the Final Environmental Impact Report, SCH# 2008121133, and Section V, of Attachment "A".

BE IT FURTHER RESOLVED that the City Council hereby determines that the Final Environmental Impact Report prepared for the Project is adequate and complete pursuant to the requirements of the California Environmental Quality Act, and so certifies it.

ATTACHMENT A: CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE VISALIA WALMART EXPANSION PROJECT AND THE CITY'S FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE APPROVAL OF THE VISALIA WALMART EXPANSION PROJECT

I. INTRODUCTION

The City of Visalia, as lead agency under the California Environmental Quality Act (Pub. Res. Act § 21000 *et* seq.) and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000-15387) (collectively, "CEQA"), has completed the Final Environmental Impact Report ("Final EIR" or "EIR") for the Visalia Walmart Expansion Project (hereinafter, "Project").

On April 25, 2011, at a publicly noticed meeting, the Planning Commission considered the Project and the required discretionary approvals, including (1) Certification of the Final EIR SCH No. 20081211133; (2) Conditional Use Permit No. 207-17; and (3) Sign Variance No. 2007-06 ("Associated Approvals"). Following a four hour hearing at which 28 persons spoke in favor of the project, three spoke in opposition including Jim Watt, a former Save-Mart executive from Contra Costa County representing competing retailers in Visalia who also submitted an opposition letter before the hearing, the Planning Commission voted to approve the Project and the Associated Approvals.

On May 5, 2011, attorney Mark Wolfe appealed the Planning Commission's decision on behalf of a heretofore unknown group called the "Visalia Smart Growth Coalition" (hereinafter, "Appellants") who did not appear at the Planning Commission hearing. Mr. Wolfe's appeal attaches his November 29, 2011 comment letter on the Draft EIR, and a brief cover letter dated April 25, 2011 submitted shortly before the Planning Commission hearing. The City's EIR consultant and expert subconsultants and Planning Staff provided verbal responses to the issues raised in the Wolfe and Watt April 25th letters. The EIR consultant subsequently prepared a comprehensive written response addressing each issue raised in the Wolfe and Watt letters (hereinafter, the "Rebuttal Memo").

On May 16, 2011, the City Council of the City of Visalia held a publicly noticed hearing to consider the appeal of the Planning Commission's approval of Project and certification of the Final EIR. Immediately prior to and during the May 16, 2011 City Council hearing to consider appeal of the Planning Commission's April 25, 2011 approval of Project and certification of the Final EIR, the City received 218 pages of comments from M.R. Wolfe & Associates and his retailed consultants and approximately 22 pages of additional comments opposing the Project from Mr. James Watt. The City's EIR consultant and expert subconsultants and Planning Staff provided verbal responses to many of the issues raised in these late comments. After hearing presentations regarding the appeal from Staff, the Appellant and the Applicant, and public testimony regarding the appeal, the City Council closed the public hearing, directed Staff to return at a subsequent hearing date originally set for June 6, 2011 to present responses to the late comments submitted by Mssrs. Wolfe and Watt. The EIR consultant and Planning Staff subsequently prepared another comprehensive written response addressing each issue raised in the Wolfe and Watt letters submitted on May 16, 2011, (hereinafter, the "Rebuttal Memo No. 2").

On June 6, 2011, at a publicly noticed City Council hearing, the Council granted Staff's request to continue the hearing on of appeal of the Planning Commission's approval of Project and certification of the Final EIR to June 20, 2011 to provide adequate time for Staff and the City's EIR consultant to respond to the detailed comments submitted by appellant M.R. Wolfe and Mr. Jim Watt on May 16, 2011;

On June 20th, at a public hearing the City Council of the City of Visalia received a presentation from Planning Staff and the City's EIR consultant regarding the May 16, 2011 comments submitted by Mssrs. Wolfe and Watt, and voted to deny the appeal of the Planning Commission's approval of Project and certification of the Final EIR. In dong so, the City approved the Project and the Associated Approvals.

This document embodies the City's approval of the Project and contains the City's certification of the Final EIR, its Findings of Fact under CEQA, and its Statement of Overriding Considerations made in approving the Project.

The document is organized into the following sections:

A. Section I, "**Introduction**," provides an Introduction to the Document.

B. Section II, "**Project Description**," provides a summary of the Project, a statement of the Project Objectives, the alternatives considered in the Final EIR, and an overview of the Record of Proceedings for approval of the Project.

C. Section III, "**Certification of the Final EIR**," sets forth the City's findings in support of certification of the Final EIR.

D. Section IV sets forth the **Findings** required under CEQA, as follows:

1. Part IV.A: Findings regarding the environmental review process and the contents of the Final EIR.

2. Part IV.B: Findings regarding the environmental impacts of the Project and the mitigation measures for those impacts identified in the Final EIR and adopted as conditions of approval.

3. Parts IV.C and IV.D: Findings regarding alternatives discussed in the Final EIR and the reasons that such alternatives to the Project are not approved.

4. Part IV.E: Findings Regarding Project Alternatives Scoped-Out of the EIR.

5. Part IV.F: Findings Regarding Adequacy of Range of Alternatives.

6. Part IV.G: Description of the Mitigation Monitoring and Reporting Program ("MMRP") for the Project.

7. Part IV.H: Summary of the findings and determinations regarding the Project.

E. Section V, **"Statement of Overriding Considerations,**" sets forth the substantial benefits of the Project that outweigh and override the Project's significant and unavoidable impacts, such that the impacts are considered acceptable.

II. PROJECT DESCRIPTION

A. Project Components, Operational Features, and Development

The Project consists of the expansion and remodeling of the existing Walmart store located in east-central Visalia.

1. Project Site.

a. The expansion Project area is 4.6 acres out of the overall 18.35-acre site the expanded Walmart store will occupy, which consists of five parcels (Assessors Parcel No. 100-050-001, 100-050-038, 100-050-007, 100-050-013, and 100-050-014) located at 1819 East Noble Avenue, between Ben Maddox Way and Pinkham Street ("Project site")

b. The Project site currently consists of an existing 133,206 square-foot Walmart store with parking areas, loading areas, and landscaping situated on 14.55 acres. The eastern 0.8 acres of the 14.55-acre parcel is undeveloped and will accommodate components of the Project. The expansion area also consists 3.8 acres to the east of the existing store, and this land contains a vacant medical office building and other, undeveloped areas that are covered with non-native grasses and weedy vegetation.

c. The lands surrounding the Project site are almost entirely urbanized with a mixture of commercial, office, residential, church, and public facility uses. There is an existing commercial retail shopping center adjacent to the west, beyond which is a series of automobile dealerships along Ben Maddox Way to the southwest. There is a new Social Security Administration office building on property adjacent to and northeast of the Project site along Noble Avenue. The land uses along the south side of Noble Avenue east to Pinkham Street consist of commercial service, church, and office uses. The lands to the east and south of the project site are largely in residential use, with the exception of one vacant 2.0-acre parcel adjacent to the southeast portion of the Project site, which vacant parcel fronts onto Pinkham Street to the east. The State Route 198 freeway corridor runs in an east-west direction just north of Noble Avenue, and beyond the freeway there are various commercial and light industrial uses along Mineral King Avenue.

2. Expanded Walmart Store.

a. The Project consists of the expansion of the existing 133,206 square-foot Walmart store by 54,076 square feet, increasing the total floor area to 187,282 square feet (including the outdoor garden center portion of the store).

b. The primary departments included in the store expansion area are grocery sales and support (52,945 square feet), an outdoor garden center (1,937 square feet), a fast-food tenant (381 square feet), and ancillary uses (133 square feet). Depending on the floor plan for the remodeled ancillary area, potential uses of the expanded ancillary area include an ATM, medical clinic, vision care, hair salon, photo lab, portrait studio, and pharmacy. The existing store contains a tire and lube center, which will remain at its current size, and the overall floor area for general merchandise will decrease by 1,320 square feet.

c. While the anticipated expansion is estimated to total 54,076 square feet, the Draft EIR studies a build out of 56,794 square feet to serve as "buffer" floor area. The additional 2,718 square feet are conservatively treated as grocery floor area for purposes of analysis in the Final EIR, at p. 16, Table 2.

d. The expanded Walmart store will include six new loading docks at the rear southeast corner of the building, which will be accessed by roll-up doors. The existing store has 2 loading docks that will be demolished with the expansion. The existing Walmart store receives up to about 8 semi-trailer deliveries and up to about 8 smaller deliveries per day. The expansion project would increase the totals up to about 11 semi-trailer deliveries, of which about 2 would be by refrigerated truck, and up to about 12 smaller vendor truck deliveries per day. Deliveries by semi-trailer could occur any time of the day or night. Vendor deliveries are not anticipated to occur during overnight hours.

e. The exterior area south and east of the building will include two trash compactors (one new and one relocated unit) each with 8-foot screen walls, a relocated electrical transformer, and a relocated and enclosed pallet and bale storage area which will include an organic container. The storage area for metal shipping containers, which is currently located on the east wall of the store just north of the loading docks, will be relocated along the south site boundary adjacent to the existing 14-foot wall which will be extended eastward.

f. The existing main parking area to the north of the store will be reduced by expansion of the store and frontage improvements, the latter of which are discussed below. Additional parking area will be constructed to the east of the main building expansion area. A portion of existing parking area at the front of the existing store will be modified to improve handicapped and pedestrian access. The expanded and reconfigured parking areas will provide a total of 846 usable parking spaces (not counting the 32 spaces to be used for cart corrals), including 24 spaces compliant with requirement under the American Disabilities Act, to serve the expanded Walmart store.

g. The Project includes new and extended soundwalls and screenwalls running near the southeastern and the eastern project boundaries to provide noise and visual screening from the expanded Walmart operation.

1) Existing masonry block walls run along the south and east boundaries of the project site. These walls are approximately six feet high.

2) Along a portion of the south boundary, there is an existing 14-foot high masonry block wall which runs parallel to and inboard of the 6-foot high boundary wall (the distance of the 14-foot wall to the south property line ranges from approximately 20 to 30 feet). This 14-foot wall runs eastward from the existing loading docks for a distance of 250 feet. The Project will extend this wall eastward for approximately 250 feet, and will terminate 15 feet west of the eastern site boundary (the extended section of 14-foot wall will be located at least 15 feet from the south project boundary)**.** The existing 6-foot high block wall along the southern site boundary will be retained as is.

3) The existing 6-foot high block wall along the eastern boundary of the expansion area will also be retained as is. A new 15-foot concrete block wall is planned to be located parallel to and inboard of the existing 6-foot boundary wall, and will be set back at least 15 feet from the eastern boundary and will terminate 15 feet north of the end of the corresponding 14-foot wall extension that will parallel the south boundary.

h. The store operating hours will be 24 hours per day, seven days per week, except for the tire and lube center which will continue to operate between 6:00 AM and 10:00 PM, seven days per week. The current store hours are 8:00 AM

to 11:00 PM. The sale of alcohol for off-site consumption will be limited to the hours of 6:00 AM to 2:00 AM the following day, in accordance with Department of Alcoholic Beverage Control (ABC) requirements.

i. The Walmart store will create approximately 85 permanent employment positions.

3. Roadway Improvements.

Along the project frontage, Noble Avenue will be widened to accommodate second eastbound travel lane and a landscaped median will be added. New bus bays will be added on the north and south sides of Noble Avenue and a crosswalk will be provided across Noble Avenue at the signalized east Walmart driveway entrance.

B. Project Design

1. Architectural Elements

a. The expanded store will be single-story and utilize contemporary retail architectural design. Two new primary entrances on the front elevation, one to serve the general merchandise area and the other for the grocery sales area, will better connect with and direct customers. Architectural elements such as canopies and articulated detailing will be used to accentuate entrance spaces and provide the customer a stronger sense of place. The front elevation will feature a number of canopies and a seating area under new shade trees, providing pedestrians a welcoming environment for entering the store or while waiting for a ride.

b. The mass of the long elevation will be reduced in scale by these pedestrian spaces, by breaking up the exterior wall into actual exterior and interior spaces that serve merchandising functions, and by articulating the design. This is reinforced by the variety of the architectural elements and the varied earth tone color palette. Curved roofs and walls, natural materials along with contemporary materials such as translucent wall panels and a large amount of transparent storefront glazing reinforce the “human scale” theme. Contrasting colors and textures will also work to break up building mass and accentuate the pedestrian experience.

c. The new rooftop equipment will be screened from view by its location and the design of the new parapet walls. New rooftop equipment will consist of Heating, Ventilating, and Air Conditioning (HVAC) units, refrigeration units, and satellite equipment. Existing and new rooftop equipment will be screened by both existing walls and new architecture.

d. The existing garden center will be increased in size, modified, and will remain in its current location to the northwest corner of the building. It will be surrounded by a masonry wall, pilasters and a painted steel fence, backed by vinyl-coated black and tan mesh shade cloth. These materials provide an opacity rating of approximately eighty-five percent (85%) and therefore visual screening of the interior of this enclosure.

2. Signage

a. Signage on the expanded Walmart building will be replaced with updated signs (the Walmart Sign Program is included in Appendix A-2 of the Final EIR). The building signage for the expanded Walmart consists of a total surface area of 585.22 square feet. The Project architect indicates that the Project signage will integrate and complement the building architecture. The signage would be mounted to the building and would not be illuminated except the primary "Walmart" sign on the front elevation, which will be internally lit by light-emitting diode (LED) technology. Since the total area of signage proposed exceeds the 150 square-foot maximum specified in the Design District 'A' standards set forth in Zoning Ordinance Section 17.48.080, the proposed action includes a Sign Variance.

b. The existing monument sign at the western project entrance on Noble Avenue will also be replaced with one new, updated monument sign. The new monument sign will be approximately 52 square feet in total surface area on each side for a total of approximately 100 square feet in total sign area. In addition, there will be approximately 43.74 square feet of monument base per side, for a total area of 95.74 square feet per side. Since these areas exceed the maximums of 70 square feet total surface area and 35 square feet of sign face per side, the monument signs will also require a Sign Variance. The building sign program and the monument signs were considered in a combined Sign Variance request, with separate findings made for each.

3. Project Lighting

The Project includes a combination of lighting fixtures located throughout the site and parking area.

a. The proposed lighting for the expanded Walmart store parking lot will include various single, two-, or four-light fixtures throughout the parking areas and driveways. The existing 42-foot high light standards will be retained where feasible and augmented by additional 42-foot high light standards in the eastern expansion area of the Project site. The parking lot light fixtures located near Project boundaries will be directed toward the Project interior and away from neighboring properties. All light fixtures will be designed and oriented to avoid direct illumination spilling beyond the site boundaries, in accordance with Section 17.30.130 (H) of the Visalia Municipal Code.

b. Lighting for the expanded Walmart building will include decorative wall lighting fixtures to highlight wall areas along the front façade, and also below canopies at pedestrian level along the main entries and the sign wall to create a nighttime environment that promotes safe movement of pedestrian and vehicular traffic. The mounting height of the exterior light fixtures will average 12 feet and may vary between the building's elements. No wall-illuminating lighting is planned for the east, south, or west facades of the expanded Walmart. Security lighting at service areas (wall packs) and exits will be wall mounted and will incorporate cut-off shielding as needed to ensure minimal visibility at nearby residences.

4. Security Measures

a. The security measures listed below would be undertaken as part of the Project and would be implemented or continue to be implemented in the operation of the expended store.

1) Conduct a risk analysis (crime survey) of the area to evaluate the security needs for the store and implement a security plan based upon this analysis.

2) Continue the parking lot security patrol for the Walmart store which assists customers, ensures safety and takes action to identify and prevent any suspicious activity (such as loitering and vandalism) both during the day and nighttime hours (i.e., 24 hours per day).

3) Install new or replace existing closed-circuit camera systems (surveillance cameras) inside and outside the store.

4) Maintain the existing plainclothes patrol inside the store to ensure safety and security.

5) Maintain the existing Risk Control Team, which is a team of associates responsible and trained to identify and correct safety and security issues at the site.

6) Provide new lighting and upgrade existing lighting in the parking area to provide public safety and visibility.

7) Continue to prohibit consumption of alcohol in the parking lots by having associates regularly "patrol" the parking areas while collecting shopping carts, and report any inappropriate activity to the store managers. (Also, per state law, alcohol sales will be limited to the hours of 6 AM to 2 AM of the following day.).

b. In addition, Walmart will implement a security plan for the south and east Project boundaries as part of the Project. The Walmart expansion will include parallel masonry walls along the south and east boundaries that may create safety or security conditions requiring implementation of a security plan for monitoring the space between the proposed walls which are adjacent to existing residences. Measures include:

1) *Parking Lot Security Patrol.* The Walmart store will provide on-site parking lot Security Patrol to assist customers, and to identify and prevent suspicious activities such as loitering and vandalism both during the day and nighttime hours (i.e., 24 hours a day). The parking lot Security Patrol will also monitor the space between the sound/screen walls and existing residents to the south and east of the parking lot/building.

2) *Closed-Circuit Camera System.* The expansion to the store will include the installation of new surveillance cameras and replacement of existing surveillance cameras. The expansion will include the installation of 2 additional cameras located on a pole near the southeast corner of the Project site that will provide surveillance of the space between the new sound/screen walls and the adjoining residences along the south and east boundaries. The surveillance cameras will be mounted lower than typical to avoid

views of the adjoining residential back yards. The two proposed surveillance cameras will monitor the space between the new sound/screen walls 24 hours a day. The proposed sound/screen walls will also be posted with signs indicating “Camera Surveillance.”

3) *Parking Lot Lighting.* The expansion of the store will include upgrading existing parking lot light poles and installation of new light poles to provide for visibility and public safety. Additional lighting will be installed in the space between the new sound/screen walls and the adjoining residences along the south and east boundaries of the Project site. The lighting will be placed in this space to provide sufficient light levels for nighttime safety. The light fixtures will have shielding to prevent light spillover to the adjoining residents along the south and east boundaries.

5. Landscaping

a. The Project site will be re-landscaped throughout and along the perimeter while retaining usable elements of the existing landscaping.

b. The front setback area will be planted with trees, shrubs and groundcovers, and the parking areas will also be extensively planted in accordance with the landscape standards of the Municipal Code.

c. Along the west, south, and east site boundaries, the setback areas will be planted with rows of trees to provide visual screening and buffering. Along the eastern portion of the southern project boundary, landscape trees will be planted between the 6-foot boundary wall and the 14-foot sound wall.

d. Along the eastern project boundary, landscape trees will be planted between the 6-foot boundary wall and the 15-foot sound wall, as well as on the interior side of the 15-foot sound wall.

e. As required under the Water Efficient Landscape Ordinance adopted by the City of Visalia in December 2009, project landscape materials are required to be suited to the local climate and the irrigation system will be water efficient, with water applied in accordance with the evapotranspiration rates of the plant materials.

C. Project Objectives

The basic objectives of the Project (“Project Objectives”) are:

1. Expand the existing Visalia Walmart store to provide the market area with a centrally-located, affordable, one-stop shopping alternative with an adequately-sized grocery component to enhance customer convenience.

2. Maximize new job opportunities for local residents.

3. Positively contribute to the local economy.

4. Provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment.

5. Design a project consistent with the City of Visalia General Plan and Zoning Ordinance.

6. Develop the vacant eastern portion of the site in a manner that compatible with the existing site and enhances its aesthetics, positively contributes to the local economy, and enhances commercial retail and service opportunities available in the surrounding community.

7. Implement a high-quality architectural design that complements the existing design characteristics of the surrounding commercial uses and improves the aesthetics of the existing store.

8. Develop a project with new landscaping to soften the design and create a pleasant, attractive appearance that complements the Walmart store and surrounding area.

9. Develop a site plan to minimize potential automobile and pedestrian conflicts.

10. Provide sufficient off-street parking to minimize impacts to the surrounding residential neighborhood, and ensure that adequate on-site parking is provided for store customers, and employees.

11. Maximize economic growth and development in a way that is consistent with the policies of the City of Visalia.

D. Summary of Alternatives in the Final EIR

The Final EIR evaluates the following four alternatives to the proposed Project:

1. **No Project Alternative:** The Project site would remain in its existing condition and no new development would occur.

2. **Reduced Project Size Alternative:** This alternative consists of a 28,400-square-foot Walmart expansion area (about half the size of the proposed Project), with 27,800 square feet of grocery floor area.

3. **In-Line Retail:** This alternative assumes that the existing Walmart store is left in its current state, and that the 4.6-acre expansion area is not used for a Walmart expansion but rather for a series of in-line retail shops totaling 56,800 square feet.

E. Record of Proceedings

Various documents and other materials constitute the record upon which the City bases these findings and approvals contained herein. The location and custodian of these documents and materials is the City of Visalia Planning Division, 315 East Acequia Avenue, Visalia, CA 93291.

III. CERTIFICATION OF THE FINAL EIR

The Final EIR comprises a project-level analysis contains the environmental review evaluating the impacts of approval of the Project and the Associated Approvals, which again include approval of Conditional Use Permit No. 2007-17 and Sign Variance No. 2007-06. The Final EIR has State Clearinghouse No. 2008121133, and the EIR was prepared in the manner specified in Section IV.A.1, which is incorporated by reference here. The Final EIR is comprised of five volumes of information, which include:

A. The Draft Environmental Impact Report ("Draft EIR"), which consists of four volumes.

1. Volume 1 of the Draft EIR assesses the potential environmental effects of implementation of the Project, identifies means to eliminate or reduce potential adverse impacts, and evaluates a reasonable range of alternatives.

2. Volumes 2, 3, and 4 of the Draft EIR consist of Appendices referred to in Volume 1.

3. Volume 4 consists of Traffic Study technical appendices and worksheets.

B. The comments on the Draft EIR submitted by interested public agencies, organizations, and members of the public; written responses to the environmental issues raised in those comments; a list of refinements to and clarifications to the Draft EIR, and revisions to the text of the Draft EIR reflecting changes made in response to comments and other information. This information together comprises Volume 5, the Final EIR.

C. The City hereby certifies as follows:

1. That it has been presented with the Final EIR and that it has reviewed and considered the information contained in the Final EIR prior to making the following certifications and the findings in Section IV, below;

2. That, pursuant to CEQA Guidelines Section 15090 (Title 14 of the California Code of Regulations, Section 15090), the Final EIR has been completed in compliance with the CEQA and the State CEQA Guidelines; and

3. That the Final EIR reflects its independent judgment and analysis.

IV. CEQA FINDINGS

Having received, reviewed, and considered the Final EIR and other information in the record of proceedings, the City Council hereby adopts the following findings in compliance with CEQA and the CEQA Guidelines:

Part IV.A:	Findings regarding the environmental review process and the contents of the Final EIR.
Part IV.B:	Findings regarding the environmental impacts of the Project and the mitigation measures for those impacts identified in the Final EIR and adopted as conditions of approval. As described in Part II.B, the City Council hereby adopts the impact findings as set forth in Exhibit A to these findings.
Parts IV.C&D:	Findings regarding alternatives discussed in the Final EIR and the reasons that such alternatives to the Project are not approved.
Part IV.E:	Findings Regarding Project Alternatives Scoped-Out of the EIR.
Part IV.F:	Findings Regarding Adequacy of Range of Alternatives.
Part IV.G:	Description of the Mitigation Monitoring and Reporting Program ("MMRP") for the Project.
Part IV.H:	Summary of the findings and determinations regarding the Project.

In addition, these findings incorporate by reference Section V of this document, which includes the Statement of Overriding Considerations and determines that the benefits of implementing the Project outweigh the significant and unavoidable environmental impacts that will result, and therefore justifies approval of the Project despite those impacts.

The City certifies that these findings are based on full appraisal of all viewpoints, including all comments received up to the date of adoption of these findings that concern the environmental issues identified and discussed in the Final EIR.

A. Environmental Review Process

1. Preparation of the EIR

a. *Notice of Preparation.* On December 31, 2008, the City issued a Notice of Preparation ("NOP") for the Project. The NOP included a description of the Project, its location and the Project's probable environmental effects, and was circulated to the public, local, state, and federal agencies, and other interested parties as required under law to solicit comments on the Project and the scope of the environmental review. A 30-day public review period followed, and comment letters on the NOP were received from Caltrans District 6, the San Joaquin Valley Air Pollution Control District (SJVAPCD), the California Water Service Company, and the Southern California Gas Company. The NOP comment letters are included in Appendix A-1 to the Draft EIR. The letters from the agencies and utility companies

were focused on technical issues within their areas of responsibility, and include recommendations with respect to the EIR's content in areas within their purview. These NOP comments are addressed in the respective environmental impact analyses in the Final EIR (i.e., Traffic and Circulation, Air Quality, Utilities and Service Systems).

b. *Public Scoping Meeting.* On January 21, 2009, the City held a scoping meeting to which the responsible agencies and interested members of the public were invited, and which had been duly advertised in advance. No members from the public or public agency representatives attended the scoping meeting and no comments were made at that time. Subsequently, on February 12, 2009, a telephone conference was held with the staff of Caltrans District 6. The comments received from Caltrans during that call covered updated information on the same technical subjects as were addressed in its NOP comment letter and previous comment letters on the Project.

c. *Completion of Draft EIR.* The City completed the Draft EIR and made it available for public review and comment on October 14, 2010.

d. *Notice of Completion/Notice of Availability.* A Notice of Completion and a Notice of Availability was published on October 14, 2010, and the period for receipt of comments on the Draft EIR remained open until November 29, 2010. Written comments on the Draft EIR were received from 5 Federal, State, and local agencies, organizations and individuals. In addition, the City received 30 letters of individuals who expressed unqualified support for the project but had no comments on the Draft EIR and raised no environmental issues regarding the project.

e. The Final EIR was completed and made available to public agencies and members of the public on April 15, 2011. The Final EIR comprises the Draft EIR plus all of the comments received during the public comment period, together with written responses to those comments that raised environmental issues, which were prepared in accordance with CEQA and the CEQA Guidelines. The Final EIR also includes refinements to mitigation measures and clarifications to text in the Draft EIR.

f. The Final EIR is hereby incorporated in this document by reference.

g. The Final EIR was made available electronically via posting on the City's Web site on April 15, 2011. The Final EIR also was available for public review in print form at the City of Visalia Planning Division at 315 E. Acequia Avenue and at the Visalia Branch Tulare County Library at 200 West Oak Avenue, both in the City of Visalia.

The City finds and determines there was procedural compliance with the mandates of CEQA and that the Final EIR provides adequate, good faith, and reasoned responses to all comments raising significant environmental issues.

2. Absence of Significant New Information

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR, but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental

effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide examples of significant new information under this standard.

a. Information Included In Final EIR

The City recognizes that the Final EIR incorporates information obtained by the City since the Draft EIR was completed, and contains additions, clarifications and some modifications. In addition, various minor changes and edits have also been made to the text and figures of the Draft EIR, as set forth in the Final EIR. These changes are generally of an administrative nature such as correcting typographical errors, making minor adjustments to the data, and adding or changing certain phrases to improve readability. In addition to the changes and corrections, the Final EIR includes additional information in response to comments and questions from agencies and the public.

Specifically, a local air quality analysis was requested by the San Joaquin Valley Air Pollution Control District (Air District) in its DEIR comment letter dated November 29, 2010 (see FEIR comment letter D1). The request to prepare such a local air quality analysis is highly unusual and is not included in any Air District guidance or other documentation regarding preparation of air quality analyses for development projects. The Air District requests such studies for projects that may be controversial.

As fully described in the Rebuttal Memo prepared by the City's EIR Consultant and Planning Staff in response to the late comments received by Mssrs. Wolfe and Watt on April 25, 2011, and incorporated in its entirety herein by reference, it is highly unusual to conduct such analyses, in this or any other air basin in California, since the potential for significant project impacts related to localized emissions of CO, NO_2, SO_2, PM_{10} and $PM_{2.5}$ is extremely low. There also is no evidence or analysis from other projects of similar nature and size in the San Joaquin Valley or elsewhere that would indicate the potential for significant impacts resulting from project emissions of these pollutants at the Visalia Walmart Expansion project. Therefore, the analysis of these localized pollutants was not included in the original air quality assessment for the DEIR.

In response to the Air District's DEIR comment letter, a supplemental air quality assessment on the potential impacts resulting from project emissions of these localized pollutants was prepared.

- The assessment of localized air quality impacts found that the project-related emissions of CO, NO_2, and SO_2 would be substantially below the significance thresholds applicable to each pollutant.

- It further found that the total pollutant concentrations, including background concentrations and emissions from the existing Walmart store and the planned store expansion, would also be well below all of the applicable significance thresholds (see FEIR Appendix A, Table 9).

- The air quality assessment also found that the localized emissions of PM_{10} and $PM_{2.5}$ from the proposed expansion (including the existing Walmart store) would be well below the applicable significance thresholds (see FEIR Appendix A, Table 10).

- Based on these findings, the project impacts to localized air pollution would be less than significant.

- In a second and final comment letter, dated March 24, 2011, the Air District indicated that it had reviewed the local air quality analysis and agrees with the conclusion that the project will not result in exceedances of the standards for carbon dioxide, sulfur dioxide, and nitrogen dioxide, nor contribute to exceedances of the particulate standard. (See Comment Letter D2 in the FEIR.)

The City finds that information added in the Final EIR does not constitute significant new information requiring recirculation, but rather that the additional information clarifies or amplifies an adequate EIR. Specifically, the City finds that the additional information does not show that:

(1) A new significant environmental impact would result from the Project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The local air quality analysis does not raise the potential existence of new significant impacts that were not evaluated in the DEIR, nor does it indicate that the severity of those impacts is greater than reported in the DEIR. The analysis confirms that the project's local air quality impacts are less than significant. Nonetheless, a letter submitted by Project opponents' attorney Mark Wolfe to the City dated April 25, 2011, states: *"Finally, the Final EIR presents for the first time and an entirely new analysis of criteria pollutants just days before the City is to act on the application. At the very least the City should recirculate this new "localized" analysis, so that the public has an opportunity to comment on this new analysis and to obtain responses."*

The City rejects Mr. Wolfe's request to recirculate the EIR and/or the local air quality analysis. The City finds that the FEIR was provided to Mr. Wolfe 10 days prior to the April 25, 2011 Planning Commission hearing. In light of the brevity of the local air quality report and the simplicity of its conclusions, i.e., that the project's local emissions are very far below all of the significance thresholds, the City agrees with the Rebuttal Memo's response to Mr. Wolfe that review and comment upon the report should not reasonably require more than 10 days. The City finds that the local air quality report included in the Final EIR does not constitute significant new information requiring recirculation; it instead merely clarifies or amplifies or makes insignificant modifications in an adequate EIR and contains further substantial evidence supporting its conclusions and the City's decision to approve the Project.

Based on the foregoing, and having reviewed the information contained in the Final EIR and in the record of City's proceedings, including the comments on the Final EIR and the responses thereto, the City finds that no significant new information has been added to the Final EIR since public notice was given of the availability of the Draft EIR that would require recirculation of the Final EIR.

b. Comments Submitted by Project Opponents On April 25, 2011 and City's Rebuttal Memo

The City also recognizes that additional information has been submitted to the City following publication of the Finial EIR, commenting on the adequacy of the Final EIR and requesting recirculation of the EIR. Specifically, on April 25, 2011, shortly before the start of the Planning Commission public hearing, the City received two letters opposing the Walmart Expansion project, one from attorney Mark Wolfe and Associates on behalf of an "ad hoc association of citizens" called the "Visalia Smart Growth Coalition," and one from Jim Watt on behalf of several competing retailers operating in Visalia.

Mr. Wolfe's letter challenged the adequacy of the Final EIR's analysis and mitigation in the areas of (1) traffic; (2) air quality; (3) urban decay; and (4) noise. Oral responses to the Wolfe letter from the EIR Consultant and the expert subconsultants were presented to the Planning Commission. Planning Staff and the applicant's engineer both responded on the record to the letter submitted by Mr. Watt. The Rebuttal Memo, a full written response to the Mark Wolfe appeal and the Jim Watt comment letter was included as Exhibit B to the Staff Report presented to the City Council prior to the May 16, 2011 public hearing.

The Rebuttal Memo prepared in response to the April 25, 2011 late comments from Mr. Wolfe and Mr. Watt, is hereby incorporated into this document by reference.

After review of the April 25, 2011 Wolfe and Watt letters, the Wolfe appeal, and the Rebuttal Memo, the City Council finds that no significant new information was presented in the testimony or documents that would warrant a different conclusion, and that no new significant impacts or increase in the severity of impacts which were analyzed in the FEIR that would require further analysis and recirculation of the FEIR have been identified.

c. Comments Submitted by Project Opponents M.R. Wolfe and Jim Watt On May 16, 2011 and City's Rebuttal Memo

The City further recognizes that on May 16, 2011, additional comment letters were submitted to the City, one by attorney Mark Wolfe and Associates, again on behalf of the "Visalia Smart Growth Coalition," and the other by Jim Watt, a former Save Mart manager turned grocery consultant, on behalf of several competing retailers operating in Visalia. The additional comments were submitted immediately prior to (Wolfe) and during (Watt) the Council hearing that night. Mssrs. Wolfe and Watt's letters totaled over 240 pages of additional material, this time supported by consultants they retained in the areas of Air Quality, Noise, Traffic and Urban Decay. These further comments again commented on the adequacy of the Final EIR and reiterated the commenters' request for recirculation of the EIR.

The May 16, 2011 comments claim to respond to Rebuttal Memo prepared to address Mssrs. Wolfe and Watt's April 25, 2011 comments on the Final EIR. The City finds that much of the comments reiterate comments presented on April 25, 2011, and in many instances present arguments and claimed EIR inadequacies, supported by Mssrs. Wolfe and Watt's retained consultants, that could have been submitted during the 45-day public review period on the Draft EIR.

Mr. Wolfe's letter challenged the adequacy of the Final EIR's analysis and mitigation in the areas of (1) traffic; (2) air quality; (3) urban decay; and (4) noise. Preliminary oral responses to the Wolfe letter from the City's EIR Consultant and the expert subconsultants were presented to the City Council. Planning Staff and the applicant's engineer both responded on the record to the letter submitted by Mr. Watt and to oral comments he made on the record during the May 16, 2011 hearing, where he spoke on behalf of competing Visalia grocers as well as Mr. Wolfe, who was not in attendance.

Planning Staff and the EIR Consultant worked to prepare a second Rebuttal Memo to the May 16, 2011 comments. This second memo provides a full written response to the M.R. Wolfe and Jim Watt May 16, 2011 comment letters. This rebuttal memo was included as Exhibit A to the Staff Report presented to the City Council prior to the June 20, 2011 public hearing.

The Rebuttal Memo prepared in response to the May 16, 2011late comments from Mr. Wolfe and Mr. Watt, is hereby incorporated into this document by reference.

After careful consideration and review of the May 16, 2011 Wolfe and Watt comment letters and the Rebuttal Memo prepared in response thereto, the City Council finds that no significant new information was presented in the letters or responsive Rebuttal Memo that would warrant a different conclusion, and that no new significant impacts or increase in the severity of impacts which were analyzed in the FEIR that would require further analysis and recirculation of the FEIR have been identified.

3. Differences of Opinion Regarding the Impacts of the Project

In making its determination to certify the Final EIR and to approve the Project, the City recognizes that the Project involves an applicant whose projects often generate organized opposition from business competitors and unions, leading to extensive comments on EIR documentation and at public hearings that are held to consider the project and differences of opinion regarding an EIR's analysis and conclusions. Here, the multiple comment letters submitted in opposition to the Project by Mark Wolfe and Jim Watt on the eve of the April 25, 2011 Planning Commission hearing, and again on the eve and during the May 16, 2011 City Council hearing on Mr. Wolfe's appeal, do not call into question any of the conclusions of the EIR, nor do they identify any "fatal flaws" despite presenting their own consultants' critique of the EIR's noise, air quality, traffic and urban decay assessments. Both Mssrs. Wolfe and Watt as well as their retain consultants express multiple differences of opinion with regard to the conclusions set forth in the EIR and the Planning Commission findings, but such differences of opinion do not amount to a CEQA violation, nor do they provide any grounds for revision and recirculation of the EIR.

Before considering comments and information evidencing a difference of opinion regarding the Project's environmental impacts, the City has reviewed and considered, as a

whole, the evidence and analysis in the Draft EIR; the evidence and analysis presented in the comments on the Draft EIR; the evidence and analysis presented in the Final EIR; the reports prepared by the experts who prepared the EIR that support its conclusions regarding the significance of project impacts and the efficacy of recommended mitigation measures; the information and comments submitted on the Final EIR; information gathered and reports prepared by the City's consultants and by staff, addressing those comments; Planning Commission hearing testimony and the Wolfe and Watt comment letters submitted at the April 25, 2011 hearing and at the May 16, 2011 City Council hearing; and the Rebuttal Memos containing the supplemental analyses and information responding to those comments. As a result, the City has gained a comprehensive and well-rounded understanding of the environmental issues presented by the Project and of the range of the differing opinions regarding the Project, its impacts and the required mitigation measures. In turn, this understanding has enabled the City to make its decisions after weighing and considering the various viewpoints on these important issues.

Accordingly, the City certifies that its findings are based on full appraisal of all of the evidence contained in the Final EIR, as well as the evidence and other information in the record addressing the Final EIR. The differing opinions expressed by Project opponents do not undermine the substantial evidence supporting the Final EIR's analysis and conclusions or in any way indicate that further evaluation of any particular impact area addressed in the Final EIR is warranted.

B. Project Impacts and Mitigation Measures

1. These findings provide the written analysis and conclusions of the City regarding the environmental impacts of the Project and the mitigation measures identified in the Final EIR and adopted by the City as conditions of approval for the Project. In making these findings, the City has considered the opinions of other agencies and members of the public, including opinions that disagree with some of the thresholds of significance and analysis used in the Final EIR.

The City finds that the analysis and determination of significance thresholds are judgments within the discretion of the City; the analysis and significance thresholds used in the Final EIR and further explained on the record at the April 25th Planning Commission hearing and in the Rebuttal Memo are supported by substantial evidence in the record, including the expert opinion of the Final EIR preparers and City consultants and staff; and the significance thresholds used in the Final EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project.

2. Exhibit A. Attached to these findings and incorporated herein by reference summarizes the environmental determinations of the Final EIR about the Project's environmental impacts before and after mitigation. This exhibit does not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, Exhibit A provides a summary description of each environmental impact, identifies the applicable mitigation measures described in the Final EIR, and states the City's findings on the significance of each environmental impact after imposition of the applicable mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determinations regarding the Project's environmental impacts and mitigation measures designed to address those impacts.

The City approves the findings set forth in Exhibit A as its findings regarding the Project's environmental impacts before and after mitigation. In making these findings, the City ratifies, adopts, and incorporates the analysis and explanation in the Final EIR, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

The City adopts, and incorporates as conditions of approval of the Project, the mitigation measures set forth in the MMRP attached to these findings as Exhibit B to reduce or avoid the potentially significant and significant impacts of the Project, as well as certain less-than-significant impacts.

3. In adopting these mitigation measures, the City intends to adopt each of the mitigation measures identified by the Final EIR and applicable to the Project. Accordingly, in the event a mitigation measure recommended in the Final EIR has inadvertently been omitted from Exhibit B, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in Exhibit B fails to accurately reflect the mitigation measures in the Final EIR due to a clerical error, the language of the mitigation measure as set forth in the Final EIR shall control, unless the language of the mitigation measure has been specifically and expressly modified by these findings.

4. Prior to approval of the Project, various measures were suggested by commenters as proposed additional mitigation measures or modifications to the mitigation measures identified by the EIR, particularly with respect to traffic improvements. Some of the EIR's mitigation measures were modified in response to such comments. Other comments requested minor modifications in mitigation measures identified in the Draft EIR; requested mitigation measures that were in fact already incorporated into proposed mitigation; requested mitigation measures for impacts that were less than significant; requested levels of detail that are not necessary for environmental review but will be submitted in advance of later permits and approvals; or requested additional mitigation measures for impacts as to which the Draft EIR identified mitigation measures that would reduce the identified impact to a less-than-significant level; these requests are declined as unnecessary.

With respect to the additional measures suggested by commenters that were not added to the Final EIR, the City adopts and incorporates by reference the reasons set forth in the responses to comments contained in the Final EIR as its grounds for rejecting adoption of these mitigation measures.

C. Basis for the City's Decision to Approve the Project and Reject Other Alternatives

The Final EIR evaluates a range of potential alternatives to the originally Project, as is described in Section I.D., above, which is incorporated here by reference. In summary, the alternatives include a: (1) No Project Alternative; (2) Reduced Project Size Alternative; and (3) In-Line Retail Alternative. The Final EIR examines the environmental impacts of each alternative in comparison with the Project as originally proposed and the relative ability of each alternative to satisfy the Project Objectives.

The Final EIR also summarizes the criteria used to identify a reasonable range of alternatives for review in the EIR and describes options that did not merit additional, more-detailed review either because they do not present viable alternatives to the Project or they are variations on the alternatives that are evaluated in detail. The findings supporting rejection of these alternatives are discussed below in Section IV.E.

D. The City's Findings Relating to Alternatives

In making these findings, the City certifies that it has independently reviewed and considered the information on alternatives provided in the Final EIR, including the information provided in comments on the Draft EIR and the responses to those comments in the Final EIR. The Final EIR's discussion and analysis of these alternatives is not repeated in total in these findings, but the discussion and analysis of the alternatives in the Final EIR are incorporated in these findings by reference to supplement the analysis here. The City also certifies that it has independently reviewed and considered all other information in the administrative record

The City finds that the range of alternatives studied in the Final EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the Project's environmental effects, while accomplishing most of the Project Objectives. The City finds that the alternatives analysis is sufficient to inform the City, agencies, and the public regarding the tradeoffs between the degrees to which alternatives to the Project could reduce environmental impacts and the corresponding degree to which the alternatives would hinder the achievement of the Project Objectives and other economic, environmental, social, technological, and legal considerations.

The City finds the Project would satisfy the Project Objectives, and is more desirable than the other alternatives. As set forth in Section IV.B above, the City has adopted mitigation measures that avoid or reduce, to the extent feasible, the significant environmental effects of the Project. As explained in Section V, which is incorporated by reference into the CEQA findings, while these mitigation measures will not mitigate all project impacts to a less-than-significant level, they will mitigate those impacts to a level that the City finds is acceptable. **The City finds the remaining alternatives infeasible. Accordingly, the City has determined to approve the Project instead of approving one of the remaining alternatives.**

In making this determination, the City finds that when compared to the other alternatives described and evaluated in the Final EIR, the Project, as mitigated, provides a reasonable balance between satisfying the Project Objectives and reducing potential environmental impacts to an acceptable level. The City further finds and determines that the Project should be approved, rather than one of the other alternatives, for the reasons set forth below and in the Final EIR.

1. No Project Alternative

Under CEQA, a "No Project Alternative" compares the impacts of proceeding with a Project with the impacts of not proceeding with the Project. A "No Project Alternative" describes the environmental conditions in existence at the time the Notice of Preparation was published or some other supportable time period, along with a discussion of what would be reasonably expected to occur at the site in the foreseeable future, based on current plans and consistent with available infrastructure and community services.

Under the “No Project Alternative" considered in the Final EIR, the Project site would remain in its existing condition and no expansion of the Walmart store would occur. Another possibility is that the site would be built out to accommodate several retail uses where no individual store would exceed 40,000 square feet, such that no Conditional Use Permit would be required; however, this scenario is evaluated under the In-Line Retail Alternative.

For comparative purposes, the proposed Project would result in significant and unavoidable impacts with regard to construction noise, as is further detailed in Section V.A, below. The Project would result in other potentially significant impacts regarding air quality; biological resources; cultural resources; geology and soils; hazardous materials; hydrology and water quality; noise from sources other than construction; utilities and service systems; and traffic and circulation, all of which could be mitigated to a level of less than significant. None of these potentially significant impacts would occur under the No Project Alternative.

The City hereby rejects the No Project Alternative as infeasible. By not expanding the Walmart store as under the proposed Project, the No Project Alternative would not: Provide the market area with a centrally-located, affordable, one-stop shopping alternative with an adequately-sized grocery component to enhance customer convenience; positively contribute to the local economy; provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment; develop the vacant eastern portion of the site in a manner that is compatible with the existing site and enhances its aesthetics, positively contributes to the local economy, and enhances commercial retail and service opportunities available in the surrounding community; implement a high-quality architectural design that complements the existing design characteristics of the surrounding commercial uses; develop a project with new landscaping to soften the design and create a pleasant, attractive appearance that complements the Walmart store and surrounding area; develop a site plan to minimize potential automobile and pedestrian conflicts; maximize economic growth and development in a way that is consistent with the policies of the City of Visalia. Thus, the Project would fail to achieve any of the fundamental Project Objectives.

While this alternative would eliminate the significant environmental effects of the Project regarding noise during construction, and eliminate the less-than-significant impacts in other topical areas evaluated in the EIR, on balance, the environmental benefits that might be achieved with this alternative are outweighed, independently and separately, by the alternative’s failure to achieve any of the Project Objectives, and its failure to effect the other beneficial attributes of the Project identified above and in Section V, below.

2. Reduced Project Size Alternative

The Reduced Project Size Alternative assumes a project size which is half the size of the Walmart expansion as originally proposed, resulting in an overall project floor area of 28,400 square feet, and a grocery floor area of 27,800 square feet. The reduced floor area would also result in a smaller expanded parking area than proposed in the Project. The area of the expansion site that would be developed under this alternative would be about 2.3 acres. It is assumed that the Reduced Project Size Alternative would be developed entirely in the western portion of the expansion site and the existing vacant office building in the southeast corner of the expansion site would be demolished. This would leave a 130-foot-wide vacant strip of land along the eastern site boundary.

For comparative purposes, the Project as originally proposed would result in significant and unavoidable impacts regarding construction noise, as is further detailed in Section V.A, below. The proposed Project would result in other potentially significant impacts regarding air quality; biological resources; cultural resources; geology and soils; hazardous materials; hydrology and water quality; noise from sources other than construction; utilities and service systems; and traffic and circulation, all of which could be mitigated to a level of less than significant.

As set forth in the Draft EIR, it is anticipated this alternative would be result in lesser potential impacts associated with all the aforementioned topical areas. However, the Reduced Project Size Alternative would not avoid the significant and unavoidable construction noise impacts of the proposed Project. Although construction noise levels would be less under the Reduced Project Size Alternative, particularly to existing residences adjacent to the east project boundary, the additional 130 feet of setback would not be sufficient to reduce noise generated by heavy construction equipment to less-than-significant levels. The mitigated noise level would be 64 dBA L_{eq}, which would still exceed the applicable significance threshold of 56 dBA L_{eq}, as is further explained in the noise and alternatives analyses chapters in the Final EIR.

The City rejects the Reduced Project Size Alternative as infeasible. The City finds, separately and independently, the Reduced Project Size Alternative would be inconsistent with some fundamental Project Objectives, would not fully meet other fundamental Project Objectives and is less desirable to the City, as is set out in further detail below.

a. *Failure to Provide Central, One-Stop Shopping Alternative.*

One fundamental Project Objectives is to provide the market area with a one-stop shopping alternative that includes an adequately-sized grocery component. The Reduced Project Size Alternative would offer grocery floor area of only 27,800 square feet. When limited to this amount of square footage, Walmart only can offer a limited line of groceries. For instance, only packaged food items would be sold (e.g., canned and bagged foods), and no fresh food items (e.g., meats, dairy products, fruits, or vegetables) would be offered. Given the limited food offerings, this alternative Walmart store would not be considered a "food store," and thus would compete minimally with other food stores in the Trade Area. That is, the Reduced Project Size Alternative would fail to function as a true alternative grocery source for residents of the Trade Area and would not provide residents with a convenient one-stop shopping alternative. At the same time, testimony and written comments provided by residents during the entitlement and environmental review process and during the April 24th public hearing has confirmed the overwhelming need and consumer demand for a full range of products offered by an approximate 190,000 square feet square foot Walmart store that has been sized for the neighborhood and community market, with a grocery component of up to 56,310 square feet (see DEIR, p. 16, Table 2; includes existing 647 square feet of grocery and "buffer" area evaluated in EIR). Walmart's research and experience and intensive consultation with the City and residents is consistent with this evidence.

In sum, without the more than 50,000 square feet of space dedicated to the sale of groceries as under the Project as proposed, coupled with a substantial amount of general merchandise sales space, this alternative would fail to provide the market area with a one-stop shopping alternative that includes an adequately-sized grocery component.

b. *No Affordable Shopping Alternatives for Groceries.*

One fundamental Project Objective is to provide the Trade Area with an affordable shopping alternative that includes an adequately-sized grocery store. Affordability is especially important in light of the unemployment figures and income levels in the City. For instance, the City had an estimated 18 percent unemployment rate in 2010. Visalia also has income levels lower than the State as a whole, with an estimated median annual household income of $41,349. In contrast, California's median household income is $47,493 for the same time period. The gap for per capita income is even more pronounced

Wal-Mart stores have been shown to provide substantial price savings on consumer goods when compared to competitors. According to the article in the *Journal of Economics & Management Strategy* entitled "The Evolving Food Chain: Competitive Effects of Wal-Mart's Entry into the Supermarket Industry," estimates of Walmart's prices for grocery items have been, on average, 10 percent lower than competitors' prices. By not expanding the existing Walmart to the same degree as the proposed Project, and reducing grocery sales space by about 25,000 square feet (which would impact sales operations as set forth in Section IV.D.2.a), the Reduced Project Size Alternative would fail to meet the objective of providing regional consumers with a real, affordable alternative to existing supplies.

c. *Fewer Job Opportunities.*

One fundamental Project Objective is to maximize new job opportunities for local residents. The expansion of the existing Walmart store, as contemplated under the Project as proposed, is estimated to create approximately 85 employment positions, and an expansion totaling roughly half the size of the originally proposed space would result in the loss of approximately 43 job opportunities. These permanent positions would be both full-time and part-time, with most of the positions being entry level. These employment opportunities are especially significant in light of recent economic trends. The City, for example, had an estimated 18 percent unemployment rate in 2010

Meanwhile, the Final EIR's urban decay analysis shows that while the Project would cause a decline in revenues at other grocery stores, no closures are expected, and sales volumes would recover to current levels by 2013. While the cumulative analysis does identify the possibility of store closures, the analysis is based on a number of conservative assumptions that are set forth in the Land Use and Planning chapter of the Draft EIR and the urban decay technical analysis in Appendix B to the Draft EIR, which are incorporated by reference. As the Draft EIR concludes, it is more reasonable that automatic market corrections and other factors as also are set forth in the above documents and incorporated by reference, will prevent the market from becoming substantially overbuilt at any given time with additional projects.

d. *Fewer Tax Revenues.*

One fundamental Project Objective is to positively contribute to the local economy. The Project, as originally proposed, would add approximately 55,000 square feet in retail space, which would result in approximately $233,750 in property tax revenues for the City. Under the Reduced Project Size Alternative, the addition square footage of expansion space would total 28,400, which would result in only about $200,500 property tax revenues. Sales tax revenues also would be reduced. Under the Project as originally proposed, the City estimates that it would receive more tax revenues than a reduced Project alternative; an additional, $20,000 in sales tax, whereas the Reduced Project Size Alternative would be expected to generate $10,000 in sales tax revenue. Tax revenues in the City are especially important given that, from 2005 to 2009, the population of Visalia increased by 16,100, yet per capita retail sales

tax decreased from $1,459,952 in 2005 to $1,239,595 in 2009, as shown in fiscal analyses prepared for the City. The City has more residents to serve, but tax revenues are not keeping pace with the size of the service population.

Meanwhile, the Final EIR's urban decay analysis shows that while the Project would cause a temporary decline in revenues at other grocery stores, sales volumes would recover to current levels by 2013. While the cumulative analysis does identify the possibility of store closures when other projects are considered along with the Walmart expansion project, the analysis is based on a number of very conservative assumptions. These assumptions are set forth in the Land Use and Planning chapter of the Draft EIR and the urban decay technical analysis in Appendix B to the Draft EIR, which are incorporated by reference. As the Draft EIR concludes, it is more reasonable to conclude that automatic market corrections and other factors, (as also are set forth in the above documents and incorporated by reference), will prevent the market from becoming substantially overbuilt at any given time with additional projects.

e. *Fewer Enhancements of Aesthetics and Commercial Opportunities.*

A fundamental Project Objective is to develop the vacant eastern portion of the site in a manner that is compatible with the existing site and enhances its aesthetics, positively contributes to the local economy, and enhances commercial retail and service opportunities available in the surrounding community. Another is to develop a project with new landscaping to soften the design and create a pleasant, attractive appearance that complements the Walmart store and surrounding area. The area of the expansion site that would be developed under the Reduced Size Project Alternative would be about 2.3 acres, in contrast to 4.6 acres under the Project as originally proposed. Thus, the alternative would leave portions of the site vacant, and fail to enhance the aesthetics of the site to the same degree as the proposed Project, as well as fail to enhance the commercial retail and service opportunities available in the surrounding community to the same extent as the proposed Project.

f. *Failure to Maximize Growth and Development Consistent with City Policies.*

One fundamental Project Objective is to maximize economic growth and development in a way that is consistent with the policies of the City of Visalia. A number of policies and objectives in the City's General Plan Land Use Element are relevant, as set forth below. Following each statement of City policy are City findings regarding how the alternative fulfills the policy compared to the Project as originally proposed.

1) *Goal 3, Objective 3.1 B*: Promote diversity in Visalia's economic base to increase the stability of jobs and fiscal revenues. As discussed in Sections IV.D.2.c and IV.D.2.d, above, the Reduced Project Size Alternative will promote diversity in the City's economic base or increase the stability of jobs and fiscal revenues to the same extent as the Project as originally proposed.

2) *Goal 3, Objective 3.1 C*: Enhance the City's sales tax revenues by maintaining and improving Visalia's retail base to serve the needs of local residents and encourage shoppers from outside the community. As discussed in Section IV.D.2.d, above, the Reduced Project Size Alternative will not enhance the City's tax revenues to the same extent as the Project as originally proposed.

3) *Policy 3.1.5*: Encourage new and existing business and industry that will employ Visalians. As discussed in Section IV.D.2.c, above, the Reduced Project Size Alternative will create about half the number of job opportunities available to Visalians as would be available under the Project as originally proposed.

4) *Goal 3, Objective 3.5 C*: Promote comprehensively planned, concentric commercial areas to meet the needs of Visalia residents and its market area. The Reduced Project Size Alternative would provide approximately 28,400 square feet of commercial space and a grocery component with reduced goods and services. Further, in reducing the expansion area, this alternative would leave acreage on the Project site undeveloped. The alternative therefore would not meet the needs of Visalia residents in terms of providing a one-stop shopping destination where consumers could purchase affordable general merchandise and a full offering of grocery goods, as is set forth in Sections IV.D.2.a and IV.D.2.b, above, and this alternative is not as comprehensively planned as the originally proposed Project.

5) *Goal 3, Objective 3.5 D*: Create and maintain a commercial land use classification system (including location and development criteria) which is responsive to the needs of shoppers, maximizing accessibility and minimizing trip length. The Reduced Project Size Alternative, by not offering a full-sized, affordable grocery component adjacent to a diverse source of goods, would not be responsive to the needs of neighborhood or community shoppers, as contemplated by the Shopping/Office Commercial designation, and as is set forth in Sections IV.D.2.a and IV.D.2.b, above would reduce the benefits of having multiple consumer needs met under one roof. Further, the arrangement of comprehensive grocery uses in a location coterminous with a national retailer's general merchandise stock not only maximizes accessibility, but minimizes residents' vehicle travel lengths. That is, by siting a number of complementary uses within the same store, such as general merchandise and grocery, consumers have the option at the Project site to meet their diverse demands without any additional vehicle travel or vehicle travel to other cities where Walmart supercenters are located. By contrast, without the centralization of development afforded by the proposed Project, consumers would have to travel greater distances to satisfy consumer demand related to each of these uses, thereby increasing congestion at intersections and along roadway segments, and contributing greater amounts of greenhouse gas emissions to the atmosphere

6) *Policy 3.5.1*: Ensure that future commercial development is concentrated in shopping districts and nodes to discourage expansion of strip commercial development. The Reduced Project Size Alternative would reduce the benefit of having multiple consumer needs met under one roof by not offering a full-sized grocery component in a location coterminous with a diverse source of goods, would fail to concentrate commercial development in a shopping district or node, as is further set forth in Section IV.D.2.a, above. It is reasonably foreseeable that demand for any of the goods or services offered exclusively by the proposed Project would have to be met off-site, thus encouraging the expansion of strip commercial development.

While the Reduced Project Size Alternative would reduce environmental effects of the Project, the alternative would not eliminate the significant and unavoidable construction noise impacts associated with the Project, and, on balance, the environmental benefits that might be achieved with this alternative are outweighed, independently and separately, by the alternative's failure to achieve Project Objectives in the manner described above, and its failure to effect fully the other beneficial attributes of the Project identified above and in Section V, below.

3. In-Line Retail Alternative

The In-Line Retail Alternative assumes that the existing Walmart store is left in its current state, and that the 4.6-acre expansion area is not used for a Walmart expansion but rather for a series of in-line retail shops. It is further assumed that the overall floor area proposed for incremental development would remain the same as in the proposed Project at about 56,800 square feet. It is also assumed that none of the new retailers would engage in grocery sales, but would sell some form of general merchandise (e.g., shoes, clothes, books, office or art supplies, housewares, etc.). The building configuration would have all new stores in a line across the vacant site from north to south (parallel to the east Project site boundary), with parking in front and loading areas in the rear. The in-line retail likely would not stay open 24 hours per day. Under this alternative, the Walmart store would not be expanded or remodeled.

For comparative purposes, the proposed Project would result in significant and unavoidable impacts regarding construction noise, as is further detailed in Section V.A, below. The Project would result in other potentially significant impacts regarding air quality; biological resources; cultural resources; geology and soils; hazardous materials; hydrology and water quality; noise from sources other than construction; utilities and service systems; and traffic and circulation, all of which could be mitigated to a level of less than significant.

As set forth in the Draft EIR, it is anticipated this alternative would be result in lesser potential impacts associated with operational noise (owing to the fact that the in-line retail would not be open 24 hours per day) and land use and planning (which were determined already to be less-than-significant under the proposed Project; however, because less noise is anticipated from operations, and because no conditional use permits would be needed for this alternative, impacts are deemed to be even less significant). However, the In-Line Retail Alternative would not avoid the significant and unavoidable construction noise impacts of the proposed Project, even after implementation of all feasible mitigation measures. Like the proposed Project, the In-Line Retail Alternative also would involve grading and construction of the entire expansion area, including demolition of the existing vacant office building. As such, the temporary construction impacts associated with this alternative would be similarly significant and unavoidable with the implementation of all feasible mitigation measures.

Other impacts of the In-Line Retail Alternative, including those regarding geology and soils; biological resources; cultural resources; aesthetics; traffic and circulation; air quality; hazardous materials; utilities and service systems; public services; energy; and global climate change were deemed to be similar to those occurring under the originally proposed Project, as is set forth in the alternatives analysis in the Draft EIR. Finally, impacts of the alternative that are associated with hydrology and water quality were determined to be greater (although still less-than-significant) than what would occur under the proposed Project because the alternative's building footprint would encroach further into a flood plain. Much of the southeastern portion of the expansion area (comprising approximately half of the total expansion area) is located within the mapped 100-year flood zone. Under the proposed Project, the planned building expansion extends into the 100-year flood zone along the front façade of the expanded store, although the planned finished floor elevation is above the highest base flood elevation on the Project site. Under the In-Line Retail Alternative, approximately one-half of the floor area would encroach upon the flood zone, with a correspondingly greater potential for displacement of flood waters compared to the proposed Project, although any potential flooding impacts are likely to be less than

significant in either case. To avoid significant impacts, building pads for the in-line retail stores would be raised above base flood elevations, as required by the City.

The City rejects the In-Line Retail Alternative as infeasible. The City finds, separately and independently, the In-Line Retail Alternative would be inconsistent with some fundamental Project Objectives, would not fully meet other fundamental Project Objectives, and is less desirable to the City, as is set out in further detail below.

a. *Failure to Provide Central, One-Stop Shopping Alternative.*

One fundamental Project Objectives is to provide the market area with a one-stop shopping alternative that includes an adequately-sized grocery component. The In-Line Retail Alternative would consist of a number of smaller stores that, reasonably, would support only general merchandise sales and not a full-sized grocery market. At the same time, Walmart's research, experience and intensive consultation with the City and residents, and information provided by residents during the CEQA review process and at the April 25th public hearing has confirmed the overwhelming need and consumer demand for a full range of products offered by a Walmart store that has been sized for the neighborhood and community market, with a grocery component of up to 56,310 square-feet.

In sum, without the more than 50,000 square feet of space dedicated to the sale of groceries as under the Project as proposed, this alternative would fail to provide the market area with a one-stop shopping alternative that includes an adequately-sized grocery component.

b. *Failure to Provide an Affordable Shopping Alternative for Groceries.*

One fundamental Project Objective is to provide the Trade Area with an affordable shopping alternative that includes an adequately sized grocery store. Affordability is especially important in light of the unemployment figures and income levels in the City. For instance, the City had an estimated 18 percent unemployment rate in 2010. Visalia also has low-income levels, with the City having an estimated median annual household income of $41,349. In contrast, California's median household income is $47,493 for the same time period. The gap for per capita income is even more pronounced.

Under the In-Line Retail Alternative, no planned grocery market would be constructed. In terms of general merchandise sales, this alternative contemplates that small-scale stores would operate. However, these small stores likely would not benefit from economies of scale to the extent that a larger discount store would benefit, and it therefore is anticipated that goods for sale in the in-line retail stores would not be as affordable as comparable goods offered in the existing Walmart store. In fact, it is more likely the in-line retail stores would offer specialty items that would not compete with the on-site, national retailer. In this vein, evidence shows Walmart stores provide substantial price savings on consumer goods when compared to competitors. For example, according to the article in the *Journal of Economics & Management Strategy* entitled "The Evolving Food Chain: Competitive Effects of Wal-Mart's Entry into the Supermarket Industry," estimates of Walmart's prices for grocery items have been, on average, 10 percent lower than competitors' prices. By not providing an affordable grocery store, and by creating a likely source of less affordable general merchandise, the In-Line Retail Alternative would fail to meet the objective of providing trade area consumers with an affordable shopping alternative.

c. *Failure to Maximize Growth and Development Consistent with City Policies.*

One fundamental Project Objective is to maximize economic growth and development in a way that is consistent with the policies of the City of Visalia. A number of policies and objectives in the City's General Plan Land Use Element are relevant, as set forth below. Following each statement of City policy are findings regarding how the alternative fulfills the policy compared to the Project as originally proposed.

1) *Goal 3, Objective 3.5 C*: Promote comprehensively planned, concentric commercial areas to meet the needs of Visalia residents and its market area. The In-Line Retail Alternative would include comparable square feet of commercial space vis-à-vis the proposed Project, but no grocery component. The alternative therefore would not meet the needs of Trade Area and Visalia residents in terms of providing a one-stop shopping destination where consumers could purchase affordable general merchandise and grocery goods, as is set forth in Sections IV.D.3.a and IV.D.3.b, above.

2) *Goal 3, Objective 3.5 D*: Create and maintain a commercial land use classification system (including location and development criteria) which is responsive to the needs of shoppers, maximizing accessibility and minimizing trip length. The In-Line Retail Alternative, by not offering a full-sized, convenient and affordable grocery component adjacent to a diverse source of goods, would not be responsive to the needs of neighborhood or community shoppers, as contemplated by the Shopping/Office Commercial designation, and as is set forth in Sections IV.D.3.a and IV.D.3.b, above. While the In-Line Retail Alternative would offer complementary uses in close proximity, the neighborhood and community have indicated a demand for more affordable grocery options, given the state of the economy. Further, the arrangement of comprehensive grocery uses in a location coterminous with a national retailer's general merchandise stock not only maximizes accessibility, but minimizes residents' vehicle travel lengths. That is, by siting a number of complementary uses in close proximity, such as general merchandise and grocery, consumers have the option at the Project site to meet their diverse demands without any additional vehicle travel. By contrast, without the centralization of development afforded by the proposed Project, consumers would have to travel greater distances to satisfy consumer related to each of these uses, thereby increasing congestion at intersections and along roadway segments, and contributing greater amounts of greenhouse gas emissions to the atmosphere.

3) *Policy 3.5.1*: Ensure that future commercial development is concentrated in shopping districts and nodes to discourage expansion of strip commercial development. The In-Line Retail Alternative, by not offering a grocery component in a location coterminous with a diverse source of goods, would fail to concentrate commercial development in a shopping district or node, as is further set forth in Section IV.D.3.a, above. While this alternative would build out the site to the same extent as the proposed Project with complementary uses, the neighborhood and community have evinced a strong preference for more affordable grocery options, given the state of the economy. It is reasonably foreseeable that demand for any of the affordable groceries offered exclusively by the proposed Project would have to be met off-site, thus encouraging the expansion of strip commercial development

While the In-Line Retail Alternative would reduce environmental effects of the Project, the alternative would not eliminate the significant and unavoidable construction noise impacts associated with the Project, and would result in greater impacts regarding hydrology and water quality; on balance, the environmental benefits

that might be achieved with this alternative are outweighed, independently and separately, by the alternative's failure to achieve Project Objectives in the manner described above, and its failure to effect fully the other beneficial attributes of the Project identified above and in Section V, below.

E. Findings Regarding Project Alternative Scoped out of EIR

One other alternative was considered during the EIR process in forming a reasonable range of alternatives: the Alternative Project Location.

With respect to alternatives considered or raised during the EIR process, the City hereby adopts and incorporates by reference the reasons set forth in the DEIR analysis and responses to comments contained in the Final EIR, separately and independently, as its grounds for finding infeasible and rejecting the scoped-out alternative. Separately and independently, the City further finds infeasible and rejects the alternative location project alternative for the following reasons:

Evaluating an alternative location for the Project was initially considered but ultimately was rejected from further considerations, separately and independently, for the following reasons:

1. Since the proposed Walmart expansion could not be located at another site in isolation of the remainder of the store, the evaluation of an alternative project location would imply the relocation of the existing Walmart store to another site, along with the proposed expansion. The resulting project would be approximately 190,000 square feet in size, which would be substantially larger than the proposed expansion project size of 56,800 square feet. Thus the basic Project Objective of providing a centrally-located, one-stop shopping alternative, and with an adequately-sized grocery component, could only be met at an alternative location with a new store at least three times the size of the proposed expansion Project.

2. Regardless of location, the impacts associated with a project which is three times as large as the proposed Project would be far greater than those associated with the proposed Project at the proposed location. The volume of traffic generated would be roughly three times that associated with the proposed project, as would air quality impacts, energy consumption, and greenhouse gas emissions. The emissions of ozone precursors such as nitrogen oxides and reactive organic gases would exceed the San Joaquin Valley Air Pollution Control District's significance thresholds under such an alternative, while the emissions associated with the proposed Project would not do so. Regarding construction noise, building an entirely new store and parking area in a location appropriate for the market area would require substantially more grading and construction, and thus would be expected to generate similar levels of noise, but for longer durations, at any nearby residences or other sensitive receptors. In terms of construction effects, expanding the existing store also would involve substantially less consumption of building materials and energy, and significantly lower emissions of air pollutants and greenhouse gases. Thus, instead of avoiding or substantially lessening the impacts of the proposed Project, this alternative would do the opposite and create new significant air quality impacts and result in substantially worse traffic and noise impacts than those associated with the proposed project location**.**

3. Expanding the existing store on land which is already owned by Walmart would be less cost prohibitive than constructing an entirely new store on land which would have to be acquired.

4. The relocation of the Walmart store to another site would create a vacancy at the existing store which would need to be retenanted. It is possible that another big box retailer that does not currently have a presence in the area could occupy the empty store, or that the store could be subdivided into smaller tenant spaces. However, under the current economic conditions, such retenanting could take several years. Alternatively, the store could be demolished and the site could be developed for another use such as residential, but this option would be costly and would generate substantial waste**.**

5. While there may be alternative sites in the area that would be suitable for a 190,000 square-foot Walmart store, it is unlikely that any would be more suitable from the standpoint of delivery of City services than the current project site. At the Project site, all urban infrastructure needed to support the project is already in place on the Project site. This includes water supply, sanitary sewer, storm drainage, natural gas, and electrical service, all of which currently serve the existing store and would require minor upgrades and on-site extensions to serve the expansion Project. The roadways serving the Project generally have adequate capacity to accommodate additional traffic generated by the Project, although some intersection improvements will be needed to maintain adequate service levels. The Project has good access to transit service along Noble Avenue, and police and fire stations are located in the vicinity. Thus the Project site avoids the necessity of extending infrastructure and services to a less central site where such utilities and services may not be in place with the service capacities necessary to serve the Project**.**

F. Findings Regarding Adequacy of Range of Alternatives.

The City finds that the range of alternatives evaluated in the EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the Project's environmental effects, while accomplishing most but not all of the Project Objectives. The City finds that the alternatives analysis is sufficient to inform the City and the public regarding the tradeoffs between the degree to which alternatives to the Project could reduce environmental impacts and the corresponding degree to which the alternatives would hinder the City's ability to achieve most or all of its Project Objectives.

G. Mitigation Monitoring and Reporting Program

In accordance with CEQA and the CEQA Guidelines, the City must adopt a mitigation monitoring and reporting program to ensure that the mitigation measures adopted herein are implemented. **The City hereby adopts the Mitigation Monitoring and Reporting Program for the Project attached to these findings as attached Exhibit B.**

H. Summary

1. Based on the foregoing findings and the information contained in the administrative record of proceedings, the City has made one or more of the following findings with respect to each of the significant environmental effects of the Project identified in the Final EIR:

a. Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effects on the environment.

b. Specific economic, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the Final EIR that would otherwise avoid or substantially lessen the identified significant environmental effects of the Project.

2. Based on the foregoing findings and information contained in the record, it is hereby determined that:

a. All significant effects on the environment due to approval of the Project have been eliminated or substantially lessened where feasible.

b. Any remaining significant effects on the environment found unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations in Section V, below.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

A. Construction Noise Impact That Remains Significant After Mitigation

As discussed in Exhibit A and the Final EIR, the City has found impacts related construction noise remain significant following adoption and implementation of the mitigation measures described in the Final EIR. **The City finds that mitigating construction noise impacts, as identified in this section, to a level of less-than-significant would be infeasible, separately and independently, for the reasons set forth below.** As more fully described in the Final EIR and MMRP, all measures identified to alleviate these impacts that are feasible will be adopted.

1. Impact

a. Construction of the Project is anticipated to significantly impact homes to the south and to the east. To the south, a number of single family homes have backyards that abut the Project site, though existing walls separate these yards from store property. The homes themselves lie approximately 25 feet from portions of the site that would undergo construction, and at least 75 feet from the building expansion footprint. To the east, a number of multiple family residences lie approximately 15 feet away from the expanded parking area, and about 400 feet away from the easternmost façade of the expansion.

b. For homes lying to the southwest and southeast of the Project site: During grading and paving, noise would exceed the threshold adopted in the Draft EIR by 19 to 29 decibels (dBA L_{eq}) when taking place in the immediate vicinity of homes, and depending on the equipment in operation during a given time. During construction of the building expansion, noise is anticipated to exceed the adopted threshold by 5 to 25 dBA L_{eq} when occurring at the nearest residences to the south, with the range of noise dependant on equipment being used at a given time (e.g., graders and excavators versus air compressors).

c. For homes lying to the east: During grading and paving, noise would exceed the adopted threshold by 3 to 23 dBA L_{eq} when taking place in the immediate vicinity of the homes, with fluctuations based on the equipment in operation during a given time. During construction of the building expansion, noise is anticipated to exceed the adopted threshold by up to 5 dBA L_{eq} when occurring at the nearest residences, and depending on equipment in operation.

2. Mitigation

Feasible mitigation measures were identified in the Draft EIR that would reduce construction noise impacts, and these will be adopted as conditions of Project approval. However, technical noise modeling shows these measures only will be able to reduce noise impacts by approximately 5 to 10 dBA L_{eq}. The adopted feasible mitigations are as follows:

a. In accordance with the City's Municipal Code, construction activities shall be limited to weekdays between 6:00 a.m. to 7:00 p.m., and weekend days between 9:00 a.m. and 7:00 p.m.

b. Permanent noise barriers proposed along the south and east boundaries of the site (which are identified and discussed above in Section II.A.2.g) shall be constructed prior to engaging in any site development activities, including site clearing, demolition, building expansion and remodeling, and parking area expansion, reconstruction or rehabilitation. If this is not feasible, temporary noise barriers (minimum 10-feet high) shall be erected at the start of construction activities to shield heavy construction areas from adjacent residential receptors. The temporary noise barriers shall either be constructed of a minimum 0.5-inch plywood (without holes or gaps) or utilize acoustical blankets with a minimum Sound Transmission Class of 12. The temporary barriers shall remain in place until all exterior construction activity is completed or the permanent noise barriers are constructed.

c. All equipment driven by internal combustion engines shall be equipped with mufflers which are in good condition and appropriate for the equipment.

d. The construction contractor shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

e. Unnecessary idling of internal combustion engines shall be prohibited.

f. At all times during project grading and construction, stationary noise-generating equipment shall be located as far as practicable from sensitive receptors.

g. All stationary construction equipment shall be placed so that the emitted noise is directed away from sensitive receptors nearest the project site.

h. Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.

i. Owners and occupants of residential and non-residential properties located within 300 feet of the construction site shall be notified of the construction schedule in writing.

j. The construction contractor shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and institute reasonable measures as warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.

3. Feasibility Findings

The City finds that further mitigation measures would not be feasible, separately and independently, for the following reasons:

a. Raising the height of the temporary noise barriers may reduce construction noise by a few decibels, but technical obstacles render it infeasible to provide the structural support needed to withstand windloading. Barriers higher than 10 feet would require substantial foundations (e.g., concrete footings) to provide structural support due to windloading issues; such foundations would be permanent in nature and would not be warranted for support of temporary structures.

Therefore, the residual significance of the impacts at this intersection and roadway segment are considered significant and unavoidable.

B. Overriding Considerations Justifying Project Approval

In accordance with CEQA Guidelines Section 15093, the City has, in determining whether or not to approve the Project, balanced the economic, social, technological, and other project benefits against its unavoidable environmental risks, and finds that each of the benefits of the Project set forth below outweigh the significant adverse environmental effects that are not mitigated to less-than-significant levels.

This statement of overriding considerations is based on the City's review of the Final EIR and other information in the administrative record. Each of the benefits identified below provides a separate and independent basis for overriding the significant environmental effects of the Project. The benefits of the Project are as follows:

1. Creation of Employment Opportunities.

The Project will provide a retail element that will provide significant benefits to the City and community in terms of employment opportunities. The Walmart store is estimated to hire approximately 85 new employees. Except for a very few number of Walmart management positions that may be filled by transferees from other localities, most of these full- and part-time positions will be entry level and filled by area residents. Consequently, it is reasonably expected that the City and its residents will enjoy the economic and social benefits from added employment opportunities afforded by the Project. These employment opportunities are especially significant in light of recent economic trends. The City and the Trade Area, as

defined in the Final EIR, have very high unemployment levels. For instance, the Trade Area had an estimated 18 percent unemployment rate in 2010.

2. Creation of Tax Revenues.

The Project would add approximately 55,000 square feet in retail space, which would result in approximately greater property tax revenues and additional sales tax revenues for the City. At the same time, anticipated municipal costs associated with the proposed Project are less than sales taxes generated, leaving a net gain of up to $20,000. These revenues will go to the City's General Fund, which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities, including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things. Tax revenues in the City are especially important given that, from 2005 to 2009, the population of Visalia increased by 16,100, yet per capita retail sales tax decreased from $1,459,952in 2005 to $1,239,595 in 2009. The City has more residents to serve, but tax revenues are not keeping pace with the size of the service population.

In addition, the opening of a Walmart store with grocery should lead to increases in sales tax and new business permits, as described in letters to the Planning Commission from the Visalia Chamber of Commerce (dated April 21, 2011) and from Lon Hatamiya of the Hatamiya Group (dated April 22, 2011). The Chamber of Commerce letter notes that "the project is unique in that it can indirectly lead to additional sales tax revenues for the City." Providing a detailed expert analysis of publicly available data provided by the California Board of Equalization, Mr. Hatamiya's letter describes a 16.1 percent increase in taxable retail sales in the City of Dinuba, and an 8.7 percent increase in the city's retail business permits since a Walmart store with grocery sales opened in 2006. While the City recognizes that post-recession increases may be smaller, substantial evidence nonetheless indicates that a Walmart store with grocery leads to increases in taxable retail sales and the opening of new businesses.

3. Provision of Convenient Shopping Alternative With a Grocery Component Sized to Meet Consumer Needs.

The Project will provide general retail and grocery items under one roof, a shopping option that currently does not exist in the Trade Area, and with updated, modern, and energy efficient construction, in close proximity to local consumers and residents. Detailed evidence in the record, including written and oral comments provided during the CEQA review process, including extensive testimony heard from 28 Project supporters at the April 25, 2011 Planning Commission meeting, demonstrates the City's need for a more convenient, affordable source of groceries and general merchandise items for which consumer demand exists, that can serve customers during both daytime and nighttime in a safe and secure environment. The proposed Project provides such a source. In addition to convenience, the community will benefit insofar as this closer source of goods leads to less vehicle miles traveled overall and associated environmental benefits.

4. Provision of Affordable, One-Stop Shopping Option

Wal-Mart stores have been shown to provide substantial price savings on consumer goods when compared to competitors. According to the article in the *Journal of Economics & Management Strategy* entitled "The Evolving Food Chain: Competitive Effects of Wal-Mart's Entry into the Supermarket Industry," estimates of Walmart's prices for grocery items

have been, on average, 10 percent lower than competitors' prices. In addition, the entry of a Walmart store has been show to result in a decrease in pricing offered by competitor stores. According to the article "Selling a Cheaper Mousetrap," published in the *Journal of Urban Economics*, the entry of a Walmart store can result in price declines of 1.5 to 3 percent for many products (e.g., staple goods such as aspirin, laundry detergent, toothpaste, and shampoo) in the short term, and 7 to 13 percent in the long-term (i.e., five years). As such, the Project results in a wide variety of more affordable goods to residents of the City and surrounding communities.

5. Modern, Energy-Efficient Sustainable Project Design

The Project involves a number of beneficial attributes that would serve the community, including the implementation of numerous sustainable design, siting and building features. With regard to sustainable design, the Project would include use of the industry's most energy-efficient features available:

a. *Energy efficient HVAC units*: In the expansion area, the Project will utilize one of the industry's most efficient heating, ventilating and air-conditioning (HVAC) units available for the expansion area. Per ASHRAE 90.1-2004, retail stores' HVAC equipment is required to achieve an overall minimum Energy Efficiency Ratio (EER) value of 10.3. The new HVAC equipment that will be installed in the expansion area has an EER rating of approximately 12.1 to 14.3, well above the standard.

b. *Water Heating*: As part of the expansion Project, the entire Walmart store will reclaim waste heat from on-site refrigeration equipment to supply 70 percent of the hot water needs for the expanded store.

c. *Central Energy Management*: Walmart employs a centralized energy management system (EMS) to monitor and control the heating, air conditioning, refrigeration and lighting systems for all stores from Walmart's corporate headquarters in Bentonville, Arkansas. The EMS enables Walmart to constantly monitor and control the expanded store's energy usage, analyze refrigeration temperatures, observe HVAC and lighting performance, and adjust system levels from a central location 24 hours per day, seven days per week. This system will govern operations in the entirety of the store.

d. *White Roof*: The entire store will have a "white" membrane roof instead of the typical darker colored roof materials. The high solar reflectivity of this membrane results in lowering the "cooling" load by about 10 percent. No PVC-roofs will be used.

e. *Interior Lighting Retrofit Program*: All lighting in the store will be replaced by T-8 fluorescent lamps and electronic ballasts, resulting in a 15-20 percent reduction in energy load.

f. *Lighting*: All exterior building signage and many refrigerated food cases in the expanded store will be illuminated with light emitting diodes (LEDs). LED technology is up to 52 percent more energy-efficient operation than fluorescent illumination. Total estimated energy savings for LED lighting in the store's grocery section is approximately 59,000 kWh per year. With a lifespan of up to 100,000 hours, LEDs significantly outlast fluorescent lamps, allowing for significant reduction in re-lamping and maintenance costs. Additionally, LEDs contain no mercury or lead, perform well in the cold

and produce less heat than fluorescent bulbs - heat which must be compensated for by the refrigeration equipment.

g. *Light Sensors*: The entire store will include occupancy sensors in most non-sales areas, including restrooms, break rooms, and offices. The sensors automatically turn the lights off when the space is unoccupied.

h. *Dehumidification*: The store entire will include a dehumidifying system that allows the store to be operated at a higher temperature, use less energy, and allow the refrigeration system to operate more efficiently.

i. *Food Displays*: The store will include a film on the freezer doors that combats condensation and requires no energy, unlike heating systems that are typically used to combat condensation.

6. Provision of Aesthetically Pleasing Design and Visual Upgrade to Existing Store and Overall Site

The Project will replace the site's existing vacant medical building that sits upon 2.0 acres and 1.8 acres of weedy vegetation with a highly-upgraded, visually-pleasing environment in which the public can gather and shop. The existing store's nearly 20-year old façade and elevations will be replaced with architectural upgrades that will seamlessly integrate the expansion area into the existing store and provide residents and members of the public with a modern-day Walmart store. Additional landscaping to be installed on-site, particularly in the areas of the new screenwalls, will provide an enhanced visual environment while also increasing on-site shading.

7. Implementation of Smart Growth

The Project would constitute development on a site surrounded on three sides by existing residential and commercial development, and located along a major thoroughfare (State Route 198) in and gateway to the City. This use of the site would help to avoid impacts to agricultural land that could arise should the Project be sited elsewhere in the City, and its mix of complementary uses would lower the number of vehicle miles traveled when compared to existing commercial inventory.

RESOLUTION NO. 2011-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. 2007-17, A REQUEST BY CEI ENGINEERING ASSOCIATES TO ALLOW THE EXPANSION OF AN EXISTING 133,206 SQUARE FOOT WALMART STORE LOCATED AT 1819 EAST NOBLE AVENUE UP TO 190,000 SQUARE FEET, WITH A PROPOSED 52,945 SQUARE FOOT GROCERY COMPONENT, OUTDOOR GARDEN CENTER AND ANCILLARY INTERIOR SERVICE-ORIENTED TENANTS, INCLUDING A FAST FOOD TENANT (THE "PROPOSED PROJECT"), AS FULLY DESCRIBED IN THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH 20081211133). THE EXISTING 14.55 ACRE SITE AREA WOULD BE EXPANDED TO A TOTAL OF 18.35 ACRES, ALL OF WHICH IS CURRENTLY ZONED COMMERCIAL /SHOPPING OFFICE (P-CSO), LOCATED AT 1819 E. NOBLE AVENUE. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, AND 100-040-038).

WHEREAS, Conditional Use Permit No. 2007-17 is a request by CEI Engineering Associates to allow the expansion of an existing 133,206 square foot Walmart store located at 1819 East Noble Avenue up to 190,000 square feet, on a 14.55 acre site on which the area would be expanded to a total of 18.35 acres, all of which is currently zoned Commercial /Shopping Office (P-CSO), located at 1819 E. Noble Avenue. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038); and,

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on April 25, 2011; and

WHEREAS, the Planning Commission of the City of Visalia, after conducting a public hearing, approved Conditional Use Permit No. 2007-17; and

WHEREAS, an appeal of the Planning Commission's approval of Conditional Use Permit No. 2007-17 pertaining to error or abuse of discretion by the Planning Commission in its action and pertaining to the Commission's actions not being supported by evidence in the record was received on May 5, 2011; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on May 16, 2011, and continued the hearing to June 6, 2011, and on June 6, 2011, continued the hearing to June 20, 2011; and

WHEREAS, the City Council finds the approval of Conditional Use Permit No. 2007-17 was made in accordance with Chapter 17.38 (Conditional Use Permits) of the City of Visalia, based on the evidence contained in the staff report and testimony presented at the public hearing.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the Project, Final Environmental Impact Report, SCH# 2004061090 was prepared consistent with the California Environmental Quality Act and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the proposed project will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity because adequate conditions and mitigation measures have been incorporated into the project to protect adjacent properties and public improvements during ongoing operations of the project.

2. That the proposed conditional use permit is consistent with the policies and intent of the General Plan and Zoning Ordinance. Specifically, the project is consistent with the required findings of Zoning Ordinance Section 17.38.110:

    A. The proposed location of the conditional use permit is in accordance with the objectives of the Zoning Ordinance and the purposes of the zone in which the site is located.

    B. The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the vicinity.

3. That the project is consistent with the project description contained in the Final Environmental Impact Report (FEIR) (SCH# 2008121133) for the project associated with this Conditional Use Permit CUP 2007-17, for the expansion of a existing Walmart store at said location, and for which said FEIR was certified by this Commission precedent to its consideration of this Variance request, consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

BE IT FURTHER RESOLVED that the City Council denies the appellants appeal and upholds the approval of the Conditional Use Permit on the real property here in above described in accordance with the terms of this resolution under the provisions of Section 17.38.110 of the Ordinance Code of the City of Visalia, subject to the following conditions:

1. That the site be developed in substantial conformance with the site plan in Exhibit “A”., except that the cross access point depicted between the project site and the church located at 1905 E. Noble Ave. (APN 100-050-013) shall be revised to occur at the east end of the church parking lot, as shown on the approved site plan for CUP 2008-30, and that said access point be signed as “exit only” from the church parking lot onto the project site.

2. That the mitigation monitoring plan and mitigation measures adopted with the FEIR certified for the project (SCH# 2008121133) by Resolution No. 2011-14, and all conditions of this project be met during construction and upon final occupancy and ongoing operation of the project.

3. That the Conditional Use Permit be developed consistent with the comments and conditions of Site Plan Review No. 2006-240, incorporated herein by reference.

4. That landscape and irrigation plans, prepared in accordance with the City of Visalia Model Water Efficient Landscape Ordinance, shall be included in the construction document plans submitted for either grading or building construction permits.
5. Parking lot trees to remain on-site shall be protected during construction such that their existing canopy configuration remains unharmed or disturbed. All site landscaping shall be regularly maintained in a healthy manner such that parking lot trees are able to exist in the full canopy configuration that is consistent with the age and size of the particularly tree.
6. That the applicant prepares a security plan for review and approval by the Community Development Director that specifically includes but is not limited to provision for controlled access, active and passive surveillance, and ongoing maintenance of the area between the two walls generally along the project's east boundary. The security plan shall also satisfactorily address security of and retrieval of shopping carts.
7. Within one year of commencement of operations of the expanded store area or new loading docks, the applicant shall bear the costs of one acoustical analyses conducted by the noise consultant the City retained to prepare the EIR's noise study and EIR analysis. The study shall be undertaken at the City's sole discretion and timing. The purpose of the analyses shall be to establish the project's compliance with Community Noise Standards for sensitive receptors adjacent to the project site.
8. That all other existing City Codes and Ordinances shall apply
9. Within 30 days following the City's issuance of a Notice of Determination, the applicant and City shall have prepared and executed an indemnification agreement.
10. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Conditional Use Permit No. 2007-17 prior to the issuance of any building permits for this project.

RESOLUTION NO. 2011-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF VARIANCE NO. 2007-06, A REQUEST BY CEI ENGINEERING CEI ENGINEERING ASSOCIATES TO ALLOW A SIGN PROGRAM FOR BUILDING AND MONUMENT SIGNAGE EXCEEDING THE STANDARDS IN DESIGN DISTRICT "A". THE SITE IS ZONED COMMERCIAL/SHOPPING OFFICE (P-CSO), LOCATED AT 1819 E. NOBLE AVENUE. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, AND 100-040-038)

WHEREAS, Variance No. 2007-06, A request by CEI Engineering Associates to allow a sign program for building and monument signage exceeding the standards in Design District "A". The site is zoned Commercial/Shopping Office (P-CSO), located at 1819 E. Noble Avenue. (APN: 100-050-001, 100-050-007, 100-050-013, 100-050-014, and 100-040-038); and,

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on April 25, 2011; and

WHEREAS, the Planning Commission of the City of Visalia, after conducting a public hearing, approved Variance No. 2007-06; and

WHEREAS, an appeal of the Planning Commission's approval of Variance No. 2007-06 pertaining to error or abuse of discretion by the Planning Commission in its action and pertaining to the Commission's actions not being supported by evidence in the record was received on May 5, 2011; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on May 16, 2011, and continued the hearing to June 6, 2011, and on June 6, 2011, continued the hearing to June 20, 2011; and

WHEREAS, the City Council finds Variance No. 2007-06, as conditioned by staff, to be in accordance with Section 17.42 of the Ordinance Code of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and,

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the Project, Final Environmental Impact Report, SCH# 2004061090 was prepared consistent with the California Environmental Quality Act and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Visalia makes specific findings with regard to the request for the freestanding monument sign with a proposed sign copy area of up to 52 square feet, as contained in Attachment 1 of this resolution, and based on the evidence presented in this public hearing; and,

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Visalia makes specific findings with regard to the request for the on building signage on the north elevation of said building of up to 585.22 square feet, as contained

in Attachment 2 of this resolution, and based on the evidence presented in this public hearing.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council hereby approves Variance No. 2007-06, as conditioned, on the real property herein above described in accordance with the terms of this resolution under the provision of Section 17.48.110 of the Ordinance Code of the City of Visalia, subject to the following conditions:

1. That the signage be developed consistent with Exhibits “D” and “E”, and the Sign Program dated April 2011.
2. That the timeline for the lapse of this Variance shall be the tied to the timeline for Conditional Use Permit 2007-17.
3. That all other existing federal, state and city codes, ordinances and laws be met.
4. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Variance No. 2007-06, prior to the issuance of any building permits for this project.

June 8, 2011

City of Visalia, City Council
Mayor Bob Link
425 E. Oak Avenue
Visalia, CA 93291

Honorable Mayor Link:

I recently read in the Visalia Times Delta that our Walmart on Noble is going to expand. The new store will feature some cutting edge technologies to reduce Walmart's stress on the environment. For example, the new store features LED lighting in the refrigeration cases and signs. This saves the store enough energy to power five homes.

Also, the bathrooms have water saving toilets and sinks. This feature alone saves over half a million gallons of water! The store will also reclaim its own energy from refrigerated cases.

These sustainable features not only help our environment but they also help us save money when we shop at Walmart. Walmart prides itself on keeping prices low. By recycling and reclaiming energy, water, and electricity, Walmart can continue to offer lower prices and help keep Visalia a beautiful place to live. I ask again that the City Council please take this into consideration and vote to allow Walmart to expand their store.

The Environmental Impact Report supports the city's ability to sustain this type of development. I would respectfully ask that the City Council support the Planning Commission's recent certification and approval of the EIR for the Walmart expansion project.

Best regards,

Loretta Ray

Loretta Ray

EXHIBIT "B"

Donjia Huffmon

From: Curtis Christensen <curtchristensen@comcast.net>
Sent: Thursday, June 16, 2011 6:46 AM
To: Bob Link
Subject: Walmart

Mr. Link

Wal-Mart expansion at the Noble Ave store is poor planning and an encroachment on surrounding homes near the property border. There are numerous reasons Wal-Mart's expansion project at this store should be denied by the City of Visalia. Some of my reasons are as follows.

1 Traffic is congested in this area because of the restricted area between the commercial areas of Wal-Mart and Mary's Vineyard and Highway 198. Traffic there has exceeded the streets capacity since the opening of Wal-Mart. Even with the improvements made at Ben Maddox and Noble area, no one could imagine, that with an expanded Wal-Mart, traffic congestion would improve. It will increase dramatically along with a greater mix of tractor trailer delivery vehicles.

2 Economic vitality of the area will be in jeopardy of deteriorating as surrounding businesses will not be able to maintain a profit margin to compete with Wal-Mart, and occupancy rates will drop.

3 The Foxglen neighborhood adjacent to the southern wall of the Wal-Mart expansion has been there for 25 years. It is full of families with children as well as retired people. The homes will be exposed to high intensity industrial noise and light pollution. Truck traffic will increase to support the expanded Wal-Mart Grocery operation. Refrigerated truck trailers will run continuously, disrupting sleep of children and workers of different shifts in adjacent homes. There will be additional forklift and other mobile loading equipment, probably operating at night. Home values will fall even faster than before and sales will be difficult. Those are some of the effects the neighborhood will bear. Some are not known yet.

4 Project not needed in this city. Current grocery and retail facilities need continued patronage. There are already numerous discount grocery outlets in all parts of the city. The Wal-Mart grocery expansion is an attempt to increase profits, while forcing existing local businesses out of operation.

These are some good reasons to deny this project at this location. It is the Civic Duty of the people and the City Council to deny the Wal-Mart Grocery expansion. This area does not need an expanded Wal-Mart on the property it sits on. It is too close to long standing homes and will spawn pollution from additional auto and truck traffic. A project like this should sit on land with appropriate open space and only commercial property surrounding it. If you are unsure about this project, imagine that it is behind your backyard.

Curtis Christensen
Foxglen Neighborhood Resident
Visalia, California

City of Visalia
City Council
425 East Oak Avenue
Visalia, CA 93291

Dear City Council Members:

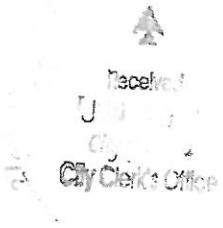
Some people in town are concerned about the effect that Walmart's expansion will have on the air in Visalia, especially contaminates, particles, and gases like carbon monoxide. First Walmart will take every precaution to keep the air clean and second the effects of increased traffic will be less harmful than many anticipate.

For example, the city found that increased car traffic would not result in a significant risk of pollutants contaminating the air. The city also found that carbon monoxide released by the increased number of cars at the store would also not result in a significant risk to the air. Finally, the expansion will not conflict with the town's clean air plan. The city determined that overall the project posed no risk to the air quality of Visalia.

This is just one more reason that we should embrace the store's expansion. Walmart, City Staff, and the Project Consultants have done a very thorough job and have accurately examined all areas of impact resulting from this project and have applied adequate measures of mitigation. I respectfully ask the Council to approve this expansion project.

Sincerely,

Barbara Cocchi



City of Visalia, City Council
425 E. Oak Avenue
Visalia, CA 93291

Dear Honorable Mayor Link, Council Members, and City Staff:

I am writing to express my views in regards to Walmart's proposed expansion of its store on Nobel Avenue.

Walmart opened in Visalia in 1992. For almost twenty years we shopped at Walmart for their low prices and wide selection of goods. More importantly, Walmart keeps us working. I ask the City Council to support Walmart's expansion because that means more jobs for people in Visalia.

Walmart currently employs almost three hundred people at their store in Visalia. These are three hundred quality jobs. By expanding the store, Walmart expects to add eighty five jobs to the store. These jobs provide both part time and full time work to locals. With the job market as tough as it is and with unemployment so high, I support any company that brings more jobs to our community.

These jobs provide more than just a place to work. Walmart offers health and dental insurance plans to all of their employees. They also provide a generous retirement program for workers who want to participate. Finally, Walmart pays well. The California minimum wage is well below Walmart's average pay wage of $13.10 an hour. Walmart provides jobs to Visalia that we cannot afford to lose. Walmart will put people to work who want to work!

Again, I want jobs for Visalia and an expanded Walmart will help. Please support Walmart as they try to bring jobs to our community and deny this appeal.

Respectfully,

City of Visalia

City Council, Mayor Bob Link

315 East Acequia Avenue

Visalia, CA 93291

Dear Mr. Mayor and Council Members:

I would like to express my complete support for the Walmart expansion project. Part of Walmart's plan is to add a grocery section including a bakery and a deli to their store. Some worry that this will have a negative impact on other businesses in Visalia.

The environmental impact report determined that the expansion of Walmart will not result in any store closings in Visalia. Any talk of store closure is an absolute worst case scenario. There is enough business in town for everyone. In fact, I look forward to the day when I don't have to wait in a long line to buy milk at the grocery store because Walmart is open. Walmart does not mean store closings it means more choices.

More choices mean lower prices and better quality goods. Everyone can profit from Walmart and the increased number of shoppers that it will bring back to Visalia.

Please vote to expand Walmart and vote no on this appeal. An expanded Walmart will bring so many more benefits to Visalia.

Sincerely,

Danny Ramos

(559) 736-2094

City of Visalia
City Council, Mayor Bob Link
315 East Acequia Avenue
Visalia, CA 93291

Dear Mayor Bob Link and Council Members:

I am writing to show my support for the expansion of the Walmart store on Noble Avenue.

I support this store expansion because it creates jobs, tax revenue, and brings more shopping options to our town.

Thanks for hearing the concerns of so many, and putting the community interest above special interests. We are indeed well served by our public planning process.

I am looking forward to more shopping opportunities, and I urge the City Council to uphold the recent Planning Commission's decision approving the expansion and its EIR. Thank You.

Sincerely,

Sandra a Ramos
(559) 622-8712 Home #

From: JHatwig@ceieng.com [mailto:JHatwig@ceieng.com]
Sent: Tuesday, June 07, 2011 2:32 PM
To: Paul Scheibel
Subject: Visalia Walmart - Interaction with neighbors

Dear Paul,

As you may know, after the May 16th Council hearing where I spoke on behalf of Walmart as the project's engineer, I was approached by Ann Campbell and Chuck Roudebush (the neighborhood watch residents who indicated to me that they live on Tracy Street just south of Wescott Ave). They wanted to discuss the project's noise impacts and what measures Walmart was taking to reduce the noise. It was clear from Ann and Chucks comments to the Council that they were not completely familiar with the project or the EIR's noise Evaluation and proposed walls. They clearly had strong misgivings about what they believed would be a worsened noise environment.

Below is my recollection of the conversation we had (and no I did not tape it). I have a detailed memory for the conversation and took notes after it ended.

Post Council Hearing - Conversation with 2 neighbors/same household that are outside the 300' notice boundary. Chuck and Ann approached our team and started to ask a few questions, mostly about the wall placement. It was obvious they were upset, but for the most part they were directly not rude or mean to me, all parties in conversation were respectful to each other. It was also obvious that they were not at the Planning commission hearing, when the full project was presented and some of the questions about the wall were answered in detail at that meeting.

Here is the conversation as I recall:

Chuck: "What will this wall look like and where will it be exactly?"

Ann: "He's in engineering too, so he knows about this kind of stuff".

Jason H: "I can, maybe setup a meeting, to go over. Can you give me your contact data?"

Ann: "Sure". (Chuck hands me a piece of paper, I place in my pocket).

Jason H: "In fact, I have some slides on the computer over there, how about I show you what I have, maybe it will answer some of your questions?"

Ann and Chuck: "Ok".

(We walk over to the computer and I pull up some wall pictures/slides to discuss).

Jason H: "Well, let me just show you some of these slides of the wall, wish you would of made it out to the PC when we presented this part. (Pointing out on the slide) Here is the overall view of where the wall will be, and the gap between the existing and the new wall is here. Here is where opening gates are for maintenance and security. Here is the loading dock well area, and its wall here. Here is the extended 14' wall looking south, here is the wall looking east, this slide shows the view from the easterly neighborhood looking west.

Ann: " I am upset that we were not noticed about the project, nobody told us this was going on, we have to find out from another neighbor! I'm also upset because in the past when I tried to call the City or Walmart store manager, nobody returns my call!" (Ann vents a bit more)

Jason H: "Maybe you are outside the mail notice boundary?"

Ann: "I' am right here!"

(They show Jimmy and I an apn map of her location then we discuss how far up the blocks CEI and Jimmy went door to door, Jimmy and Amelia briefly talk with Ann. Chuck and I continue on.)

Chuck: "Oh, that's kind of what it will look line at the end of this other street" He points to dead end street at the south. "This is where that 2 story home is".

Jason H: "Exactly, it will be similar".

Chuck: "What's going to be in between the wall? Just some small stick trees that will die?".

Jason H: "No, nice trees will be planted, the area will be Maintained...(I show Chuck landscape plan)"

(Ann joins back into the conversation).

Chuck: "Will people be able to get in between the wall, we have had some recent crimes?..". (Ann further elaborates on one of the crimes that happened in their neighborhood; she talks about how the security guy on the cart with flashing lights doesn't seem intimidating enough for someone committing a crime, although I'm not sure that crime she spoke about had anything to do with Walmart).

Jason H: "The space in between the wall will be closed off with gates, only maintenance and security will have access from the Walmart side, there is no way the general public can get to space between from our side".

Chuck: "Ok, that's a good thing. Is the area patrolled?"

(Jimmy tells me to talk about the camera systems)

Jason H: "The space between will have surveillance...

(I further explain the camera systems and how the store will work with police if crimes take place. Chuck appears satisfied with this).

Chuck: "What about the lights? They should be shielded so it's not lighting up backyards.

Jason H: "As a matter of fact, I have a light plan with me." (I unfold the plan and show him how the foot candles taper to zero at the property line and which lights have shielding.)

Chuck: "Ok that's good".

(The conversation starts to wind down)

Chuck: "Do you still have that paper?"

Jason: "Yes, right here".

(I hand it back the paper with his and Ann's phone numbers on it)

Chuck: "I think you answered most of my concerns, I don't know that we need to meet later then, I feel better with this. Well maybe the 2-story neighbor would like to hear some of this". (I could tell by his posture that he seemed a bit more at ease).

Jason H: "I can still set something up"

Chuck: "I wonder what their view from their window will be like, right now they see right into the property".
Jason H: "I'd be willing to sketch something, the wall and trees will block most of anything".

Chuck: "I'm just thinking what it might be like from their view; maybe we don't need to meet then".

Ann: "Maybe we can ask them".

Chuck: 'That might be a good idea"

(Chuck rips the bottom part of the paper he handed me, hands me back the top, it has both of his and Ann's numbers on it, I didn't read the bottom part so I have no idea what was on it).

Ann: "You know, if this were a Costco I'd be ok with it, I love Costco.
Just wish it was a Costco".

Jason H: "Costco still has delivery trucks; you would still have noise, some of those aspects would be the same".

Ann: "But I would be able to live with it if it was a Costco, but it's not, it's a Walmart".

Jason H: "Well it was nice meeting both of you; I hope some of your questions and concerns were answered"

Chuck and Ann: "Yes, thank you".

Jason H: "Welcome, I call you to schedule that meeting"

Pleasantries ...(End)

--

Two days after the meeting I called Chuck to see if they scheduled a residents meeting. He said he basically didn't see the point because he understood the project better, but he said he would have Ann call me if she wanted to setup a meeting with us.

Ann called me back, she indicated that she still wanted to meet and was waiting for one of the neighbors to come back from a vacation??? (Still a very nice and pleasant conversation).
We offered to meet at their convenience to go over their concerns and try to answer questions about the project.

I then received an email from Ann the next day (attached) indicating that she and the residents were basically opposed to the project because they felt it would create "unacceptable noise issues for the neighborhood." It was pretty clear to me the following day, after reading Ann's comments in the Visalia Times, that meeting to discuss the project would just result in attacks on the project and some past issues.

Since the Visalia Times article came out, I have not received a call or date to meet. After reading more Visalia Times comments from Ann, I'm not sure that there is real interest in meeting anymore and I know that some may oppose the project regardless of mitigation measures and evidence in the EIR; for me to give more explanation and try to answer concerns about the project, that so far I think is mostly misunderstood, I'm not sure that it would matter much to Ann. I think it's clear to me that much of the tension is about past noise on-site (likely related to past interior remodeling work and a solar install) and it could be clouding their judgment on the current proposed project. The environmental documents show that the soundwall mitigation and the improved loading docks will take care of the project-related noise, construction noise mitigation measures are required and security of the site is improving too?..only making the situation better. Is it only because it is branded "Walmart" that these particular residents are mobilizing against? Some of this may be due to the outreach efforts of former Save Mart manager Jim Watt in Visalia, (and similarly done in nearly all towns where Walmart is proposing a project).
Fairly troubling to me is the fact that Ann indicated when we met that she would have no problem with an expansion if this were a different retailer--like Costco--and not Walmart, even if the same noise impacts were involved.

I understand that some of these same residents are possibly lobbying Council members to vote against the project based upon future noise issues that are likely misunderstood, at least judging from some of the letters in the paper. However, I believe the EIR consultants so far have given some good background on the topic and will probably give even more detail at the next hearing in response to comments.

Anyway, I would think the Council might be interested in understanding my recent interaction with Ann and Chuck.

Respectfully,
--

Jason Hatwig, LEED AP BD+C
Project Manager

CEI
7543 N. Ingram Ave, #107
Fresno, CA 93711

Phone: 559-447-3119 Ext. 207
Cell: 559-285-5704

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From: Bill Little [mailto:blittle2@gmail.com]
Sent: Friday, June 03, 2011 3:47 PM
To: Bob Link
Subject: Re: Walmart Expansion

June 6, 2011

City of Visalia
City Council
c/o Mayor Bob Link,
Paul Scheibel, Planning Director
315 East Acequia Avenue
Visalia, CA 93291

Dear Mayor Link and Council Members:

I am writing to express my full support for the expansion of the Walmart store on Noble Avenue. The City of Visalia has some challenging times upcoming and I feel this project can help our city get back on more profitable economic and financial track.

I feel the expansion of the Walmart to have groceries would be a great addition to our town with additional choices to the people that live in the eastern part of Visalia. I feel Savemart would still attract their same customers and Walmart will help those that need to watch their budget more closely.

I understand there are questions from the surrounding neighbors about overnight deliveries but that could be remedied by hours of acceptable deliveries and possibly higher sound walls. With the expanded Walmart additional jobs will be created, which will help our unemployment that is still one of the highest in the state.

The surrounding cities seem to expanding their options while Visalia has seemed to stifle growth. I love the city of Visalia and want to keep my dollars in our own town but with the current economic situation I look for the best prices even if it means going to the neighboring cities so having the choice to shop and spend in Visalia would be a boost to our own economy.

I respectfully ask you and the other members of the Council to take my thoughts into consideration as this item comes before you for a final vote.

Sincerely,

Bill Little

-----Original Message-----
From: Bill Patty [mailto:oldpattys@sbcglobal.net]
Sent: Friday, June 03, 2011 12:44 PM
To: Bob Link
Subject: Walmart Expansion request

I sent a letter to the Editor of Times Delta today letting them know I support this request and pointed out they have not reported fairly on the discussions and for the most part only reported comments that oppose this project. I pointed out that since we the residence of Visalia (over 10,000 signatures submitted) spend our money there because we like their products and pricing of those products they are requesting expansion. This puts us the Citizens of Visalia & others, at the core of this request.. We want more of what they have. In support of this project that promotes growth for our community I would like to say this is good and along with the good we must accept the consequences that come with growth. Ask any residence of Visalia if they share in the consequences of growth and they will all have theirs to mention. Those on collector streets have more traffic, those near public parks, or near schools all have other noise to contend with.
The list go on. I believe more people want this expansion, this growth in our communities than do not want it. And we are willing to accept the consequences that come with it .

My thanks to the Council for the great service and direction you provide,
Sincerely, Bill Patty

From: Mathewson, Colette [mailto:CMathewson@calwater.com]
Sent: Friday, June 03, 2011 2:52 PM
To: Bob Link
Subject: Re: Visalia Walmart

City Council
c/o Mayor Bob Link, Councilmembers' Gubler, Shuklian, Nelsen
315 East Acequia Avenue
Visalia, CA 93291

Dear Mayor Link and Councilmembers,
I am 100% in support of Walmart's store expansion here in Visalia.
Since I live on the east side of Visalia I can't tell you how pleased I am to have access to such an affordable store that is in such a convenient location. I really look forward to the time when I can also pick up fresh fruits and vegetables while shopping at Walmart instead of having to waste gas going to a second store.
Wal Mart provides so many jobs and I believe is such a needed part of our city. In these economic times, I especially believe that stores like this can be part of the solution.
I embrace this plan. It's meaningful and a testament to Visalia that we have a group of this quality that wants to re-invest in our city.
Additionally, I feel the city cannot pass up the opportunity to collect tax revenue during these tough economic times. This added revenue will spill back to the city and help found various public works like public safety and sanitation.
Please vote to approve this store expansion and reject the appeal. Thank You.
Sincerely,
Colette M. Mathewson

Colette M. Mathewson
16919 Avenue 315
Visalia, CA 93292
559-594-5682

Referred to Chris Young

Rachel Palermino
817 S. Tracy St.
Visalia, Ca. 93292

May 27, 2011

To Mayor Link & Counsel members
c/o Visalia city council
425 E. Oak St.
Visalia, Ca. 93291

Re: Vote No June 6, Against walmart expansion

Dear Mayor Bob Link & Counsel members.

Please Vote NO June 6, Against walmart expansion for the following reasons:

1) I live close to walmart and I do not want the additional noise and traffic from the 24 hour operation. Higher than 15 feet walls and no deliveries after 10 p.m.

2) I believe this will force many Vineyard to eventually close and have negative impact on our neighborhood. This walmart belongs at a different location.

3) The last 24 hour operation walmart had here, there was increased crime in our

Continued
neighborhood. This is another reason for higher walls needed.

Again, Please Vote NO on this matter.

Thank You for your consideration.

Sincerely,

Rachel Palomino
559 635-1331

P.S. I live within 300 feet of the proposed expansion and never recived notice of the expansion from the city or walmart.

Citizen Letter – received via e-mail

From: claudia culbertson [mailto:culbertsontpocc3@aol.com]

Sent: Thursday, May 26, 2011 1:08 PM

To: Steve Nelsen

Subject: Wal-Mart expansion project

Dear Mayor and Council Members,

I am a resident of the neighborhood immediately behind Wal-Mart and I am very concerned about the proposed expansion project. I have listed many problems that this project will create.

NOISE

When Walmart tears down the commercial building to the north of Tracy Street, this buffer will be gone and the proposed buffer of walls and landscaping will not hide the sound of grocery-related refrigerator trucks delivering their products. The loading docks will more than double in number and will be moved to the east. This will cause more noise to flow down Tracy Street as well as disturb the peaceful, quiet enjoyment of our homes, especially at the houses which border Walmart. Noise will be terrible, as it will be coming from a mere 15 feet away from the houses!!

The site plan indicated the location of the receiving door for small vendor trucks. It will move from the east side of the store to the south side right across from our homes. These trucks (like bread trucks) deliver at ground level, which means they will be unloading in the alleyway and rolling their carts into the back receiving door. Plus there will be a giant trash compactor (making a noise as loud as a garbage truck makes) right up against the south wall. That will make a ton of noise directly behind the houses, again only feet away from our homes.

TRAFFIC is a huge issue. YOU need to personally experience the corner of Noble/Lovers lane during school transportation times and see how congested we are on the east side. Creating more traffic should not be done until the current problem is resolved at Lover's Lane. Having more trucks running up and down Noble is not the answer.

REAL ESTATE VALUES is a personal and local issue. Our Foxglen community has an active Neighborhood Watch and very well-kept properties. Foreclosures have hurt but, people are putting money into their new homes and turning the foreclosure blight around. We have fought drive-by shootings, chased out drug manufacturers, mowed front yards of foreclosures, and called city departments for treatment of green pools. The people who live here love their community. All homes

abutting Walmart will suffer in value which in turn causes the entire community to decline in value. Does the City of Visalia need to permit that in these times of stressed real estate as it is?

After reading this, please ask yourself how you would feel about this expansion if you owned one of our homes? I urge you to stop and think of the results of your decision and to vote no on this project.

Thank you for taking the time to read this and consider how this will affect my neighborhood.

Sincerely,

Claudia Culbertson

559-786-0513

Citizen Letter – received via e-mail

From: Sharla Allison [mailto:sallisonus@gmail.com]
Sent: Tuesday, May 24, 2011 11:11 PM
To: Bob Link
Subject: Pleae VOTE NO on Walmart Expansion

Mr Link,

My husband and I live in the two story home nearest to Walmart and purchased this home in 1993. The Dock would be our view from our bedroom window upstairs.

PLEASE VOTE NO ON THIS EXPANSION for the following Negative Impact Reasons:

1) DO NO HARM - Traffic is already TOO CONGESTED due to Walmart currently. DELIVERY TRUCKS RUNNING 24 HOURS A DAY, ARE YOU KIDDING ME? HOW WILL WE SLEEP? The proposed 9 and 15 FOOT Wall with trees is not enough. HOW ABOUT 20 FOOT WALLS AND NO DELIVERIES AT NIGHT?

2) DO NO HARM - It would likely force Mary's Vineyard to eventually close. Has the City's Finance Department analyzed the numbers from the potential closing of this and other stores for 3 to 6 years at least? Loss of revenue from Property Tax, Sales Tax, Loss of Jobs? Is the cost of all this worth the benefit of the a Super Walmart that can afford to go to another location to build?

3) NOT LEGAL - We purchased this home with the understanding the lot next to us was zoned for a single story professional bldg. NOT A WALMART SUPERSTORE! We trusted the City and relied on this information.

4) TRUST ISSUES - Walmart does not maintain the current sound barrier shrubs. The Fire department had to clean up the most recent problem with the over grown weeds. Galt California Walmart Sound Barriers Trees and Shrubs were left to die after their expansion. GET IT IN WRITING,THIS NEEDS TO BE MAINTAINED.

5) ILLEGAL ACTIVITY - Walmart was at one time open 24 hours, which brought increased crime to our homes. Unknown HOODED persons driving to our neighborhood, jumping into peoples back yards in THE day to recover STOLEN goods thrown over fences near Walmart. Another reason for HIGHER 20 foot WALLS.

Please make the right leadership decision on this matter. This project does not belong at this location.

Thank you for your consideration.

Buddy and Sharla Allison
744 S Tracy Street
Visalia, CA 93292
sallisonus@gmail.com

Citizen Letter – received via e-mail

From: Jmbluejeans [mailto:jmbluejeans@aol.com]

Sent: Saturday, May 21, 2011 10:51 AM

To: Steve Nelsen

Subject: Wal-Mart expansion

May 21, 2011

Dear Mayor and Council Members,

I am a resident of the neighborhood immediately behind Wal-Mart and I am very concerned about the proposed expansion project. Below I have listed just a few of the many problems that this project will create. Thank you for taking the time to read this and consider how this will affect my neighborhood.

NOISE

When Walmart tears down the commercial building to the north of Tracy Street, this buffer will be gone and the proposed buffer of walls and landscaping will not hide the sound of grocery-related refrigerator trucks delivering their products. The loading docks will more than double in number and will be moved to the east. This will cause more noise to flow down Tracy Street as well as disturb the peaceful, quiet enjoyment of our homes, especially at the houses which border Walmart. The exhaust and noise will be terrible, as it will be coming from a mere 15 feet away from the houses!! The site plan shows the location of the receiving door for small vendor trucks. It will move from the east side of the store to the south side right across from our homes. These trucks (like bread trucks) deliver at ground level, which means they will be unloading in the alleyway and rolling their carts into the back receiving door. Plus there will be a giant trash compactor (making a noise as loud as a garbage truck makes) right up against the south wall. That will make a ton of noise directly behind the houses, again only feet away from our homes. We are hardworking, tax paying people who have a right to enjoy our homes!

EXISTING GROCERY STORES : Our current grocery stores have made a choice to be involved in Visalia's PAST growth. Yes, it is all about money, but Savemart is a California company who supports California-grown products. Hopefully, California has learned we must support companies within our state more then the big boxes. If Savemart closes down, we will have another shopping center like the blight of the Vons shopping center. Visalia does not need that.

TRAFFIC is a huge issue. YOU need to personally experience the corner of Noble/Lovers lane during school transportation times and see how congested we are on the east side. Creating more traffic should not be done until the current problem is resolved at Lover's Lane. Having more trucks running up and down Noble is not the answer.

REAL ESTATE VALUES is a personal and local issue. Foxglen is a strong little community with an active Neighborhood Watch and very well-kept properties. Foreclosures have hurt but people are putting

money into their new homes and turning the foreclosure blight around. We have fought drive-by shootings, chased out drug manufacturers, mowed front yards of foreclosures, and called city departments for treatment of green pools. The people who live here love their community. All homes abutting Walmart will suffer in value which in turn causes the entire community to decline in value. Does the City of Visalia need to permit that in these times of stressed real estate as it is?

After reading this, please ask yourself how you would feel about this expansion if you owned one of our homes?

I urge you to stop and think of the results of your decision and to vote no on this project.

Sincerely,

Jean M. Maddox

810 S. Tracy St.

Citizen Letter – received via e-mail

From: Sharman Wood [mailto:mwamerika@sbcglobal.net]
Sent: Wednesday, June 01, 2011 1:58 PM
To: Bob Link
Subject: Proposed Walmart Expansion

May 28, 2011

Dear Mayor Link:

Our family is concerned about the proposed Walmart Super Store expansion, and we want to share some of our concerns with you before you vote on this project. We all like low prices, especially in the current economy. But it is not always worth the eventual cost to others.

Our family has lived on Tracy Street in the Foxglen neighborhood of Visalia for nine years. This is a quite, middle class, residential area. All of the streets dead end and children can play safely. Part of the neighborhood is also located behind the current Walmart store on Noble Avenue. We are a tight-knit community with a strong neighborhood watch. This grew out of necessity, as several of us, including our family, were victims of crime. If a resident needs to borrow a green waste bin, or have someone pick up their newspaper when they are out of town, neighbors can always be counted on to lend a hand. This is not as common as it should be, and it is the main reason that we continue live in this particular neighborhood.

Many of the people who live in the houses right behind the existing Walmart were there before the store was built (about 17 years ago). There is a small quiet office building at the end of Tracy Street now, which will be taken out to expand the store. This is where they propose to build the new loading dock. This office building is on the other side of the wall, next to (and east of) the current Walmart).

Walmart is proposing 24/7 operations with the 60,000 square feet expansion, as well as round the clock deliveries. Imagine the bright lights and noise at all hours of the day and night: refrigeration truck motors, large trash compactor, banging while unloading pallets, etc. And the exhaust from those trucks will also increase pollution. Some houses are only about 50-100 feet away from the new proposed loading bays!

A small wall and some shrubs will not help much. The existing wall, which is behind about half of the houses in the neighborhood, does very little to minimize the noise. The shrubs between Walmart and the wall behind the houses are usually overgrown and half dead, creating a fire hazard. Walmart has been unresponsive to residents regarding this matter.

We do not own our house, we rent. But, we are very concerned about our neighbors and the value of their homes. The building of the Super Store there will decrease home

property values, costing residents money. And we don't think many people would want to buy their houses with the loading dock right there.

The proposed Walmart expansion on Noble Avenue in Visalia will result in an increase in large tractor-trailer trucks delivering to the new grocery part of the store. This will surely cause traffic problems on Ben Maddox, Noble, and Lover's Lane, all of which seem too small and congested to handle this increase.

The current Walmart, and proposed expansion, is a block away from Mary's Vineyard. The SaveMart and small businesses in the Mary's Vineyard shopping center will be affected by this proposed expansion. SaveMart is a California based company, and they support California- grown products. I heard that their lease expires in about a year and a half. If Walmart adds a Sam's Club grocery component, and SaveMart goes out of business (as many grocery stores here have recently) there will be another ugly empty box store in the neighborhood. That will surely negatively impact the small businesses in the shopping center, resulting in business closures and lost jobs.

A Walmart Super Store may be a nice thing to have in Visalia, but not in the proposed location! We would not want it a few hundred feet from our front yard, and don't know anyone who would. It makes more sense to put a Walmart Super Store in one of the currently vacant box stores that have better road access and are away from residential neighborhoods and established businesses.

Walmart did very little to inform residents about the proposed expansion, and did not include them in the planning process. Most of us only recently learned about it. Neighbors report that Walmart has been unresponsive to other community concerns in the past, including maintaining the landscaping near the existing wall.

Many residents and local businesses near Walmart have serious, and valid, concerns. They really want an opportunity to be fully informed, as well as for the City and Walmart to listen to their concerns, and to honestly explore and consider possibilities for alternate locations, modifications to the plan in terms of operating hours for the loading dock, etc. That does not seem like too much to ask. I hope that the City listens and fully considers all sides before deciding what they think is best. That would include opening the next City Council meeting to public comment, doing more research, and postponing the vote.

Thank you for taking the time to read this and considering our concerns. The residents of Foxglen invite, and would welcome, you to come to our neighborhood to speak with us and see the situation for yourself.

Sincerely,

Katherine Wood and Sharman Wood