NOTICE OF CONTINUANCE
AGENDA

TEHACHAPI CITY COUNCIL SPECIAL MEETING,
TEHACHAPI REDEVELOPMENT AGENCY SPECIAL MEETING,
TEHACHAPI PUBLIC FINANCING AUTHORITY SPECIAL MEETING, AND
TEHACHAPI CITY FINANCING CORPORATION SPECIAL MEETING
TEHACHAPI HIGH SCHOOL GYMNASIUM
801 SOUTH DENNISON ROAD
THURSDAY, MAY 19, 2011 - 6:00 P.M.

Persons desiring disability-related accommodations should contact the City Clerk no later than ten days prior to the need for the accommodation. A copy of any writing that is a public record relating to an open session of this meeting is available at City Hall, 115 South Robinson Street, Tehachapi, California.

CALL TO ORDER

ROLL CALL

PLEDGE TO FLAG

BUSINESS

1. **CONTINUED HEARING** - Consideration of an appeal by Henry L. Schaeffer on behalf of Tehachapi First, of a Planning Commission decision certifying the Environmental Impact Report (State Clearinghouse #2007081139), adopting a Statement of Overriding Considerations, and approving the Tehachapi Walmart Architectural Design & Site Plan Review No 2007-11 (Walmart) located east and adjacent to Tucker Road (SR 202), north and adjacent to the Sail Thru car wash and the Las Colinas subdivision, west of Antelope Run drainage and south of the Tehachapi Crossing Commercial Center for construction of a 165,000 square foot Walmart Supercenter – **STAFF REPORT; TAKE THE FOLLOWING ACTIONS: (A) ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI DENYING THE APPEAL BY HENRY L. SCHAEFFER ON BEHALF OF TEHACHAPI FIRST OF THE TEHACHAPI PLANNING COMMISSION DECISION TO CERTIFY THE ENVIRONMENTAL IMPACT REPORT AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE TEHACHAPI WAL-MART ARCHITECTURAL DESIGN AND SITE PLAN REVIEW; (B) ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI UPHOLDING THE PLANNING COMMISSIONS CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE TEHACHAPI WAL-MART ARCHITECTURAL DESIGN AND SITE PLAN REVIEW; AND (C) ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE ARCHITECTURAL DESIGN AND SITE PLAN REVIEW SUBJECT TO CONDITIONS OF APPROVAL.**

ADJOURNMENT

COUNCIL REPORTS

AGENDA SECTION: COMMUNITY DEVELOPMENT

SPECIAL MEETING DATE: May 19, 2011

APPROVED

DEPARTMENT HEAD: _____

CITY MANAGER: _____

TO: HONORABLE MAYOR GRIMES AND COUNCIL MEMBERS

FROM: DAVID A. JAMES, COMMUNITY DEVELOPMENT DIRECTOR

DATE: May 16, 2011

SUBJECT: CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT AND ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS FOR ARCHITECTURAL DESIGN AND SITE PLAN REVIEW NO. 2007-11 (WALMART SUPERCENTER) CITY COUNCIL CONTINUANCE.

BACKGROUND:

As the City Council will recall the Public Hearing for the above referenced action was closed on March 28, 2011. However, the matter was continued in order to provide staff with an opportunity to respond to three studies submitted on March 28 prior to the close of the Public Hearing. Those specific challenges are listed below.

- Briggs Law Corporation ("Briggs").
- Autumn Wind Associates, Inc. (on behalf of Tehachapi First) ("Autumn").
- Wilson IHRIG and Associates (on behalf of Tehachapi First) ("Wilson").

The above referenced documents are enclosed herein as Attachments A, B and C, respectfully. In addition to the above, the Briggs materials included additional information indexed herein as Attachment A-2. The documents are on disk that has been included.

Briggs and Autumn focused primarily on the issue of Green House Gas Emissions whereas Wilson focused exclusively on the Noise Impacts section of the EIR. As the City Council is aware the issue of Green House Gas Emissions is a relatively new CEQA issue and as such protocols for addressing Green House Gas Emissions are still a work in progress. The responses to the aforementioned critiques have been enclosed herein as Attachment D-1, D-2 & D-3. Staff has concluded that the critiques do not reveal any flaws in the Walmart EIR that would warrant a recirculation of a particular section of the EIR and that would preclude the EIR from being certified.

As previously indicated, the aforementioned critiques focused much of their attention on air quality issues and more specifically on Green House Gas Emissions. As the City Council is aware there is a significant amount of retail leakage or out shopping that occurs from the Tehachapi region. Pursuant to the Fiscal Impact Report and Urban Decay Study prepared by the Natelson Dale Group, Inc. in conjunction with the Walmart EIR the City is anticipated to capture a considerable amount of this leakage by virtue of having a Walmart in our community. For a more detailed analysis please refer to Response to Comment No. 2.08.

RECOMMENDATION:

Therefore, staff continues to recommend adopting Resolution A-2011 of the City Council of the City of Tehachapi denying the Appeal filed by Henry L. Schaeffer on behalf of Tehachapi First of the Tehachapi Planning Commission decision to Certify the Environmental Impact Report (State Clearinghouse No. 2007081139) and adopting A Statement Of Overriding Considerations for the Tehachapi Walmart Architectural Design and Site Plan Review No. 2007-11.

Further, Staff and the Planning Commission continues to recommend adopting Resolution B-2011 of the City Council of the City of Tehachapi upholding the Planning Commissions Certification of the Environmental Impact Report (State Clearinghouse No. #2007081139) and adopting A Statement Of Overriding Considerations for the Tehachapi Walmart (Architectural Design and Site Plan Review No. 2007-11).

Further, Staff and the Planning Commission continues to recommend adopting Resolution C-2011 of the City Council of the City of Tehachapi upholding the Planning Commission's decision to approve Architectural Design and Site plan Review No. 2007-11 subject to the conditions of approval. With one (1) additional condition; Condition No. 133 requiring Walmart to enter into an Indemnification Agreement with the City of Tehachapi.

Finally, Staff recommends approval of the Indemnification Agreement attached as Attachment E.

Attachments

Attachment A – Briggs Law Corporation
Attachment B – Autumn Wind Associates, Inc. (on behalf or Tehachapi First)
Attachment C - Wilson IHRIG and Associates (on behalf of Tehachapi First)
Attachment A-2 – Briggs Law Corp. on behalf of CREED 21 CD
Attachment D - 1 – Response to Comments Briggs Law Corp on behalf of CREED 21
Attachment D - 2 – Response to Comments Autumn Wind Associates (on behalf of Tehachapi First)
Attachment D – 3 Response to Comments Wilson IHRIG & Associates (on behalf of Tehachapi First)
Attachment E – Indemnification Agreement

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CITY OF TEHACHAPI

ORIGINAL

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1366.54

25 March 2011

City Council
City of Tehachapi
115 South Robinson Street
Tehachapi, CA 93561

Re: Tehachapi Walmart (on City Council Agenda for March 28, 2011)

Dear Tehachapi City Council:

On behalf of CREED-21, I am writing to urge you to uphold the appeal and deny the project that is the subject of the above-referenced matter. In general, approval of the project would violate the California Environmental Quality Act, the Planning and Zoning Law, and other laws. The specific reasons for denying the project are set forth on Attachment 1 to this letter and supported by evidence in the administrative record for the project and by other evidence provided on the accompanying CD/DVD.

If you do not make a decision on the tonight, please provide me with written notice of the next public hearing or other meeting at which you will consider this project. Additionally, please provide me with written notice of whatever action you do take tonight.

Thank you for your attention to this matter.

Sincerely,

BRIGGS LAW CORPORATION

Mekaela M. Gladden

Attachment & DVD

ATTACHMENT A

I. Air Quality

1.01 The EIR does not evaluate air quality impacts, even health impacts, associated with railroad operations approximately one-mile from the project site. Railroad operations, however, contribute significantly to health impacts. *See, e.g.*, Ex. 1a.

1.02 Although the EIR recognizes that the New Life Christian School is located within a quarter-mile of the project site. However, you not complied with Public Resources Code Section 21151.4.

II. Greenhouse Gas Emissions

2.01 The figures in Appendix D do not match the figures in the EIR. For example, the water use emission figure in Appendix D does not match any figures in Table IV.C-16.

2.02 The draft EIR indicates on page IV.C43 that the GHG emission reductions are estimated only for those Project Design Features that were "readily quantifiable." Table IV.C-16 says that there were no quantified Project Design Features, yet the EIR assumes a 4.5% reduction with Project Design Features from motor vehicles.

2.03 The information given in the EIR is inconsistent. The revised Table IV.C-12 says that carbon dioxide emissions from solid waste will be 108.36 metric tons per year without Project Design Features. Table IV.C-16 says that the carbon dioxide emission equivalent from solid waste will be 216.72 metric tons per year (which is not from the original or revised Table IV.C-12) without Project Design Features and 108.36 metric tons per year with Project Design Features. The explanation in response to comments in the Final EIR indicates that the 108.36 metric tons per year is with application of the 50% recycling required under State Law, not something specific to the project, which means that the percent reduction from Project Design Features should be zero, not 50%.

2.04 On page IV.L-11, the EIR indicates that the Project will use 26,499 gallons of water per day. Assuming a month has 30 days, the Project would use approximately 794,970 gallons of water per month. However, in Appendix D on the page titled "Emissions of Greenhouse as Emissions From Water Use" it says that the project uses 759,927 gallons/month of water. That is a 35,043 gallon per month difference.

2.05 Eliminating the credit for the reduction from Project Design Features from motor vehicle emissions because the Project Design Features are not quantified and eliminating the credit for the solid waste generation Project Design Features because those features are already required by state law (and the update to Table IV.C-12), the percent reduction from Project Design Features would only be 2%, not 7.2%.

2.06 Table IV.C-16 says that calculation sheets are provided in Appendix D. However, Appendix D does not contain sufficient data to understand how the figures in the table were derived.

2.07 The EIR's analysis of GHGs is inadequate because it fails to account for GHGs from all aspects of the project. In particular, the EIR fails to identify the GHGs from refrigerants. *See* Exs. 2a-2b (identifying global warming potential of refrigerants). EPA Victoria has developed useful tools for calculating the GHGs resulting from refrigerants used in air conditions, commercial refrigeration, and other sources. Ex. 2c. Furthermore, Walmart knows that refrigerants contribute to global warming and climate change because it has settled lawsuits based on the implementation of technologies that reduce GHGs related to refrigerants. *See* § 2.11 *infra*.

2.08 The project is not consistent with the attainment of the state's goals of reducing GHGs to 1990 levels by 2020 and an 80% reduction below 1990 levels by 2050. In order to achieve 1990 levels by 2020, a reduction of 15% below 2008 levels and 30% below projected 2020 levels is required. Ex. 2d. As shown in Table IV.C-16, the Project does not reduce emissions by 15% below 2008 levels or 30% below projected 2020 levels. By 2050, the project will be significantly behind where it needs to be to help with the attainment of the state's goal.

2.09 There are several feasible mitigation measures that can be implemented. Big-box stores, including other Walmart stores, are installing solar panels on their roofs, with the effect of reducing project-specific and cumulative impacts relating to climate change. *See* Exs. 2e-2l. The use of solar panels can significantly reduce the GHGs resulting from the project's electricity use. Renewable energy certificates (RECs) can also be used to offset emissions. Ex. 2m. Solar technology is not limited to rooftops and is a feasible mitigation measure that can be implemented in parking lots. See Ex. 2o. There are mitigation measures that can be targeted at the project's refrigerant use. Ex.2p. Other mitigation measures have been identified by the Attorney General. Ex. 2q.

2.10 Walmart is capable of using solar power at the project site without any capital costs and without paying more than existing electricity rates. In 2007, SunEdison announced that it finances, installs, operates, and maintains solar technology for free on eight Walmart stores, four of which are in California. Ex. 2r.

2.11 Walmart has agreed not only to include solar panels on other stores, but also to implement a number of other efficiency measures. For example, at the Riverside, Yucca Valley, and Perris locations, Walmart has agreed to install at least 250 kilowatts of roof-top solar, a system to re-circulate the waste heat from the refrigeration units, a secondary loop CO2/Glycerol refrigeration, energy management systems, and other measures. Exs. 2s-2u. *See also* Exs. 2aa-2dd.

2.12 The EIR's analysis of greenhouse gas emissions is inadequate because it fails to adopt a threshold of significance. The California Office of Planning and Research technical guidelines requires that lead agencies adopt a standard of significance. *See* Ex. 2u. 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). The new CEQA Guidelines add that "[w]hen adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence." Even if you choose to use a qualitative threshold, the threshold must be identifiable. The standard is being applied in such a way that there is effectively no standard at all. Regardless of what threshold is used, a threshold of significance must be established and that threshold must be supported by substantial evidence. Here, no threshold of significance was established and the decision not to establish a threshold is not supported by substantial evidence.

2.13 The Project is not consistent with the emissions reductions strategies included in the three identified documents. Instead, measures are cherry-picked. Consider the following examples from the three-referenced documents:

<u>CARB Scoping Plan</u>. The early action measures are not project-specific measures. Even so, the Project does not implement all of the measures. See Ex. 2v (list of measures). For example, one of the measures is the Million Solar Roofs program. Exs. 2v (Measure E-4) & 2w. The Project does not include any on-site solar energy generation. Early Action Measure H-6 is the High-GWP Refrigerant Management Program. Ex. 2v. *See also* Ex. 3h. The EIR acknowledges that there will be some hydrofluorocarbon (HFC) emissions from leakage and service of refrigeration and air conditioning equipment.

<u>Office of the Attorney General.</u> The project is not consistent with all of the Attorney General's office measures. Ex. 2y. Most notably, the measures in the section "Renewable Energy and Energy Storage" will not be met as the project does not include the use of renewable energy.

<u>CAPCOA.</u> The project is not consistent with the mitigation measures identified in the CAPCOA report. Ex. 2e. Notably, the CAPCOA report identifies mitigation measures including LEED certification, on-site renewable energy, the use of light-colored paving, and the inclusion of charging facilities. The project does not incorporate these mitigation measures. In addition to the 2008 CAPCOA report,

there is a more recent publication that goes into more detail about potential mitigation measures. Ex. 2z[1].

2.14 The EIR does not state whether the project is accounted for in a business as usual scenario.

2.15 The EIR does not include any alternatives that significantly reduce the impacts associated with GHGs.

2.16 Additional evidence supporting the conclusion that the project may have a significant environmental impact due to GHGs can be found in the GHG folder.

III. Biological Impacts

3.01 Mitigation measures D-1 is inadequate. Mitigation measures requiring future surveys are not sufficient mitigation measures. Identification analysis and consultations must take place in advance and be fully disclosed to the public in an EIR. Furthermore, because surveys and assessments for specific biological resources have not been conducted, the EIR's identification of those resources and analysis of the project's impacts on those resources are inadequate. Under *San Joaquin Raptor Resource Center v. County of Merced*, 149 Cal. App. 4th 645 (2007), deferring mitigation until future studies are completed is impermissible.

3.02 Mitigation measure D-2 is inadequate because it defers analysis and mitigation to a future date. This mitigation measure also does not set a performance standard.

IV. Response to Comments

4.01. The City of Tehachapi did not respond to commenters as required by CEQA Guidelines Section 15088(b). In particular, the response to comments by the Tehachapi-Cummings Water District and the Sierra Club, Kern-Kaweah Chapter are inadequate.

V. Alternatives

5.01 No traditional store alternative

5.02 The alternatives analysis is inadequate, particularly with respect to noise and traffic impacts. For example, for Alternative Sites 4A and 4C, the EIR simply indicates that it is not known which intersections would be impacted by the alternatives. Assuming

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[1] Any analysis of the reductions achieved through the use of Project Design Features must be contained in the EIR itself.

that an impact is significant and unavoidable without conducting the necessary analysis is insufficient under CEQA; the agency is required to find out and disclose all that it reasonably can.

5.03 It is not clear why Alternative Site 4C was chosen as the environmentally superior alternative given the analysis provided in the EIR. Alternative 4C is shown on Table VI-1 as having similar impacts as the proposed project in all categories. While the Reduced Intensity Alternative is shown to have similar impacts in many categories, it is shown to have less impacts with respect to air quality (both construction and operational), less seismic hazards, less operational hazard impacts, less operational and cumulative noise impacts (a significant and unavoidable impact of the project), less operational impact to public services, less impacts with respect to transportation/traffic (a significant and unavoidable impact of the project), and less impact on utilities. The Standalone Walmart Alternative has similar impacts to the Reduced Intensity Alternative but has less significant impacts in the additional categories of cultural resources and hydrology and water quality.

5.04 The EIR states that Alternative Site 4c is the environmentally superior alternative. The proposed findings say that the Standalone Walmart Alternative is the environmentally superior alternative.

VI. Necessary Findings and Sufficiency of the Evidence

6.01. The draft EIR states that Alternative Site C is the environmentally superior alternative. However, you have not made the findings required under Public Resources Code Section 21081(a) and (b) to approve the project generally and as they relate to the environmentally superior alternative.

6.02. To the extent that you have attempted to make all findings required under Public Resources Code Section 21081(a) and (b), such findings have not been supported by substantial evidence in the record.

6.03. You have not made all of the necessary findings to support the parcel map. Alternatively, such findings are not supported by substantial evidence.

6.04 The statement that the project will maximize and broaden the City's sales tax base in excess of $496,000 is not supported by substantial evidence and in fact conflicts with figures provided in the EIr.

6.05 The statement that the project will maximize tax increment by approximately $176,800 per year that will accrue to the Tehachapi Redevelopment Agency is not supported by substantial evidence.

6.06 The statement that the project will create additional employment-generating opportunities for the citizens of Tehachapi and the surrounding communities is not

supported by substantial evidence. The proposed project is projected to result in the closure of a supermarket and the Kmart. Thus, the proposed project will also result in the loss of a certain number of jobs and the replacement jobs will likely pay less than the jobs being lost. *See* Ex. 6a.

6.07 You have failed to adopt a program in compliance with Public Resources Code Section 21081.6.

VII. Noise

7.01 The finding that the cumulative noise impacts would be significant triggered the obligation to consider mitigation measures. There is no evidence that any mitigation measures were considered. As increased traffic is the primary cause of the noise impact, it would make sense to look at mitigation measures aimed at reducing traffic. There are feasible mitigation measures available that reduce traffic levels. For example, the CAPCOA report ("Quantifying Greenhouse Gas Mitigation Measures") has an entire chapter dedicated to reducing traffic levels, that although aimed at mitigating greenhouse gas emissions are equally applicable here. Such measures include increasing access to transit, developing the site in a way that promotes the use of alternative transportation, limiting parking supply, encouraging car-pooling, and taking measures that make alternative transportation more convenient (*e.g.*, providing bike parking and showers on-site). Ex. 7a. These traffic-reduction measures should be exhausted before it is determined that there are no feasible mitigation measures that will reduce the noise impact to a level of insignificance.

VIII. Traffic

8.01 The same mitigation measures should have been considered in relation to the project's traffic impact as discussed in Section 7.01 above.

IX. Cumulative Impacts

9.01 The same generic list of related projects was used for the cumulative impacts regardless of impact. The related projects should have focused on projects that would have contributed to the same environmental impact rather than be constrained by geography. For example, the cumulative impact on groundwater should take into account all past, present and future users of the groundwater basin, not just those on the project list.

X. Urban Decay

10.01 The conclusion that there are a number of retailers to reoccupy one of the potentially vacant supermarkets is not very realistic. Table II-6 indicates that one supermarket that may have to be filled is 44,066 square feet and the other is 49,500 square feet. None of the examples provided is a good fit to reoccupy the stores. The average size

of a Staples is approximately 20,000 square feet (Ex. 10a), the average size of a Petsmart is around 19,000 to 26,000 square feet (Ex. 10b), the average size of a Big 5 Sporting Goods Store is 11,000 square feet (Ex. 10c), the average size of a Michaels is 18,300 square feet (Ex. 10d), the average size of a Ross Dress for Less is 30,000 square feet (Exs. 10e-10g), the average size of a T.J. Maxx is 30,000 square feet (Ex. 10h), and the average size of a Marshalls is 30,000 square feet (Ex. 10h). In other words, none of the examples given are likely to fill the closed supermarket space.

10.02 The conclusion that the Kmart could feasibly be reconfigured and subdivided for multiple tenants does not address how likely it is that this will occur or how long it would likely take.

10.03 There is no analysis of how long it would take to fill the vacant space. Even assuming that another retail use could use the vacated space or that the spaces could be reconfigured, there is no evidence or even an estimate of how long it would take for the spaces to be filled. Other projects have done some sort of vacancy analysis. *See* Ex. 10i.

INDEX OF EXHIBITS

Exhibit	Description	DATE
Air Quality		
1a	"At San Bernardino rail yard with worst cancer risk in state, plan on cutting emissions to take months"	June 12, 2008
Air Quality-Greenhouse Gas Emissions and Global Climate Change		
2a	"Refrigerant Gases Have High Global Warming Potential (GWP) and Contribute to Climate Change"	Not identified
2b	"Other Direct Greenhouse Gases-CFCs"	Not identified
2c	EPA Victoria, Worksheet for Calculating GHGs from Refrigerants	February 2009
2d	Climate Change Scoping Plan	December 2008
2e	CAPCOA, "CEQA and Climate Change-Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to CEQA"	January 2008
2f	San Jose Business Journal "Big-Box Retailers Tap California's Sun Power for Stores"	October 5, 2007
2g	San Jose Business Journal "More Solar in Store for California Big-Box Retailers"	June 15, 2007
2h	Journal Sentinal, "Khol's to go Solar in California"	April 26, 2007
2i	Kohl's Press Release, "Khol's Opens 59th California Solar Location at New Point West Store in Sacramento"	September 30, 2009
2j	Wal-Mart Press Release: "Wal-Mart Announces the Completion of Apple Valley Distribution Center Solar Project"	January 18, 2010
2k	Wal-Mart Press Release: "Wal-Mart to Nearly Double Solar Energy Use in California"	April 22, 2009
2l	"Target Begins Solar Power Rollout"	April 30, 2007
2m	Frequently Asked Questions Regarding Renewable Energy Credits	Not identified
2n	Examples of solar parking lots	Not identified

2o	"EPA Helps Supermarkets Save Money, Reduce Greenhouse Gases"	August 6, 2009
2p	Attorney General, "The California Environmental Quality Act Addressing Global Impacts at the Local Agency Levels"	May 2008
2q	Sunedison Named for Wal-Mart's Solar Power Pilot Project	May 7, 2007
2r	Letter to Honorable Daryl Busch and City Council Members from Matthew Vespa, John Clarke, John McClendon, and Jack Yeh Regarding Negotiated Resolution of Center for Biological Diversity v. City of Perris et al.	February 16, 2010
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2t	Press release regarding settlement reached	March 2010
2u	Office of Planning and Research, "CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review"	June 19, 2008
2v	Scoping Plan Measures Implementation Timeline	October 28, 2010
2w	Office of the Governor Press Release, Schwarzenegger Signs Legislation to Complete Million Solar Roofs Plan	October 21, 2006
2x	Stationary Equipment Refrigerant Management Program	November 12, 2010
2y	"Addressing Climate Change at the Project Level"	January 6, 2010
2z	"Quantifying Greenhouse Gas Mitigation Measures-A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures"	August 2010
2aa	Negotiated Resolution of Citizens for Responsible Equitable Environmental Development v. City of Lake Forest, et al. (Orange County Superior Court, Case No. 30-2009-00290385)	April 2010

2bb	Negotiated Resolution of Citizens for Responsible Equitable Environmental Development v. City of San Bernardino, et al. (San Bernardino County Superior Court, Case No. CIVDS 918169)	May 25, 2010
2cc	Negotiated Resolution of Grow Victorville Smart v. City of Victorville, et al. (San Bernardino County Superior Court, Case No. CIVBS 800801)	February 2010
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GHG Folder	•"Not too late to save the polar bear," Center for Biological Diversity Report • Arctic Sea Ice Data • "The California Environmental Quality Act: On the Front Lines of California's Fight Against Global Warming," Center for Biological Diversity Report • "Our Changing Climate: Assessing the Risks to California" • The Copenhagen Diagnosis • Executive Order S-3-05 • AB 32 • "Local Government's Role in Responding to Climate Change in California" • IPCC Working Group 1 • IPCC Working Group 2 • IPCC Working Group 3 • National snow and ice data • "Arctic sea ice decline: Faster than forcast" • "Working 9 to 5 on Climate Change: An Office Guide" • Various reporting protocols	
Findings		
6a	"The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Affairs"	September 1999
Noise		
7a	CAPCOA: Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures	August 2010

Urban Decay		
10a	Staples Media Information	March 10, 2011
10b	Petsmart History Timeline	March 10, 2011
10c	Big 5 History and Store Information	March 10, 2011
10d	Michaels History and Store Information	March 10, 2011
10e	Ross History and Store Information	March 10, 2011
10f	"Ross Dress for Less Celebrates Grand Opening at Riverside Towne Center"	Not Identified
10g	Ross at Buena Park Downtown	March 10, 2011
10h	TJX Companies, Inc. 2003 Annual Review	March 10, 2011
10i	Super Wal-Mart Economic Impact Analysis	October 6, 2005

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2cc	Negotiated Resolution of Grow Victorville Smart v. City of Victorville, et al. (San Bernardino County Superior Court, Case No. CIVBS 800801)	February 2010
2dd	Negotiated Resolution of Grow Victorville Smart v. City of Victorville, et al. (San Bernardino County Superior Court, Case No. CIVBS 801001)	February 2010
GHG Folder	•"Not too late to save the polar bear," Center for Biological Diversity Report • Arctic Sea Ice Data • "The California Environmental Quality Act: On the Front Lines of California's Fight Against Global Warming," Center for Biological Diversity Report • "Our Changing Climate: Assessing the Risks to California" • The Copenhagen Diagnosis • Executive Order S-3-05 • AB 32 • "Local Government's Role in Responding to Climate Change in California" • IPCC Working Group 1 • IPCC Working Group 2 • IPCC Working Group 3 • National snow and ice data • "Arctic sea ice decline: Faster than forcast" • "Working 9 to 5 on Climate Change: An Office Guide" • Various reporting protocols	
Findings		
6a	"The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Affairs"	September 1999
Noise		
7a	CAPCOA: Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures	August 2010

Urban Decay		
10a	Staples Media Information	March 10, 2011
10b	Petsmart History Timeline	March 10, 2011
10c	Big 5 History and Store Information	March 10, 2011
10d	Michaels History and Store Information	March 10, 2011
10e	Ross History and Store Information	March 10, 2011
10f	"Ross Dress for Less Celebrates Grand Opening at Riverside Towne Center"	Not Identified
10g	Ross at Buena Park Downtown	March 10, 2011
10h	TJX Companies, Inc. 2003 Annual Review	March 10, 2011
10i	Super Wal-Mart Economic Impact Analysis	October 6, 2005

RECEIVED
AT CITY COUNCIL MEETING
DATE: 3/28/2011
BY: Joan
Time: 8:38 pm

March 28, 2011

To: Mayor and City Council

Re: Walmart

I am forwarding a critique of the Wal-Mart EIR's discussion of air quality and greenhouse gas impacts, prepared by qualified consultant with experience in this area. As you will see, there are serious problems, for example the EIR does not consider the air pollution from building offsite transportation and wastewater treatment facilities. The EIR also does not measure greenhouse gas impacts as required by state law. The EIR is inadequate for this reason, and for all the reasons documented by others, which I second.

Please deny the Wal-Mart project.

ATTACHMENT B

Autumn Wind Associates, Inc.
Air Quality CEQA Analysis and Consulting Services
P.O. Box 1030 • Newcastle, CA 95658
916.663.2222 • Cell 916.719.5472

MEMORANDUM

March 24, 2010

TO: Tehachapi First

FROM: Greg Gilbert,
Autumn Wind Associates

RE: **Tehachapi Walmart EIR**

Thank you for the opportunity to evaluate the air quality and greenhouse gas analyses in the Tehachipi Walmart EIR. As demonstrated in the attached statement of qualifications, Autumn Wind Associates is well qualified to prepare this evaluation based on our experience evaluating air quality issues for numerous public and private clients.

We have reviewed the Draft and Final EIR and the relevant technical appendices prepared for the proposed project. For the reasons set forth below, we believe that the EIR fails to provide a reasoned, substantive basis for its conclusions.

First, the EIR does not evaluate all of the project-related emissions, because it omits emissions from off-site construction activity. Thus, the EIR does not support its conclusion that impacts from criteria pollutants are less than significant.

Second, because the EIR misapplies the CEQA Guidelines for determining significance of greenhouse gas emissions, its analysis provides no evidence that these emissions are less than significant. Indeed, by accepted quantitative thresholds, the project's greenhouse gas emissions should be identified as significant, and feasible mitigation should be proposed.

I. Incomplete Analysis of Air Quality Impacts Related to Construction

The EIR inappropriately limits the evaluation of construction related air quality and greenhouse gas impacts to construction of the 25-acre project site. In addition to the 25-acre site analyzed in the EIR, the project includes substantial off-site improvements, such as roadway median improvements to Tucker Road from Valley Boulevard to Tehachapi Boulevard, and to Tehachapi Boulevard from Tucker Road to 500 feet east of Old Tehachapi Road. Additional median work will take place on Valley Boulevard. These two "Concept Median Plans" will clearly require extensive roadway construction on these two key arterials (DEIR, II-7 and figures II-3, 4, and 5).

Construction of median areas typically includes intensive activities such as breaking and/or grinding existing pavement, hauling material off-site, removing and replacing soil in landscaped areas, installing concrete curbs, and installing irrigation facilities and drains. These activities require the use of diesel powered trucks and equipment such as haul trucks, diesel equipment to break or grind pavement, trenching and excavation equipment, cement delivery, and possibly other equipment. From the scaled drawings, the median length on Tucker Road is about 1,350 feet plus an additional 600 feet on Valley Boulevard, resulting in a total of almost 2,000 feet of linear construction area. This represents a substantial amount of construction activity that is completely overlooked in the EIR.

In addition to roadway median construction, the project includes construction of drainage improvements and storm water quality facilities. The EIR project description includes construction of a 24-inch collector pipe on the southern side of Tehachapi Boulevard and three 24-inch collector pipes to be constructed perpendicular to the project site (DEIR, II-2). This construction activity will require the use of additional diesel powered equipment such as excavators, haul trucks, cranes, and possibly other equipment.

The EIR's analysis of project-related emissions, including the URBEMIS modeling reports in Appendix D, does not include emissions from the off-site construction activities described above. The failure to analyze construction emissions resulting from roadway and utility construction activities represents a potentially significant underestimation of air quality impacts, greenhouse gas emissions, and health risk from diesel particulate matter. These construction activities include substantial earthmoving activities that require the use of heavy-duty diesel equipment, and could more than double the incomplete total project emissions quantified in the EIR.

II. Flawed Greenhouse Gas Significance Determination

The City relies on CEQA Guidelines section 15064.4(b) to evaluate the significance of greenhouse gas (GHG) emissions. The EIR claims to evaluate all

three factors identified in section 15064.4(b)(1), (2), and (3) (DEIR, IV.C-36). However, the analysis provided in the EIR does not support the conclusion that project GHG emissions are less than significant. For the reasons described below, the EIR provides incomplete and inaccurate information that does not meet CEQA requirements to analyze and disclose greenhouse gas impacts from the proposed project.

Factor 1 Analysis Does Not Support Significance Determination

The EIR describes the Factor 1 analysis based on 15064.4(b)(1):

> *The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting*

There are two flaws in the EIR's analysis of this factor. First, the EIR does not include supporting justification for many of the claims that the project would reduce GHG emissions.

The DEIR quantifies project emissions based on various identified sources (DEIR, IV.C-37 to 40). The DEIR then identifies various Project Design Features (PDFs) "that will significantly reduce GHG emissions." (DEIR, IV.C-41). Table IC.C-16 presents the reduction in project emissions resulting from these PDFs, including a 15.3% reduction in emissions from natural gas consumption, a 13.6% reduction in emissions from electricity generation, a 50% reduction in emissions related to solid waste, a 21.8% reduction in emissions related to water consumption, and a 4.5% reduction in emissions from motor vehicles (DEIR, IV.C-44). The DEIR claims that "a detailed analysis of the reductions taken is presented in Appendix D." (DEIR, IV.C-43).

However, Appendix D does not provide the supporting evidence for the reductions noted above. Appendix D includes URBEMIS modeling reports and calculations for GHG emissions from water use and electricity generation. Within the URBEMIS modeling reports, only two mitigation measures are included. The first is a 10 percent reduction in area source emissions from commercial energy efficiency beyond Title 24 requirements. The other mitigation measure is a 2 percent reduction in operational (vehicle) emissions from non-residential local serving retail. The DEIR improperly claims GHG reductions beyond what is supported in the URBEMIS modeling. The DEIR appendix includes no quantification for the claimed GHG reductions from natural gas consumption[1], solid waste, and water consumption. Without providing evidence to support the claimed GHG reductions, the EIR cannot reasonably conclude that the project will achieve the specified reductions.

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[1] Note that the DEIR description of energy efficiency measures discloses that the HVAC system could be as little as 4 percent more efficient than Title 24 requirements (DEIR, II-8). Therefore, the supposedly "conservative" reductions in Table IV.C-16 should not have included more than a 4 percent GHG reduction from natural gas consumption.

The second flaw in the Factor 1 analysis is that the EIR improperly evaluates project impacts relative to a hypothetical business as usual (BAU) baseline instead of comparing project impacts to existing conditions.

In adopting CEQA Guidelines, § 14064.5(b)(1), the California Natural Resources Agency made it clear that analysis of significance using this factor must compare a project's emissions to existing conditions, not to a hypothetical business as usual (BAU) baseline:

> *The first factor in subdivision (b), for example, asks lead agencies to consider whether the project will result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting. All project components, including construction and operation, equipment and energy use, and development phases must be considered in this analysis. (State CEQA Guidelines, § 15378 (project includes "the whole of the action").) For example, a mass transit project may involve GHG emissions during its construction phase, but substantial evidence may also indicate that it will cause existing commuters to switch from single-occupant vehicles to mass transit use. Operation of such a project may ultimately result in a decrease in GHG emissions. Such analysis, provided that it is supported with substantial evidence and fully accounts for all project emissions, may support a lead agency's determination that GHG emissions associated with a project are not cumulatively considerable.*
>
> *<u>This section's reference to the "existing environmental setting" reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, § 15125.) This clarification is necessary to avoid a comparison of the project against a "business as usual" scenario as defined by ARB in the Scoping Plan. Such an approach would confuse "business as usual" projections used in ARB's Scoping Plan with CEQA's separate requirement of analyzing project effects in comparison to the environmental baseline.</u> (Compare Scoping Plan, at p. 9 ("The foundation of the Proposed Scoping Plan's strategy is a set of measures that will cut greenhouse gas emissions by nearly 30 percent by the year 2020 as compared to business as usual") with Fat v. County of Sacramento (2002) 97 Cal.App.4th 1270, 1278 (existing environmental conditions normally constitute the baseline for environmental analysis); see also Center for Bio. Diversity v. City of Desert Hot Springs, Riverside Sup. Ct. Case No. RIC464585 (August 6, 2008) (rejecting argument that a large subdivision project would have a "beneficial impact on CO2 emissions" because the homes would be more energy efficient and located near relatively uncongested freeways).) Business as usual may be relevant, however, in the discussion of the "no project alternative" in an EIR. (State CEQA Guidelines, § 15126.6(e)(2)*

(no project alternative should describe what would reasonably be expected to occur in the future in the absence of the project).) [2]

It is clear from this discussion that Factor 1 is intended to allow an agency to conclude that a project that on balance decreases, or does not increase, emissions does not have a significant effect, even if some aspects of the project may generate emissions. Factor 1 is intended to provide the analytic basis for finding a project's emissions to be less than significant where a project is designed to reduce existing emissions. For example, while construction of a mass transit project may generate emissions, the operation of the transit project may decrease emissions.

More fundamentally, Factor 1 is expressly not intended to permit a significance determination based on comparing a project's emissions to a hypothetical business as usual scenario. Yet that is precisely the comparison the DEIR purports to provide. Table IC.C-16 compares hypothetical project emissions *without* the Project Design Features, i.e., BAU emissions, to project emissions *with* the Project Design Features. The DEIR's claim is clearly based on a comparison to a hypothetical BAU baseline, not an existing conditions baseline, because the analysis does not even attempt to show the project's effects on existing conditions. Nothing in the DEIR's Factor 1 analysis provides a comparison of emissions under existing conditions without the project to conditions with the project.

Indeed the DEIR expressly states that its Factor 1 analysis is based on a BAU baseline:

> *As shown in Table IV.C-16, the project's PDFs will reduce project emissions by approximately 589 MTCO2e, or approximately 7.2 percent. In addition, the proposed project will comply with all regulations adopted pursuant to AB 32, which constitutes an <u>additional improvement from BAU conditions</u>.* [3]

Thus, even if the EIR had demonstrated that Project Design Features would reduce emissions compared to business as usual conditions, such a demonstration would not fulfill the requirements of Factor 1 analysis under CEQA Guidelines, § 14064.5(b)(1). Factor 1 analysis may provide support for a finding that a project's emissions would not be a considerable contribution to significant global GHG impacts when the project demonstrably reduces (or does not change) existing emissions. But where the analysis identifies *increased* GHG

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[2] California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97, December 2009, pp. 24-25, emphasis added.

[3] DEIR, p. IV.C-44, emphasis added.

emissions, the agency must provide some other evidence that this increase is not considerable.

The California Natural Resources Agency observes that Factor 1 is not intended to require zero net emissions. But where a project does result in an increase in emissions, the agency obviously cannot rely on a demonstrable reduction in emissions, such as the demonstrable reductions attained by a mass transit project, to justify its significance finding. If a project increases emissions, the agency must explain why this increase is not a considerable contribution to significant global GHG impacts. The agency would need to rely on *other, additional* analyses, e.g. analyses under Factors 2 and 3 (CEQA Guidelines, §§ 14064.5(b)(2) and (3)) to do so. Under Factor 3 analysis the agency might show that the project is consistent with an adopted plan with specific requirements that adequately address GHG impacts. However, as discussed below, the DEIR admits that there is no such applicable plan, so Factor 3 analysis is simply not relevant.

Although reductions from a hypothetical baseline are not relevant to Factor 1 analysis, under other analyses, the agency might conclude that meeting a performance standard for emissions is sufficient to justify considering the project's emissions to be a less than considerable contribution. For example, the new CEQA Guidelines, § 15183.5(b)(1)(D) contemplate use of performance standards in connection with adopted plans for the reduction of GHG emissions. But as the Natural Resources Agency points out, use of performance standards must be accompanied by "evidence indicating that compliance with such standards would indicate that the impact of greenhouse gas emissions would be less than significant."[4] Thus, an adopted plan for GHG emission reductions that relies on a performance standard must initially "establish a level, *based on substantial evidence*, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable." (CEQA Guidelines, § 15183.5(b)(1)(B)). Here, however, the City has not even attempted to establish any justification for the assertion that a particular reduction in emissions is sufficient to render the remaining emissions a less than considerable contribution.

Even if it were permissible to frame the significance analysis with reference to the hypothetical BAU baseline used for the AB 32 Scoping Plan goal, the City has not provided any evidence that meeting the AB 32 Scoping Plan goal for GHG reductions is a sufficient response to the global warming problem, much less that the project's purported overall 7.2 percent reduction from BAU is a sufficient response. Indeed, in view of the much higher reductions called for by AB 32 (a statewide 29% reduction in BAU GHG emissions by 2020), it is difficult to understand how the project's purported overall 7.2 percent reduction from BAU *could* be found sufficient. To the contrary, by the EIR's own logic, these relatively

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[4] California Natural Resources Agency, p. 22.

modest reductions from BAU conditions imply that the project's effects *will be* considerable contributions. And, as discussed below, the Natural Resources Agency has made it clear that mere compliance with AB 32 regulations, much less unexplained claims of consistency with AB 32's very general goals for GHG emission reductions, is not an adequate basis to conclude that emissions are less than considerable contributions to climate change.

Factor 3 Does Not Apply

The EIR identifies Factor 3 by quoting CEQA Guidelines section 15064.4(b)(3):

> *The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions.*[5]

The CEQA Guidelines language above mirrors and complements the more general language of the CEQA Guidelines § 14064(h)(3), which was amended to include compliance with GHG reduction plans as the basis of a significance determination at the same time that section 15064.4(b)(3) was added.

> *A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.*[6]

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[5] California Natural Resources Agency, Adopted Text of CEQA Guidelines Amendments, Dec. 30, 2009 (available at http://ceres.ca.gov/ceqa/guidelines/)

[6] Ibid.

In an analysis of significance, the point of Factor 3 is to provide an affirmative basis for concluding impacts are less than significant when a project does comply with an adopted plan with specific requirements for GHG reductions.[7]

However, this factor is simply not relevant to an EIR's analysis and determination that GHG impacts are less than significant where there *is* no adopted plan to address GHG emissions. Here, as the DEIR admits, there is no adopted plan with specific requirements because "[t]o date, no regulations or specific requirements have been adopted for Tehachapi or the KCAPCD to reduce or mitigate greenhouse gas emissions through a public review process." (DEIR, IV.C-46) Thus, consideration of this factor is simply irrelevant and the EIR cannot draw any conclusion on the basis of this factor.

Factor 2 Analysis Does Not Support Significance Determination

The EIR describes the Factor 2 analysis based on 15064.4(b)(2):

> *Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.*

The EIR then identifies the threshold of significance as follows:

> *The extent to which the project could further or hinder attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in AB 32 and an 80-percent reduction in GHG emissions below 1990 levels by 2050 as stated in Executive Order S-3-05. A project may be considered to help attainment of the state's goals by being consistent with adopted statewide greenhouse gas emissions limits or the plans, programs, recommendations and regulations adopted to implement AB 32 and Executive Order S-305.*[8]

The EIR concludes that the project would not result in a significant impact because it would not hinder attainment of the AB 32 goals:

> *The proposed project would not hinder attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by 2020 and an 80-percent reduction below 1990 levels by 2050. The proposed project is not in conflict with any regulation or law adopted pursuant to AB 32 or Executive Order S-3-05, and no waiver from any adopted regulation or law is being sought in connection with development and operation of the project. Accordingly, the proposed project would not hinder or preclude the State's goals in adopting regulations that would reduce emissions to 1990 levels by the year 2020 and an 80-percent reduction in GHG*

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[7] California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97, December 2009, pp. 26-27.

[8] DEIR, IV.C-44 to 45.

emissions below 1990 levels by 2050. In addition, the project's design features set forth above expand upon regulatory requirements and further constitute an improvement over BAU conditions.[9]

The DEIR goes on to observe that (1) the project may reduce GHG emissions for those customers that would otherwise travel to Bakersfield or Lancaster, (2) the project would exceed Title 24 requirements (by an unspecified percentage), (3) the project does not conflict with GHG measures "outside the commercial development sector", (4) not all economic sectors need to meet the 1990-based statewide reduction measures to meet AB 32 goals, and (5) the commercial sector only accounts for 3% of GHG emissions. DEIR, p. IV.C-45. Based on this analysis, the DEIR concludes that the project will not hinder attainment of AB 32 goals and that it supports those goals by including some design features that exceed regulatory requirements and reducing VMT.

The EIR provides little more than hand waving to support the Factor 2 threshold and analysis. First, the EIR provides no evidence that the project would reduce net VMT compared to existing conditions, but instead claims that it would reduce VMT for an unspecified number of customers that might currently travel to more distant Walmart locations. Nor does the EIR demonstrate that the project design features, whether they exceed specific regulatory requirements or not, will collectively result in meeting the AB 32 goals of specific reductions from business as usual. As discussed above, the DEIR's Factor 1 analysis actually purports to document only a 7.2 percent reduction from business as usual, not the reductions called for by AB 32.

While claiming that not all sectors must meet AB 32 goals, the DEIR does not explain what portion of AB 32's goals the project's sector must meet in order to be consistent with those goals. The EIR presents no evidence that the AB 32 goals were set in contemplation of an exemption of the commercial sector, or any other sector. While the AB 32 scoping process, which sets reduction goals for specific sectors, may provide some basis for determining a sector or project GHG reductions obligation in order to be consistent with AB 32, the EIR does not discuss evidence of this kind.

Finally, the DEIR improperly implies that the commercial sector's GHG emissions may be ignored as de minimis, despite the fact that CEQA does not permit a de minimis exception for cumulative impacts. In sum, the factual bases of the DEIR's consistency claims are unsupported.

More fundamentally, the DEIR's Factor 2 threshold is not the kind of threshold contemplated by CEQA Guidelines section 15064.4(b)(2). The Resources Agency specifically states that "thresholds" adopted by the Air Resources Board for non-CEQA purposes, e.g., thresholds in AB 32 related regulations, "do not

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[9] DEIR, IV.C-45.

satisfy a lead agency's duties under CEQA" because these thresholds do "not address the level at which environmental harm may occur."[10]

The California Natural Resource Agency explains that a Factor 2 analysis is supposed to be based on an identifiable threshold that has previously been adopted by an agency through a public process and that is based on substantial evidence:

> *[Factor 2] asks whether a project exceeds a threshold of significance for GHG emissions. Section 21000(d) of the Public Resources Code expressly directs public agencies to identify whether there are any critical thresholds for health and safety to identify those areas where the capacity of the environment is limited. A threshold is an "identifiable quantitative, qualitative or performance level" at which impacts are normally less than significant. (State CEQA Guidelines, § 15064.7(a); see also Protect the Historic Amador Waterways, supra, 116 Cal.App.4th at 1107.) Lead agencies may rely on thresholds developed by other agencies that have particular expertise in the subject matter under consideration. (See, e.g., State CEQA Guidelines, Appendix G, Sample Question III ("[w]here available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make" a significance determination).) For example, a lead agency may look to standards included in a Basin Plan to assist in the determination of whether water quality impacts are significant. (Protect the Historic Amador Waterways, supra, 116 Cal.App.4th at 1107 ("[s]uch thresholds can be drawn from existing environmental standards, such as other statutes or regulations").)*[11]

The reference to CEQA Guidelines section 15064.7 makes it clear that identifiable thresholds of significance on which it is proper to base Factor 2 analysis are those that have been previously adopted by a public agency as a yardstick for CEQA significance determinations, through public hearings, and that are based on substantial evidence. Section 15064.7 provides:

> *(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. 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.*
> *(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by*

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[10] California Natural Resources Agency, p. 26.

[11] Ibid, p. 25, emphasis added

ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.[12]

The California Natural Resources Agency is clear that a Factor 2 analysis must be based on CEQA-specific GHG yardsticks developed through public review processes, citing the CEQA GHG thresholds developed by the Bay Area Air Quality Management District; the City of Davis residential construction threshold; and the South Coast Air Quality Management District's threshold for industrial projects.[13]

Despite this, the DEIR bases its Factor 2 analysis on a threshold taken directly from the AB 32 goals. This "threshold" has not been adopted by the City. Nor was it adopted *for CEQA purposes* to establish "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." The DEIR's threshold is not even a regulation, but a goal for future regulations. The AB 32 goals were clearly not adopted to be used as CEQA thresholds of significance, and cannot be used as such. The EIR provides no such independent evidence. And in fact, the AB 32 goals are precisely the kind of "threshold" or "plan" that the Natural Resources Agency identifies as inapplicable to both Factor 2 and Factor 3 analysis.[14]

In fact, the total project carbon dioxide emissions shown on Table IV.C-12 of the DEIR exceed the CEQA greenhouse gas threshold adopted by the BAAQMD, and referenced by the Natural Resources Agency. The project's carbon dioxide emissions alone are seven times higher than the BAAQMD threshold of 1,100 metric tons of carbon dioxide equivalents per year[15]. Methane emissions and nitrous oxide emissions add even more to the significance of the project's GHG impact.

As discussed below, the Factor 2 analysis is actually a deficient form of the Factor 3 analysis since it purports to determine the project's consistency with a plan, but the plan it evaluates is specifically not the kind of plan on which a Factor 3 analysis may be based.

The Factor 2 analysis consists of claims that the project will "not hinder attainment," but will instead "support" the AB 32 goals, and that it is "consistent" with "numerous regulations that are being adopted," including regulations "outside the commercial sector." DEIR, p. IV.C45. The DEIR's discussion

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[12] CEQA Guidelines, § 15064.7, emphasis added.

[13] California Natural Resources Agency, pp. 25-26.

[14] Ibid., pp. 25-27.

[15] BAAQMD, Adopted Thresholds Table, December 2010, www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/Adopted%20Thresholds%20Table_December%202010.ashx

makes it clear that its Factor 2 analysis would be more appropriately considered as a form of Factor 3 analysis, because it is in a Factor 3 analysis that an agency is supposed to determine "consistency" with a GHG control plan.[16]

Mislabeling the Factor 3 analysis as Factor 2 analysis would not disqualify the analysis – if it were otherwise sufficient. However, the AB 32 goals are not an adequate basis for Factor 3 analysis because these goals are not "regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions . . .adopted by the relevant public agency through a public review process [intended to] reduce or mitigate the project's incremental contribution of greenhouse gas emissions." The Natural Resources Agency specifically rejects reliance on the AB 32 Scoping Plan as a form of adopted plan on which to base Factor 3 analysis, because those regulations have not been adopted.[17] And the Scoping Plan is much more specific than the AB 32 Goals themselves; if the Scoping Plan is not sufficient because its requirements are not adopted (or, indeed, adequately specific), then the more general AB 32 goals cannot constitute the kind of adopted regulations on which to base a Factor 3 analysis.

The mere fact that the project is "not in conflict" with the inchoate AB 32 regulations cannot provide evidence that it meets specific requirements intended to ensure GHG emissions are adequately controlled. Since the regulations are not yet adopted, how could the project conflict with them?

Nor do the largely unidentified "plans, programs, recommendations, and regulations adopted to implement AB 32 and Executive order S-305," identified in the DEIR's Factor 2 threshold of significance (DEIR, p. IV.C-45), constitute these kinds of specific regulations or requirements upon which a Factor 3 analysis can be based. The *only* specific regulations that the DEIR identifies as applicable to the project are Title 24 regulations. But Title 24 regulations are not "regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions . . . by the relevant public agency through a public review process." If meeting Title 24 regulations were all that is required of a project, essentially all building projects could be found to have less than considerable contributions. The kind of regulations intended to provide support for a Factor 3 analysis are "plans found to reduce community-wide emission to a level that is less than significant."[18]

The DEIR discussion of climate change measures "outside the commercial development sector" (DEIR, IV.C-45) is simply irrelevant. The relevant GHG reduction plan in Factor 3 analysis must actually address the project's emissions:

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[16] See California Natural Resources Agency, p. 26 (explaining that a project may be found to comply with such a plan if it "furthers its objectives" and 'does not obstruct their attainment.")

[17] Ibid, p. 27.

[18] Ibid.

> *Reading section 15064.4 together with 15064(h)(3), however, to demonstrate consistency with an existing GHG reduction plan, a lead agency would have to show that the plan actually addresses the emissions that would result from the project. Thus, for example, a subdivision project could not demonstrate "consistency" with the ARB's Early Action Measures because those measures do not address emissions resulting from a typical housing subdivision.*[19]

In sum, the disguised Factor 3 analysis presented by the DEIR as its Factor 2 analysis is not adequate because it does not provide evidence that (1) project emissions meet an identifiable threshold of significance, or (2) the project will comply with an adopted plan of specific requirements for projects of its type that is intended to reduce or mitigate GHG emissions.

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[19] Ibid, emphasis added.

Greg Gilbert
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STATEMENT OF QUALIFICATIONS

Education
University of California, Santa Barbara; B.A., Env. Studies, 1982
Graduate and Professional Studies in Law, Planning, Emissions Modeling

Professional History
Greg Gilbert has consulted on air quality land use planning and mobile source issues and projects to private and public clients since forming Autumn Wind Associates in 2001. Previously, he was marketing director for a specialty emissions catalyst manufacturer. Between 1990 and 2000 Mr. Gilbert worked in two California air agencies, most recently as project manager in the Mobile Source Division of the Sacramento Metropolitan Air Quality Management District. While at the SMAQMD, Mr. Gilbert was responsible for implementing the District's heavy-duty vehicle low-emission incentive program that would later serve as a model for creation of the statewide Moyer Program. Air agency experience included evaluating land use-related air quality emission impacts and control strategies, developing CEQA mitigations and updating CEQA guidance, and creation of the first in-lieu air quality CEQA mitigation fee program.

Since leaving the SMAQMD he has provided consulting expertise to air agencies, provided input for revisions to the URBEMIS model, conducted research on construction practices and equipment emissions, and assisted with development of air district CEQA land use guidance documents and mitigation strategies. Mr. Gilbert has reviewed CEQA project-specific environmental documentation and provided expert written comments and testimony for public-, private-, and environmental-sector clients.

RECEIVED
AT CITY COUNCIL MEETING
DATE: 3/28/2011
BY: D Jones

March 28, 2011

Tehachapi City Council
115 S. Robinson St.
Tehachapi, CA 93561

Dear City Council,

I am writing to oppose the Walmart Project and to protest the EIR's statements about its impacts on noise levels in the community. The project will clearly add to noise levels on residential streets in the neighborhood and will exceed the city's noise standards, but the EIR washes over this with faulty analysis. The EIR does not consider the potential for sleep disturbance from truck deliveries, alarms, etc. It also does not sufficiently address the overall noise impacts of the Project combined with other projects planned for the area.

Please refer to the attached report prepared by an expert in noise issues for projects like this one. It clearly shows that the EIR's analysis is faulty and that the Walmart will have serious noise consequences for neighbors.

I join with the comments of others, and urge you to vote NO on the Project

Sincerely,

Rory Turner

Rory Turner

ATTACHMENT C

WILSON IHRIG & ASSOCIATES
ACOUSTICAL AND VIBRATION CONSULTANTS
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MEMORANDUM

24 March 2011

To: Tehachapi First

Fr: Derek L. Watry, Principal

Re: Tehachapi Walmart Environmental Impact Report Review – Noise

As requested, we have reviewed the various documents pertaining to the Tehachapi Walmart Environmental Impact Report (EIR), including, but not limited to, the Draft EIR and associated appendices dated May 26, 2010 and the Final EIR dated December 31, 2010. Wilson Ihrig has practiced exclusively in the field of acoustics since 1966. During our 45 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have also peer-reviewed and critiqued many more noise studies. Wilson Ihrig has one of the largest technical laboratories in the acoustical consulting industry, and we routinely utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

As the California legislation that establishes the need for an EIR states, "The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." [Calif. Public Resources Code, Section 21002.1(a)]. A set of "guidelines" have been established since this legislation was signed into law in 1970 to aid in the required identification of significant environmental effects, and we believe that these have not be correctly followed in all instances by the Tehachapi Walmart EIR Noise section. As such, the EIR does not completely and reliably inform the public and decision-makers about the noise impacts from this proposed project. Details about our analyses and findings follow.

Issue #1: EIR Fails to Consider All Relevant EIR Noise Analysis Guidelines

The thresholds of significance for noise impacts are contained in Appendix G of the State CEQA Guidelines. As faithfully reproduced in the DEIR Noise section at page IV-I-15, the first is that the project would have a significant impact on noise if it would cause "exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies" [Noise Guideline A]. Table 2 of the Tehachapi Noise Element establishes that the Exterior Noise Standard for Sensitive receptors

(which includes "residential uses which feature an outdoor lifestyle" per the Noise Element) is L_{dn} 65.[1] There are a couple of things about this standard that are relevant to the Walmart EIR. Most importantly, it is an absolute standard. If a noise environment currently below L_{dn} 65 is pushed above L_{dn} 65 by a single project or a collection of projects, then the CEQA Guideline quoted above requires that this be identified as a significant noise impact. Secondarily, although the City of Tehachapi has adopted this standard, it is higher than the level of environmental noise requisite to protect the public health and welfare with an adequate margin of safety as determined by the Environmental Protection Agency, which is L_{dn} 55 for outdoor residential areas.[2] It is also higher than the upper limit of "Normally Acceptable" noise exposure for low density single family homes per the California Office of Noise Control, which is L_{dn} 60.[3] In summary, the Tehachapi standard is somewhat high, so it is all the more imperative that noise exposure levels not be allowed to exceed it lightly.

One major shortcoming of the Tehachapi Walmart EIR is that it completely disregards Noise Guideline A and the Noise Element absolute standard of L_{dn} 65 for single family residences. Instead, the EIR considers only Noise Guideline C which deals with relative noise level increases. It is important to adhere to an absolute standard as required by Guideline A in order to protect against many small relative increases resulting in an absolute noise level that is detrimental to human health. Because Tehachapi has adopted a relatively high absolute standard, any excess should be considered detrimental to human health.

In addition, the exclusive reliance on the Guideline C relative standard places no effective upper limit on noise levels. Noise Guideline C states that a project would have a significant noise impact if it caused "a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project." The EIR couples this with the unsupported statement that "It is widely accepted that in the community noise environment the average healthy ear can barely perceive [L_{dn}] noise level changes of 3 dBA" to assert that any change less than 3 dBA is "not discernable; not significant." This approach essentially enables any amount of noise increase over time. If it is L_{dn} 64 today, it can be L_{dn} 66.9 after the project. Sometime later, it can increase to 69.8 L_{dn}. This logical consequence of the EIR's relative (as opposed to absolute) significance threshold in light of the population's purported inability to detect changes of less then 3 dBA makes adherence to an absolute standard of paramount importance. Disregarding Tehachapi's absolute standard is an invitation for ever-increasing noise exposure.

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[1] L_{dn}: Day-Night Sound Level – The energy average of the A-weighted noise level over a 24-hour period with a 10 dB penalty applied to noise levels between 10 p.m. and 7 a.m.

[2] *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*, U. S. Environmental Protection Agency, Office of Noise Abatement and Control, March 1974.

[3] The Calif. Office of Noise Control Land Use Compatibility levels are reproduced within the Tehachapi Noise Element and also in the Walmart DEIR, although neither adopt nor utilize them.

We will discuss below specific instances where proper application of Tehachapi's absolute L_{dn} 65 standard would compel the EIR to identify significant noise impacts.

Issue #2: EIR Fails to Identify Noise Levels in Excess of General Plan Standard as Significant Impacts

Walmarts are large stores, and one key to being profitable is having many customers. This increases traffic in the area around a new Walmart store, which consequently increases noise exposure. Baseline (2009) roadway noise levels in the project area were calculated using the FHWA Highway Noise Prediction Model (with relevant modifications by Caltrans) and traffic volumes from the project traffic report.[4] The modeled 2009 L_{dn} noise levels are presented in EIR Table IV.I-4 – Existing (2009) Roadway Noise Levels Offsite [DEIR at p. IV.I-9]. It is important to note that three of the road segments analyzed – Valley Boulevard both east and west of Sierra Vista Drive and Red Apple Avenue east of Westwood Boulevard – all have noise exposure levels less than L_{dn} 65.

The same FHWA Noise Prediction Model was also used to calculate 2011 L_{dn} noise levels both with and without the Walmart project. These are presented and the Walmart noise levels "assessed" in EIR Table IV.I-13 – Predicted Future Roadway Noise Levels Offsite [DEIR at p. IV.I-23].

The most apparent problem with the assessment in Table IV.I-13 is that it does not use the existing 2009 noise levels as the baseline for comparison, but, rather, it uses the predicted future 2011 noise levels without the Walmart. In other words, it compares future noise levels with the project to future noise levels without the project. Our understanding is that EIRs are supposed to use the existing conditions that prevail at the time the EIR process is begun as the baseline condition. This is ostensibly why the EIR calculated and presented 2009 traffic noise levels. Interestingly, the cumulative noise analysis (discussed later) does, in fact, use the 2009 noise levels as the baseline for comparison.

The question that should be asked and answered in this section of the EIR – but isn't – is "Does the Walmart project cause the noise exposure along any of the road segments to exceed Tehachapi's L_{dn} 65 noise standard?" The answer is, "It does," but no one that is not familiar with the way decibels add would ever be able to figure that out from the EIR.

The decibel scale is a logarithmic scale, and the sum of two L_{dn} levels (A and B) must be calculated by the following formula:

$$C = 10 \cdot \log_{10}(10^{A/10} + 10^{B/10})$$ C is the "log" or "energy" sum of A and B

---

[4] It appears that the preparers of the EIR did not calibrate their model results with any field measurements. Because the FHWA model can't account for the condition of every paved road, it is common practice to measure noise at several locations that are also modeled. The difference between the modeled result and the measured result is the applied uniformly as a calibration factor. This is sometimes referred to as the *K-factor*.

Using this formula and the noise levels presented in Tables IV.I-4 and IV.I-13, we can calculate what the effect of adding *only* Walmart to the 2009 noise environment would do. The results of these calculations are as follows:

Roadway Segment	2009 L_{dn}	2009 L_{dn} + Walmart	+Walmart L_{dn} > 65?
Valley Blvd, west of Sierra Vista	64.7	65.1	Yes
Valley Blvd, east of Sierra Vista	64.7	65.1	Yes
Red Apple Ave, east of Westwood	64.8	65.4	Yes

To reiterate, the "2009 L_{dn} + Walmart" noise levels in the table above are those levels that would be occur if all traffic volumes in the area stayed at their existing 2009 levels with the exception that new Walmart trips are added. In contrast, the "Future (2011) With Project" noise levels in EIR Table IV.I-13 also include the general growth of traffic over time, so they are higher. By using future conditions as a baseline, the DEIR obscures the fact that Walmart, by itself, causes the L_{dn} 65 standard to be exceeded.

It might be claimed that the relative increases due to the new store alone, 0.4 to 0.6 dB, are "insignificant" in both the common and technical senses of this word. This claim, however, would fail to recognize EIR Noise Guideline A. While it may be unfortunate for this project that it is the one that breaks the camel's back by elevating local noise levels above Tehachapi's absolute noise standard, that fact must be revealed by the EIR and the noise impact identified as significant.

Issue #3: Cumulative Traffic Noise Analysis Is Flawed

The fundamental error of disregarding Tehachapi's absolute noise standard that was made during the project-specific analysis is repeated during the cumulative analysis. The cumulative analysis, however, does correctly use the 2009 baseline traffic noise levels, so it is apparent from the results in EIR Table IV.I-17 – Cumulative Project Roadway Noise Impacts with Proposed Project that the L_{dn} 65 standard is not now exceeded along Valley Boulevard and Red Apple Avenue but will be at some time in the near future. As discussed at length above, by Noise Guideline A (the absolute L_{dn} 65 standard), this constitutes a significant noise impact along these roadways, albeit in this case it is a significant <u>cumulative</u> noise impact that is evident the Table IV.I-17. The next question is does Walmart traffic contribute *considerably* to this significant impact.

Our understanding is that the cumulative analysis should proceed by two distinct steps:

1. Determine cumulative noise level, including the project, and assess significance

In this case, sections of Valley Boulevard, Red Apple Avenue, and Mulberry Street should all be identified as having significant cumulative noise impacts – the first two because the noise levels exceed the absolute standard of L_{dn} 65, and the latter because the noise levels increase more than 5 dB.

2. If cumulative impacts are significant, determine if the project's contribution is "considerable"

In order to determine if a project's contribution is considerable, new criteria are needed. Our understanding is that the EIR expressly should *not* utilize the same criteria as were used to determine if the cumulative noise levels are significant because the main point of the cumulative analysis is to ferret out those situations in which there is a cumulative impact but in which no one project is itself the source of a significant impact.

In this case, as discussed above, the traffic noise due solely to Walmart is sufficient to increase the noise levels along Valley Blvd and Red Apple Ave above the L_{dn} 65 standard. This is one potential ground for finding that Walmart's contribution is considerable. Another is to consider the contribution of Walmart traffic alone to the total 2011 cumulative (including Walmart). This calculation, which is somewhat obscure because of the logarithmic nature of decibels, yields 7% to 11% of the total sound exposure is due solely to Walmart traffic.[5] Because Walmart, one identifiable source, accounts for approximately 1/10 of the noise exposure, its contribution should be regarded as "considerable."

Issue #4: EIR Fails to Evaluate Traffic Noise at General Plan Buildout

Generally, an EIR noise analysis examines long-term impacts as well near-term ones, and Comment 7-28 in the FEIR appropriately requested a noise analysis at General Plan build-out (the "long-term" condition).

The initial response to this in the FEIR was that 2011 conditions constituted the "future" conditions and comparison between 2011 conditions and 2009 conditions was "the method that was used to evaluate cumulative impacts throughout the Draft EIR, not only noise. It would be inappropriate, let alone inconsistent, to evaluate cumulative impacts in the noise section differently than the rest of the EIR" [FEIR at p. II-42]. This is an odd statement, to say the least. The appropriate and consistent thing to have done would have been to do the General Plan build-out analysis for all relevant topics in the EIR. Furthermore, this statement isn't even true. The DEIR in the Transportation/Traffic does evaluate both 2011 and General Plan build-out conditions, explaining that ". . . the City of Tehachapi requires that if the daily V/C ratio increases . . . as a result of project volumes being added to year 2011 cumulative volumes or

[5] As one example, the sound exposure (energy) due to Walmart along Red Apple Avenue is given by $1 - [10^{(65.8/10)}/10^{(66.3/10)}] = 11\%$

General Plan buildout without project volumes (year 2030), the developer has the responsibility to mitigate the impact" [DEIR at p. IV.K-20]. The required traffic level of service analysis at General Plan build-out is subsequently presented.

The FEIR's second response acknowledged that "future noise levels throughout Tehachapi will be greater after buildout under the General Plan along several, if not all, of the roadway segments [analyzed]." The FEIR goes on to state:

> At the present time, however, the EIR consultant is not able to identify or calculate these future noise levels since they are not identified in the Noise Element of the City's General Plan and the traffic data needed to calculate the future noise levels is not identified in the Circulation Element of the General Plan. [FEIR at p. II-42].

This statement is also not true on two counts. First, the General Plan Noise Element does include 2020 Noise Contours provided by Quad Knopf [General Plan Noise Element at p. 30]. The General Plan states that the contours are based on traffic noise from assumed future development. Thus, the future noise levels were available and should have been used in the General Plan buildout analysis.

Second, and more importantly, the EIR states in the Transportation/Traffic section "that peak hour and daily forecasts for the General Plan buildout traffic conditions have been provided by the City's consultant for the General Plan update" [DEIR at p. IV.K-23], and the traffic analyst's scope of work expressly states "General Plan Buildout traffic volumes will be forecast utilizing the City of Tehachapi traffic model" [DEIR, Appendix K, Sub-Appendix A, p. A-2]. These are precisely the traffic data needed to calculate the future noise levels that the above comment implies are not available. General Plan Buildout traffic volumes for some, but not all, of the roadway segments analyzed in the noise section may be found in Table 11-2 of the Traffic Report [DEIR, Appendix K]. Had the traffic volumes been made available to the noise analyst, 2030 traffic noise levels could have been calculated exactly as 2011 levels were calculated.

The EIR simply failed to do the long-term analysis. Had it done so, other residential areas may have also been identified as crossing the L_{dn} 65 threshold, thereby being significantly impacted by noise.

Issue #5: Traffic Volumes in Noise Analysis Inconsistent with those in Traffic Analysis

EIR analyses are required to make good faith efforts to predict future conditions and to assess the environmental impacts of those conditions. While is it unreasonable to expect the predictions to be perfect every time, it is nonetheless essential that the EIR present a reasonably well supported and complete picture of the future conditions. One element of "reasonable" in this case is that the picture presented should be consistent across all of the EIR analyses. In this case, however, the traffic data used in the noise analysis is markedly different that that used in the traffic flow analysis. This inconsistency undermines the credibility of both analyses and, hence, the EIR itself.

The DEIR at p. IV.I-21 states that the traffic noise analysis was based on the Traffic Report included as Appendix K. Existing 2008, 2011 "without Walmart," and 2011 "with Walmart" daily traffic volumes are all given in the Appendix K Traffic Report in Table 7-2 [DEIR, Appendix K, p. 35; also reproduced as Table IV.K-9, DEIR, p. IV.K-62]. The DEIR's traffic noise analysis calculation sheets are presented in Appendix J, Noise Data. These sheets also present existing 2008, 2011 "without Walmart" and 2011 "with Walmart" daily traffic volumes used for the noise modeling. The volumes from these two EIR sections are vastly different:

Appendix J – Noise Data	2008 Existing	2011 w/o Proj	2011 w/ Proj	Project Adds
Valley west of SVD	11,528	15,016	16,320	1,304
Valley east of SVD	11,560	15,288	16,352	1,064
Red Apple east of WB	9,256	11,736	13,080	1,344
Appendix K – Traffic Report	**2,008 Existing**	**2,011 w/o Proj**	**2,011 w/ Proj**	
Valley west of SVD	17,698	24,847	27,055	2,208
Valley east of SVC	17,669	25,014	27,222	2,208
Red Apple east of WB	12,971	17,673	20,433	2,760

The Traffic Report volumes are much higher than those used for the noise analysis for all three scenarios, and the 2011 traffic increments due to adding the project are higher. Had the Traffic Report volumes been used, the future area noise levels and the noise contributions of Walmart would be even greater than the DEIR reveals.

Aside from this key technical point, the use of two markedly different sets of traffic data in different sections of the EIR is inconsistent and inappropriate. The public and decision-makers have no solid basis on which to ground discussion and decisions about land use planning if the picture of the future condition is confused and inconsistent.

Issue #5: EIR Discusses Sleep Disturbance but Fails to Analyze It

The EIR correctly states that "Noise levels above 45 dBA at night can disrupt sleep" [DEIR at p. IV.I-3]. Sleep is profoundly important to human health, so this potential impact should have been analyzed, but was not.

Information in the DEIR indicates that truck deliveries to the Walmart loading dock will occur during both the day and at night. The DEIR did analyze this truck noise in terms of hourly and daily averages, but it did not examine the short-term noise levels from sources it explicitly describes such as air brakes, backup alarms, and revving engines. The long-term average analyses does not address sleep disturbance, which is directly connected to short-term event noise levels.

The nearest residence is 118 ft from Walmart. At this distance, the exterior noise level of a Class C backup alarm which is used on both delivery trucks and construction vehicles is

approximately 68 dBA. The corresponding noise level inside the residence with the window open would be 51 to 66 dBA depending on the proximity of the listener to the window. The EPA's Noise Effects Handbook reports that there is a 5% probability of a person being awakened by a noise level of 40 dBA and a 30% probability at 70 dBA, so these calculations indicate that nighttime truck delivery noise will have non-negligible probability of disturbing the sleep of residents on Las Colinas.

In addition to the sound levels involved, it is important to note that the character of the truck sounds will be much different than the sound prevalent at the residences today. The backup alarms serve as the most blatant example – these are devices that are intended by design to attract attention – but the other sounds will also be new to the neighborhood. This factor is difficult to quantify, but many noise regulations add a 5 dB "penalty" for tonal and other distinctive noises to account for it.

This brief analysis should indicate that there is sufficient cause for concern to require the DEIR to assess the potential for sleep disturbance at nearby residences, focusing in particular on short-term event noise levels.

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DEREK L. WATRY, M.S.

Experience

Wilson, Ihrig & Associates, Inc. (1992 to Present)
Principal

Mr. Watry is experienced in all aspects of environmental acoustics, including noise measurement and prediction, regulatory analysis, environmental impact assessment, and noise control design. He is well versed in the requirements of CEQA, and has both prepared and critiqued many environmental noise studies. Over the past 18 years, he has conducted numerous construction, traffic, HVAC, and industrial equipment noise projects, and has extensive experience with construction noise and vibration monitoring.

University of California, Berkeley (1988 - 1992)
Graduate Student, Research and Teaching Assistant

Teaching Assistant for "Fundamentals of Acoustics" course

Education

M.S. (1991) in Mechanical Engineering, University of California at Berkeley
B.S. (1988) in Mechanical Engineering, University of California at San Diego
M.B.A. (2000), Saint Mary's College of California, Moraga

Professional Associations

Member, Acoustical Society of America
Member, National Council of Acoustical Consultants

Academic Distinctions

Summa Cum Laude, Saint Mary's College of California (2000)
National Science Foundation Fellowship Recipient (1988 - 1991)
Summa Cum Laude, University of California, San Diego (1988)

Representative Projects

Patterson Ranch EIR, Fremont
Noise section of EIR for 428 acre project that included residential, educational, religious, community recreation, and commercial land uses.

Mare Island Dredged Material Disposal Facility EIR, Vallejo
EIR noise study for proposed disposal facility to be built next to residential neighborhood.

Silva Ranch Annexation EIR, King City
EIR noise study for development of new, large, primarily residential, district on the outskirts of King City.

525 Golden Gate Avenue Demolition, San Francisco
Noise and vibration monitoring and consultation during the demolition of multi-story office building next to Federal, State, and Municipal Court buildings in San Francisco.

Tyco Electronics Annual Noise Compliance Study, Menlo Park
Conducted annual noise compliance monitoring for Tyco Electronics in 2009 and 2010. Provided letter critiquing the regulatory requirements and recommending improvements.

Safeway Redevelopment, Sunnyvale
Noise study of store redevelopment including loading dock, trash compactor, parking lot, and rooftop HVAC equipment.

Safeway Redevelopment, Los Altos
Noise study of store redevelopment including loading dock, trash compactor, rooftop parking lot, rooftop HVAC equipment, and Foothill Expressway traffic noise.

Central Park Apartments Noise Study, Mountain View
Noise study for new residential building development. Major noise sources included Central Expressway and Caltrain.

465 N. Whisman Road, Mountain View
Noise control among suites in a low-rise office complex.

Caltrain Centralized Equipment Maintenance and Operations Facility, San Jose
Noise study of impacts for new maintenance and operations facility built next to existing residential neighborhood. Included analysis of 16 ft sound barrier wall.

Conoco-Phillips Refinery Noise Control, Rodeo
Environmental noise study and assessment of refinery noise at residential neighborhood.

Groth Winery HVAC Sound Barrier, Oakville
Design of sound barriers to control noise from rooftop HVAC equipment.

Dahl Booster Pump Station, Palo Alto
Design of sound barrier and specification of mufflers for pump station equipment.

RESPONSE TO COMMENTS BRIGGS LAW CORPORATION ON BEHALF OF CREED 21

Attachment D-1

BRIGGS LAW CORPORATION

Mekaela M. Gladden
BRIGGS LAW CORPORATON
99 East "C" Street, Suite 111
Upland, CA 91786
March 25, 2011

Introduction

The public review process for the proposed Tehachapi Walmart project (proposed project) began with the publication and circulation of a Notice of Preparation (NOP) and Initial Study. The NOP requested input from public agencies and the public as to the potential impacts of the proposed project and the necessary scope of study in the Draft EIR. The NOP was published on September 12, 2007 and circulated for public review and comment for 30 days through October 11, 2007. The Draft EIR was completed and published for public review on May 26, 2010. Public agencies and the public in general were afforded the opportunity to review the Draft EIR and provide comments back to the City within the CEQA-mandated period of 45 days. During this time period, a public workshop occurred with the City of Tehachapi Planning Commission on June 14, 2010. Following the end of the Draft EIR public review period, the Final EIR was prepared and published. The Planning Commission hearings for the proposed project occurred on January 10, 2011 and January 31, 2011. The City Council hearing for this project was first scheduled to occur on March 28, 2011.

Section 21003.1(a) of CEQA provides that comments on the environmental effects of a project "shall be made to lead agencies as soon as possible in the review of environmental documents ... in order to allow the lead agency to identify, at the earliest possible time in the environmental review process, the potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects." The lead agency, in turn, is required to evaluate and respond to any significant environmental questions presented. However, in accordance with the cases, Browning-Ferris Industries v. City Council (1986) 181 Cal.App.3d 852, 862, 226 Cal.Rptr. 575; Guidelines, s 15088, subd. (a) and City of Poway v. City of San Diego (1984) 155 Cal.App.3d 1037, 1043-1044, 202 Cal.Rptr. 366, there is no requirement that a lead agency respond in writing to comments submitted after expiration of the Draft EIR public comment period.

The commenter did not participate in any of the review process until the date of the March 28, 2011 City Council hearing, when approximately four hours prior to the start of the public hearing, the commenter submitted the letter that is the subject of these responses. The commenter also did not attend the public hearing to provide testimony to the City Council or to hear the City's responses to the comment letter.

As presented above, the City has provided ample opportunity for agencies and members of the public to participate in the review process of the proposed project and the associated EIR. Waiting until the last possible moment to provide comments is a process referred to as "sandbagging" and is a tactic typically employed solely for the purpose of obstruction and delay. This is an issue that was addressed by the California Supreme Court in Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County (1990) 52 Cal. 3d 553, 568 ("Goleta"). In the Goleta case the Supreme Court stated that "[w]e cannot, of course, overemphasize our disapproval of the tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay." This appears to be the case with this comment letter since it does not state the reasons that the commenter did not provide comments earlier in the EIR review process, and the commenter has recently used this same tactic on other Walmart projects in California. Nonetheless, the City also

recognizes that it has an obligation to consider and respond, where necessary, to all comments made until close of the hearing. Accordingly, the City responds to the late filed comment letter as follows.

I. Air Quality

Comment No. 1.01

The EIR does not evaluate air quality impacts, even health impacts, associated with railroad operations approximately one-mile form the project site. Railroad operations, however, contribute significantly to health impacts. *See, e.g., Ex. 1a*

Response to Comment No. 1.01

The comment mistakenly alleges that the EIR does not evaluate air quality impacts associated with railroad operations in the project vicinity. Presumably the commenter is referring to the BNSF railway located approximately one-quarter mile north of the project site. Although the EIR does not specifically call out emissions from the nearby BNSF railway, when analyzing the potential for the project to result in a cumulatively significant air quality impact, emissions for the railway are accounted for in that analysis. The proposed project is located within the Mojave Desert Air Basin, which is regulated by the Eastern Kern Air Pollution Control District (EKAPCD) (formerly known as the Kern County APCD). The BNSF railway located approximately one-quarter mile north of the Project site is likewise located within the Mojave Desert Air Basin. Existing sources of air pollutants in the Mojave Desert Air basin and Kern County are discussed on page IV.C-4 of the Draft EIR. As discussed in the last paragraph on this page, off-road mobile sources of air pollutants include aircraft, ships, trains, racecars, and self-propelled construction equipment. Mobile sources account for the majority of the air pollutant emissions within the Basin and eastern Kern County.

As discussed in detail in the Draft EIR, the significance of air quality impacts of the Project are in part measured against whether the emissions from the project would conflict with or obstruct the implementation of the current EKAPCD Air Quality Attainment Plan (AQAP) or otherwise violate air quality standards or substantially contribute to an existing or projected air quality violation. The baseline for this analysis is the existing air quality within the Mojave Desert Air Basin, which includes emissions from the BNSF railroad operations. Accordingly, air quality impacts associated with railroad operations in the Project vicinity were considered in the Draft EIR. However, the Draft EIR for the proposed Walmart project does not specifically evaluate air quality impacts associated with railroad operations since they are unrelated to the proposed project. The project is not a sensitive receptor to localized emissions and it also would not increase railroad operations within the City of Tehachapi.

Comment No. 1.01

Although the EIR recognizes that the New Life Christian School is located within a quarter mile of the project site. However, you not complied with Public Resources Code Section 21151.4.

Response to Comment No. 1.01

The comment claims that, although the Draft EIR recognizes that the New Life Christian School is located within a quarter-mile of the project site, *Public Resources Code* Section 21151.4 has not been complied with. *Public Resources Code* section 21151.4 specifically states:

> *An environmental impact report shall not be certified ... for any project involving the construction of alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipate to emit hazardous air emissions ... that may pose a health or safety hazard to persons who would attend or would be employed at the school ...*

The only potential hazardous air emissions, specifically a toxic air contaminant (TAC), that could result from this project is the diesel particulate emissions from the truck deliveries. As discussed on page IV.C-32 of the Draft EIR, the maximum concentration of TACs associated with the project would occur along the northeast fence line of the project site. This is illustrated in the Plot File of Annual Values in Appendix D. Only the single highest concentration was evaluated since it could be reasonably assumed that other receptors in the area would have a concentration less than the maximum. There are no sensitive receptors located in close proximity to the northeast fence line of the project site. Therefore, there are no sensitive receptors exposed to the health risk presented in the Draft EIR. Based on the Plot File of Annual Values in Appendix D, the existing residential uses located to the immediate south of the project site could be exposed to a theoretical incremental lifetime cancer risk of 4.91 in one million. The existing residential uses located to the immediate west of Tucker Road could be exposed to a theoretical incremental lifetime cancer risk of less than 0.9 in one million. These numbers are well below the significance criteria of 10 in one million. It can be reasonably assumed that incremental lifetime cancer risk at the New Life Christian School would be even lower. Accordingly, since the project does not pose a health or safety hazard from hazardous emissions at this location, the project is in compliance with *Public Resources* section 21151.4.

II. Greenhouse Gas Emissions

Comment No. 2.01

The figures in Appendix D do not match the figures in the EIR. For example, the water use emissions figure in Appendix D does not match any figures in Table IV.C-16.

Response to Comment No. 2.01

The comment states the figures in Appendix D do not match the figures in the Draft EIR. Specifically, the comment alleges the water use emission figure in Appendix D does not match any figures in Table IV.C-16. Unfortunately, Appendix D to the Draft EIR only included two of the five pages that show the calculation data for project GHG emissions and one of these two pages showed the incorrect data (the sheet showing the calculation data for GHG emissions from electricity generation is correct and matches the data presented in Tables IV.C-12, IV.C-13, IV.C-14, and IV.C-16). The correct data sheets are attached to the end of this response. With the exception of GHG emissions associated with solid waste disposal, these sheets match the data presented in Tables IV.C-12, IV.C-13, IV.C-14, and IV.C-16. As stated in the Response to Comment 7-18, Table IV.C-12 has been corrected to show that there would be an increase of 108.36 metric tons of CO_2 emissions associated with solid waste generation at the project site.

The City is, however, unable to locate the appendix sheet(s) that calculate the reductions in GHG emissions associated with the Project Design Features (PDFs). These reductions are based upon the project GHG calculation sheets attached to this response. That does not mean, however, that the reductions shown in Table IV.C-16 are inaccurate. The reduction percentages associated with natural gas consumption and electricity generation are consistent with data published by the United States Environmental Protection Agency in its Energy Star® and Other Climate Protection Partnerships annual reports (2008 is the latest annual report). The calculations assume that the project would, at a

minimum, comply with the State-mandated 50-percent solid waste diversion target. According to corporate representatives, Walmart stores typically recycle approximately 80 percent of the waste materials that are generated at its stores. This makes sense since the majority of the waste materials are packaging materials used to transport items to each store. The packaging materials are readily recyclable. The 4.5 percent reduction in GHG emissions from motor vehicles reflects adherence to State measures such as the Paveley I (AB 1493) regulation, which requires GHG emission reductions from passenger cars and light trucks and the California Low Carbon Fuel Standard.

Comment No. 2.02

The draft EIR indicates on page IV. C43 that the GHG emission reductions are estimated only for those Project Design Features that were "readily quantifiable." Table IV.C-16 says that there were no quantified Project Design Features, yet the EIR assumes a 4.5% reduction with Project Design Features from motor vehicles.

Response to Comment No. 2.02

The comment mistakenly claims that Table IV.C-16 says that there were no quantified Project Design Features (PDFs). In fact, as shown in Table IV.C-16, the project's PDFs would reduce project emissions by approximately 589 $MTCO_2e$, or approximately 7.2 percent. In addition, the proposed project would comply with all regulations adopted pursuant to AB 32, which constitutes an additional improvement from business as usual (BAU) conditions (Draft EIR pages IV.C-43 and IV.C-44). The commenter correctly notes that the EIR assumes a 4.5 percent reduction in GHG emissions from motor vehicles. This reduction reflects adherence to State measures such as the Paveley I (AB 1493) regulation, which requires GHG emission reductions from passenger cars and light trucks and the California Low Carbon Fuel Standard. See also the Response to Comment 2.01.

Comment No. 2.03

The information given in the EIR is inconsistent. The revised Table IV.C-12 says that carbon dioxide emissions from solid waste will be 108.36 metric tons per year without Project Design Features. Table IV.C-16 says that the carbon dioxide emission equivalent from solid waste will be 216.72 metric tons per year (which is not from the original or revised Table IV.C-12) without Project Design Features and 108.36 metric tons per year with Project Design Features. The explanation in response to comments in the Final EIR indicates that the 108.36 metric tons per year is with application of the 50% recycling required under State Law, not something specific to the project, which means that the percent reduction from Project Design Features should be zero, not 50%.

Response to Comment No. 2.03

The comment alleges the information set forth in the Draft EIR, and in particular Tables IV.C-12 and IV.C-16 is inconsistent. See the Response to Comment 2.01.

The commenter also questions the 50 percent reduction in GHG emissions related to solid waste generation. The commenter correctly notes that the 50 percent reduction referenced in Table IV.C-16 reflects compliance with State Law. The project would, at a minimum, comply with the State-mandated 50 percent waste diversion target. However, the comment neglects to recognize the PDFs specific to the project which would promote recycling. The project would provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers located in public areas. In addition, the project would provide education and publicity about reducing waste and available recycling services. These PDFs are included in the Mitigation Monitoring Plan to assure their

implementation (Draft EIR pages IV.C-41 to IV.C-43). According to corporate representatives, Walmart stores typically recycle approximately 80 percent of the waste materials that are generated at its stores. This makes sense since the majority of the waste materials are packaging materials used to transport items to each store. The packaging materials are readily recyclable. Based on the foregoing, the 50 percent reduction for recycling noted in Table IV.C-16 is a conservative assumption for the proposed project.

Comment No. 2.04

On page IV.L-11, the EIR indicates that the Project wil use 26,499 gallons of water per day. Assuming a month has 30 days, the Project would use approximately 794,970 gallons of water per month. However, in Appendix D on the page titled "Emissions of Greenhouse as Emissions From Water Use" it says that the project uses 759,927 gallons/month of water. That is a 35,043 gallon per month difference.

Response to Comment No. 2.04

The comment identifies a discrepancy between the water demand numbers identified on page IV.L-11 of the Draft EIR and that shown in the Draft EIR Appendix D GHG calculation sheet for water use. The GHG calculation sheet for water use provided in Appendix D was incorrect. As stated in the Response to Comment 2.01, the correct data sheets are attached to the end of this response. The GHG calculation sheet for water use matches the data presented in Tables IV.C-12, IV.C-13, IV.C-14, and IV.C-16 of the Draft EIR.

Comment No. 2.05

Eliminating the credit for the reduction from Project Design Features from motor vehicle emissions because the Project Design Features are not quantified and eliminating the credit for the solid waste generation Project Design Features because those features are already required by state law (and the update to Table IV.C-12), the percent reduction from Project Design Features would only be 2%, not 7.2%.

Response to Comment No. 2.05

The comment states that eliminating the credit for the reduction of PDFs from motor vehicle emissions and eliminating the credit for solid waste reduction would result in a remaining percent reduction from PDFs of 2 percent; not 7.2 percent. Notwithstanding the comment's arithmetic, the comment does not identify any information that would undermine the Draft EIR's conclusions with respect to GHGs, particularly since the Draft EIR relies on a qualitative analysis to evaluate potential global climate change impacts (see the Response to Comment 2.08).

Comment No. 2.06

Table IV.C-16 says that calculation sheets are provided in Appendix D. However, Appendix does not contain sufficient data to understand how the figures in the table were derived.

Response to Comment No. 2.06

The comment states that Appendix D (of the Draft EIR) does not contain sufficient data to understand how the figures in the table were derived. See the Response to Comment 2.01.

Comment No. 2.07

The EIR analysis of GHSs is inadequate because it fails to account for GHSs from all aspects of the project. In particular, the EIR fails to identify the GHGs from refrigerants. *See* Exs. 2a-2b (identifying global warming potential of refrigerants). EPA Victoria has developed useful tools for calculating the GHGs resulting from refrigerants used in air conditions, commercial refrigeration, and other sources. Ex 2c. Furthermore, Walmart knows that refrigerants contribute to global warming and climate change because it has settled lawsuits based on the implementation of technologies that reduce GHGs related to refrigerants. *See* § 2.11 *infra.*

Response to Comment No. 2.07

The comment claims the Draft EIR's analysis of GHGs is inadequate because it fails to identify GHGs from refrigerants. The Draft EIR does, however, acknowledge that the project may emit a small amount of Hydrofluorocarbon (HFC) emissions related to refrigerants (Draft EIR page IV.C-40). Further, the Draft EIR notes that the R410a refrigerant used by the project applicant for all air conditioning units results in lower emissions of HFCs compared to the R-22 refrigerant still used by many companies in their air conditioning units. Emissions associated with possible refrigeration leaks, however, were not quantified since any leakage is merely a possibility and would not occur on a regular basis, if at all.

At the entitlement stage of development, the degree of uncertainty concerning potential facilities with sources that may have refrigeration leaks makes a meaningful quantification of GHG emissions difficult. As a result of this uncertainty, the Draft EIR did not attempt to quantify these emissions. Instead, GHG emissions related to vehicle miles travelled, water use, solid waste generation, and electricity and natural gas consumption were evaluated to provide a quantified estimate of the Projects' annual GHG emissions (Draft EIR pages IV.C-37 to IV.C-44). Since a qualitative analysis was applied to determine the significance of potential GHG impacts, the Draft EIR's estimate of total project GHG was included for informational purposes only, and had no impact on the ultimate determination of significance (Draft EIR page IV.C-44).

Comment No. 2.08

The project is not consistent with the attainment of the state's goals of reducing GHGs to 1990 levels by 2020 and an 80% reduction below 1990 levels by 2050. In order to achieve 1990 levels by 2020, a reduction of 15% below 2008 levels and 30% below projected 2020 levels is required. Ex 2d. As shown n Table IV.C-16, the Project doest not reduce emissions by 15% below 2008 levels or 30% below projected 2020 levels. By 2050, the project will be significantly behind where it needs to be to help with the attainment of the state's goal.

Response to Comment No. 2.08

The comment states the project is not consistent with the attainment of the State's goals of reducing GHGs to 1990 levels by 2020 and an 80% reduction below 1990 levels by 2050. The comment also argues that because the project in and of itself will not reduce emissions by 15% below 2008 levels or 30% below projected 2020 levels, the project will be significantly behind where it need to be to help the attainment of the State's goals. This statement is incorrect. As stated in the Draft EIR, reductions in GHG emissions need not be equal among all sectors (e.g. reduction levels apply on a state-wide basis and are not independently required of every individual project). The commercial sector accounts for only approximately 3 percent of statewide GHGs. By contrast, transportation, industrial, and electricity production sectors combined create approximately 85% of the State's emissions (Draft EIR page IV.C-

45). These are sectors that must be controlled by regulations at the state level: not individual land use development projects.

The Draft EIR utilizes a qualitative approach to determining project consistency with state-mandated GHG reduction targets. This approach is consistent with CEQA Guidelines Section 15064.4(a)(1), which authorizes a lead agency to rely on a qualitative analysis when determining impacts related to GHG emissions. As such, the Draft EIR utilizes a qualitative analysis to evaluate compliance with the goals and objectives of AB 32 and Executive Order S-3-05 and the reduction requirements therein. The Draft EIR identifies how the project's design features resulting in a reduction in GHG emissions will all assist in achievement of the AB 32 GHG reduction targets (Draft EIR pages IV.C-41 to IV.C-46).

In addition, the Draft EIR notes that the project would constitute development within an established community and would not be opening up a new geographical area for development, resulting in mostly new vehicular trips, or substantially lengthening existing vehicular trips. Rather, development proposed under the project would provide an opportunity for nearby residents to shop closer to home. Most of the vehicle trips associated with the project would be coming from the immediate area. Given the location of other Walmart stores in Bakersfield, Lancaster, and Palmdale, customers that would otherwise travel to these locations would, with implementation of the project, have a store closer to home. There is anecdotal evidence to suggest that there is a substantial number of people traveling from Tehachapi for the explicit purpose of purchasing goods and services in either the Antelope Valley (Palmdale/Lancaster) or Bakersfield markets. This evidence presents itself in two forms: oral testimony from the public during the Planning Commission and City Council hearings for the project, and the extensive amount of retail leakage (out-shopping) that occurs within the Tehachapi Region. A round trip to either of the above-referenced locations translate into 90+/- vehicle miles traveled (VMT). The proposed Walmart is anticipated to capture a substantial amount of commercial leakage estimated to be $43,412,000 in new retail sales (net gain) to Tehachapi annually. Based upon research conducted by Thomas J. Holmes Federal Reserve Bank of Minneapolis, the average sales in a Walmart per visit is $71.27. This translates into approximately 609,000 visits per year as calculated below:

$\frac{\$43,412,000}{\$71.27}$ Sales per Year / Average Sales per Visit = 609,000 Visits per Year

Retail leakage assumes that purchases are either made elsewhere or purchases are simply forgone and not made at all in the absence of available goods and services. Assuming that only ½ of the aforementioned new Walmart visits would have made their purchases elsewhere (i.e., Palmdale/Lancaster or Bakersfield), this represents approximately 27 million VMT eliminated from the highway in response to having a local Walmart in which to access goods and services as calculated below:

$\frac{609,000}{2}$ Store Visits x 90 Miles per Trip = 27 Million VMT

While the above analysis is rather anecdotal and qualitative, and makes no claim to be a guaranteed value for the proposed project, it never-the-less demonstrates that Walmart's presence in Tehachapi will reduce VMTs and in so doing reduce the amount of auto (VMT) related pollutants (criteria pollutants as well as GHGs) from a regional perspective. On this basis, the Draft EIR properly concludes that, taken together, the project location, design features, and operational programs, support attainment of the State's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in AB 32, and an 80-percent reduction in GHG emissions below 1990 levels by 2050 as stated in Executive Order S-3-05.

Comment No. 2.09

There are several feasible mitigation measures that can be implemented. Big-box stores, including other Walmart stores, are installing solar panels on their roofs, with the effect of reducing project-specific and cumulative impacts relating to climate changes. *See* Exs. 2e2l. The use of solar panels can significantly reduce the GHGs resulting from project's electricity use. Renewable energy certificates (RECs) can also be used to offset emissions. Ex. 2m. Solar technology is not limited to rooftops and is a feasible mitigation measure that can be implemented in parking lots. *See* Ex. 2o. There are mitigation measures that can be targeted at the project's refrigerant use. Ex. 2p. Other mitigation measures have been identified by the Attorney General. Extq.

Response to Comment No. 2.09

The comment suggests that additional mitigation measures could be implemented to address GHG emissions. However, as set forth in the Draft EIR, the project's global climate change impacts were determined to be less than significant; thus, requiring no mitigation (Draft EIR page IV.C-46). Accordingly, the GHG reduction measures referenced by Commenter need not be considered.

Comment No. 2.10

Walmart is capable of using solar power at the project site without any capital costs and without paying more than existing electricity rates. In 2007, SunEdison announced that it finances, installs, operates, and maintains solar technology for free on eight Walmart stores, four of which are in California. Ex 2r.

Response to Comment No. 2.10

The comment discusses the possibility of using solar power at the project site. However, because the Draft EIR determines that the project would not have a significant impact on global climate change, no mitigation is required (see the Response to Comment 2.09).

Comment No. 2.11

Walmart has agreed not only to include solar panels on other stores, but also to implement a number of other efficiency measures. For example, at the Riverside, Yucca Valley, and Perris locations, Walmart has agreed to install at least 250 kilowatts of roof-top solar, a system to re-circulate the waste heat from the refrigeration units, a secondary loop CO2/Glycerol refrigeration, energy management systems, and other measures. Exs.2s-2u. *See also* Exs. 2aa-2dd.

Response to Comment No. 2.11

The comment references design features and efficiency measures incorporated into other Walmart stores. The project-specific design of other Walmart stores is extraneous to the City's assessment of the current project proposed for Tehachapi. Again, because the Draft EIR determines that the project would not have a significant impact on global climate change, no mitigation is required (wee the Responses to Comments 2.09 and 2.10).

Comment No. 2.12

The EIR's analysis of greenhouse gas emissions is inadequate because it fails to adopt a threshold of significance. The California Office of Planning and Research technical guidelines requires that lead agencies adopt a standard of significance. See Ex. 2u. 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). The new CEQA Guidelines add that "[w]hen adopting thresholds of significance, lead agency may consider thresholds of significance previously adopted or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence." Even if you choose to use a qualitative threshold, the threshold must be identifiable. The standard is being applied in such a way that there is effectively no standard at all. Regardless of what threshold is used, a threshold of significance must be established and that threshold must be supported by substantial evidence. Here, no threshold of significance was established and the decision not to establish a threshold is not supported by substantial evidence.

Response to Comment No. 2.12

The comment incorrectly states the Draft EIR's analysis of greenhouse gas emissions is inadequate because it fails to adopt a threshold of significance. This statement is incorrect. Pursuant to the CEQA Guidelines Appendix G and CEQA Guideline Section 15064.4, the EIR properly adopts and utilizes a threshold of significance for potential GHG impacts (Draft EIR pages IV.C-24 to IV.C-26 and IV.C-36 to IV.C-36).

To assess the significance of impacts from GHGs, the Draft EIR evaluates three factors delineated in the CEQA Guidelines: (1) the extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing setting; (2) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (3) the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (CEQA Guidelines § 15064.4(a)). As to the first factor, the EIR concludes that with incorporation of the PDFs, project-related GHGs will be reduced by approximately 589 $MTCO_2e$, or approximately 7.2 percent. Further, with implementation of the project's PDFs, the project's annual GHG emission would represent 0.002 percent of the State's annual GHG emissions in 2006[1] (Draft EIR pages IV.C-41 to IV.C-44). With respect to the second factor, the EIR applies the following qualitative threshold to the project:

> *The extent to which the project could further or hinder attainment of the state's goal of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in AB 32 and an 80-percent reduction in GHG emissions below 1990 levels by 2050 as stated in Executive Order S-3-05. A project may be considered to help attainment of the state's goals by being consistent with adopted statewide greenhouse gas emissions limits or the plans, programs, recommendations and regulations adopted to implement AB 32 and Executive Order S-305.*

Utilizing this threshold, the Draft EIR determines the project would not hinder attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by 2020 and an 80-pecent reduction below 1990 levels by 2050 (Draft EIR pages IV. C-45 and IV.C-46; see also the Response to Comment 2.08). As to the third factor, the Drft EIR correctly notes that, to date, no regulations or specific requirements have been adopted for Tehachapi or the EKAPCD to reduce or mitigate greenhouse gas emissions through a public review process (Draft EIR page IV.C-46). Upon analysis of the three factors delineated above, including the properly utilized qualitative threshold, the Draft EIR concludes the potential impact on global warming resulting from implementation of the project would not be cumulatively considerable.

[1] The most current year that statewide annual GHG emissions are provided by the California GHG inventory if 2006.

Comment No. 2.13

The Project is not consistent with the emissions reductions strategies included in the three identified documents. Instead, measures are cherry-picked. Consider the following examples from the three-referenced documents:

CARD Scoping Plan. The early action measures are not project-specific measures. Even so, the Project does not implement all of the measures. See Ex. 2v (list of measures). For example, one of the measures is the Million Solar Roofs program. Exs. 2v (Measure E-4) & 2w. The Project doest not include any on-site solar energy generation. Early Action Measure H-6 is he High-GWP Refrigerant Management Program. Ex 2v. *See also* Ex. 3h. The EIR acknowledges that there will be some hdyroflurocarbon (HFC) emissions from leakage and service of refrigeration and air conditioning equipment.

Office of the Attorney General. The project is not consistent with all of the Attorney General's office measures. Ex. 2y. Most notably, the measures in the section "Renewable Energy and Energy Storage" will not be met as the project does not include the use of renewable energy.

CAPCOA. The project is not consistent with the mitigation measures identified in the CAPCOA report. Ex. 2e. Notably, the CAPCOA report identifies mitigation measures including LEED certification, on-site renewable energy, the use of light-colored paving, and the inclusion of charging facilities. The project does not incorporate these measures. In addition to the 2008 CAPCOA report, there is a more recent publication that goes into more detail about potential mitigation measures. Ex 2z.

Response to Comment No. 2.13

The comment alleges the project is not consistent with the emissions reductions strategies included in three cited documents. The Draft EIR correctly notes that many of the PDFs are consistent with many GHG reduction strategies developed by groups and public agencies, such as ARB, CAPCOA and the California Attorney General Office (Draft EIR pages IV.C-41 to IV.C-43). However, the project does not purport to – and is not required to – adhere to every conceivable GHG reduction strategy devised by these groups. As set forth in the EIR, the project's global warming impacts were determined to be less than significant, requiring no mitigation (Draft EIR page IV.C-46). Accordingly, the additional GHG reduction measures referenced by the commenter need not be considered.

Comment No. 2.14

The EIR does not state whether the project is accounted for in a business as usual scenario.

Response to Comment No. 2.14

The comment states the Draft EIR does not state whether the project is accounted for in a business as usual scenario. The Draft EIR, does, however note that the project will not hinder or preclude the state's goals in adopting regulations that would reduce forecast "Business as Usual" (BAU) emissions to 1990 levels by the year 2020 and an 80-percent reduction in GHG emissions below 1990 levels by 2050. Further, the PDFs would expand upon regulatory requirements and further constitute an improvement over BAU conditions (Draft EIR pages IV.C-18, IV.C-19, IV.C-44, and IV.C-45).

Comment No. 2.15

The EIR does not include any alternatives that significantly reduce the impacts associated with GHGs.

Response to Comment No. 2.15

The comment states the Draft EIR does not include any alternatives that significantly reduce impacts associated with greenhouse gas emissions. First, the comment fails to recognize the purpose of the alternatives analysis, as required by CEQA. Specifically, CEQA Guidelines section 15126.6 (a) states:

> *An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the* ***significant effects*** *of the project, and evaluate the comparative merits of the alternatives.*

For this project, the Draft EIR concluded that the project would have a less than significant global warming impact (Draft EIR page IV.C-46). Therefore, the Draft EIR did not need to include an alternatives analysis as it pertains to greenhouse gas emissions. Nonetheless, the commenter's statement is false, because even though an alternative analysis was not required by CEQA, the Draft EIR did evaluate three alternatives ("No Project", "Reduced Intensity", and "Standalone Walmart") that would result in a reduction of air quality emissions, including greenhouse gases.

Comment No. 2.16

Additional evidence supporting the conclusion that the project may have a significant environmental impact due to GHGs can be found in the GHG folder.

Response to Comment No. 2.16

The comment claims that "[a]dditional evidence supporting the conclusion that the project may have a significant environmental impact due to GHGs can be found in the GHG folder." The additional evidence referenced in this comment, however, consists of general information on greenhouse gas effects and global climate change. This general information is not specifically applicable to the proposed project and does not support a conclusion that the project may have a significant environmental impact related to GHG emissions as suggested by the commenter.

III. Biological Impacts

Comment No. 3.01

Mitigation measure D-1 is inadequate. Mitigation measures requiring future surveys are not sufficient mitigation measures. Identification analysis and consultations must take place in advance and be fully disclosed to the public in an EIR. Furthermore, because surveys and assessments for specific biological resources have not been conducted, the EIR's identification of those resources and analysis of the project's impacts on those resources are inadequate. Under San Joaquin Raptor Resource Center v. County of Merced, 149 Cal. App. 4th 645 (2007), deferring mitigation until furuter studies are completed is impermissible.

Response to Comment No. 3.01

The comment alleges Mitigation Measure D-1 is inadequate. Contrary to the comment's assertion that surveys and assessments for specific biological resources have not been conducted, biological resources field surveys were conducted on site on November 30, 2005 and again in May, June, and July 2008. As demonstrated in the Draft EIR (see Draft EIR, pgs. IV.D-1 and -2). Based on these field surveys, impacts to nesting bird species were determined to be potentially significant. Mitigation Measure D-1 reduces

this potential impact to a level of less than significant by requiring that (1) vegetation clearing and other disruptive construction activities must occur during the non-breeding season, or (2) if the construction activities are to take place during the nesting season, additional pre-construction surveys for nesting birds must be taken by a qualified biologist to confirm the presence or absence of active nests in the Project vicinity. Additional focuses surveys prior to ground disturbance activities are constitute permissible mitigation under State law so long as specific criteria for addressing any species found during those surveys is set forth within the mitigation plan.

This methodology is approved of in the *San Joaquin Raptor Rescue Center* case cited by Commenter:

> Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 671

Mitigation Measure D-1 expressly sets for the specific criteria for addressing any nesting birds found during these subsequent focus surveys. If active nests are encountered, species-specific measures must be prepared by a qualified biologist in coordination with the CDFA and other appropriate agencies, and implemented to prevent the direct loss or abandonment of the active nest. Mitigation Measure D-1 further specifies that at a minimum, construction activities in the vicinity of a nest shall be deferred until the young have fledged and an exclusion buffer zone should be established. Mitigation Measure D-1 explains that a minimum exclusion buffer zone of 25 feet is typically recommended by CDFG for songbird nests, and 200 to 500 feet for raptor nests. Further, Mitigation Measure D-1 provides the perimeter of the exclusion buffer zone shall be fenced or adequately demarcated with staked flagging at 20-foot intervals, and construction personnel shall be restricted from the area. (see Draft EIR, pg. IV.D-26) Accordingly, Mitigation Measure D-1 is does not constitute impermissible deferred mitigation.

Comment No. 3.02

Mitigation measure D-2 is inadequate because it defers analysis and mitigation to a future date. This mitigation measure also does not set a performance standard.

Response to Comment No. 3.02

The comment alleges Mitigation Measure D-2 is inadequate because it defers analysis and mitigation to a future date. As set forth in the Draft EIR, the project construction and operation could have indirect impacts (e.g., inadvertent damage by construction equipment or human encroachment, decreased water and habitat quality due to site runoff) on Antelope Run Drainage, an off-site tributary to Tehachapi Creak (see Draft EIR, pg. IV.D-23). A complete analysis of this potentially significant impact is provided in Section IV.D, Biological Resources and IV.H, Hydrology and Water Quality of the Draft EIR. Mitigation Measure D-2 ensures this impact will be reduced to a less than significant level by requiring preventative measures to be taken prior to the issuance of grading and construction permits and prior to the commencement of construction. In no sense is mitigation deferred as claimed by the comment.

The commenter also alleges Mitigation Measure D-2 is inadequate because it "does not set a performance standard." Beyond this blanket assertion, the comment does not provide any explanation or factual basis for this comment. As such, no further reply is warranted.

IV. Response to Comments

Comment No. 4.01

The City of Tehachapi did not respond to commenters as required by CEQA Guidelines Section 15088(b). In particular, the response to comments by the Tehachapi-Cummings Water District and the Sierra Club, Kern-Kaweah Chapter re inadequate.

Response to Comment No. 4.01

The comment claims the City did not respond to comments as required by CEQA Guidelines Section 15088(b), and that the responses to comments by the Tehachapi-Cummings Water District and the Sierra Club, Kern-Kaweah Chapter are inadequate. Despite this vague and overbroad assertion, however, the comment neglects to point out any particular omissions made by the City. Section 15088(b) requires a lead agency to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an Environmental Impact Report. All responses to public agency comments were delivered at least 10 days before the initial consideration of the Project at the January 31, 2011 Planning Commission hearing. Therefore, no further response is warranted.

V. Alternatives

Comment No. 5.01

No traditional store alternative.

Response to Comment No. 5.01

The comment simply states, "[n]o traditional store alternative." It is unclear what the intended meaning of this comment is and no additional information is provided. Presumably, the comment means that the project would be constructed to include only retail sales and exclude grocery sales. CEQA requires that an EIR describe a reasonable range of alternatives to the proposed project, or to its location, that would feasibly attain most of the project's basic objectives, while reducing or avoiding any of its significant impacts (see CEQA Guidelines Section 15126.6(a)). Expanding the proposed store's general retail store area and eliminating grocery sales would not reduce or avoid any of the project's significant impacts. The range of alternatives provided in the Draft EIR addressed the potential significant impacts of the proposed project (see Draft EIR, section IV. Alternatives). Accordingly, there is no reason to evaluate the "traditional store" alternative urged by Commenter.

Comment No. 5.02

The alternatives analysis is inadequate, particularly with respect to noise and traffic impacts. For example, for Alternative Sites 4A and 4C, the EIR simply indicates that it is not known which intersections would be impacted by the alternatives. Assuming that an impact is significant and unavoidable without conducting the necessary analysis is insufficient under CEQA; the agency is required to find out and disclose all that it reasonably can.

Response to Comment No. 5.02

The comment states the EIR's alternatives analysis is inadequate, particularly with respect to noise and traffic. By way of example, the comment references the Draft EIR's discussion of Alternative Sites 4A and

4C and claims the Draft EIR is inadequate because it indicates that it is not known which intersections would be impacted by the alternatives.

Pursuant to CEQA, an EIR must contain a discussion of project alternatives that is sufficient to foster informed decision making and public participation (see CEQA Guidelines § 15126.6(a)). The EIR must include sufficient information about each alterative to allow meaningful evaluation, analysis, and comparison with the proposed project (see CEQA Guidelines § 151266.6(d)). Potentially significant impacts related to the project alternatives need not be discussed with the same level of detail as the significant effects of the project as proposed. *(Id.)*

The Draft EIR's alternatives analysis, including its assessment of Alternative Sites 4A and 4C, is consistent with these principles and entirely adequate under CEQA. With respect to potential noise impacts and Alternative Sites 4A through 4C, the EIR reasonably assumes construction and operation noise would be similar to the project. The comment does not provide any facts or information to which would undermine this assumption (see Draf EIR, pgs. VI-39 to -41) The EIR likewise provides an appropriate evaluation of potential transportation and traffic impacts related to Alternative Sites 4A through 4C. Each alternative site is assumed to generate the same amount of daily vehicle trips as the project. The EIR notes that Alternative Site 4A, which is located in the northern portion of the City of Tehachapi, would have the potential for other intersections to be impacted in the vicinity of the alternative site such as Capital Hills Parkway at Voyager Drive, or Mill Street at SR-58 on- and off-ramps.

The Draft EIR acknowledges that it is not known exactly which intersections or how many would be affected by implementation of the project at this alternative location. For a worse-case scenario, the EIR assumes these significant impacts could be similar to the project's impacts, which would be less than significant with mitigation. Similar to the project, however, the Draft EIR states this alternative could contribute to significant and unavoidable cumulative impacts at intersections that are not part of the Tehachapi Region Transportation Impact Fee Program and are subject to the jurisdiction of Caltrans (see Draft EIR, pg. VI-43). The Draft EIR notes that Alternative Site 4C, which is located in the eastern portion of the City of Tehachapi, would have the potential for other intersections to be impacted in the vicinity of the alternative site such as Steuber Road at East Tehachapi Boulevard. The Drft EIR acknowledges that it is not known exactly which intersections or how many would be affected by implementation of the project at this alternative location. For a worse-case scenario, the Draft EIR assumes these significant impacts could be similar to the project's impacts, which would be less than significant with mitigation. Similar to the project, however, the Draft EIR states this alternative could contribute to significant and unavoidable cumulative impacts at intersections that are not part of the Tehachapi Region Transportation Impact Fee Program and are subject to the jurisdiction of Caltrans (see Draft EIR pg. VI-43). The analysis of potential transportation and traffic impacts related to Alternative Sites 4A through 4C is sufficient to foster informed decision-making and public participation and includes ample information about each alternative to allow meaningful evaluation, analysis, and comparison with the Project in compliance with CEQA.

Comment No. 5.03

It is not clear why Alternative Site 4C was chosen as the environmentally superior alternative given the analysis provided in the EIR. Alternative 4C is shown on Table IV-1 as having similar impacts as the proposed project in many categories. While the Reduced Intensity Alternative is shown to have similar impacts in many categories, it is shown to have less impacts with respect to air quality (both construction and operational), less seismic hazards, less operational hazard impacts, less operational and cumulative noise impacts (a significant and unavoidable impact of the project), less operational impact to public services, less impacts with respect to transportation/traffic (a significant and

unavoidable impact of the project), and less impact on utilities. The Standalone Walmart Alternative has similar impacts to the Reduced Intensity Alternative but has less significant impacts in the additional categories of cultural resources and hydrology and water quality.

Response to Comment No. 5.03

The comment mistakenly claims that Alternative 4C was selected as the environmentally superior alternative. However, as set forth in the EIR, the Stand-alone Walmart Store alternative, is the environmentally superior alternative (see, Draft EIR, pg. VI-46 and Final EIR, pg. 1-7). The Draft EIR stated "Alternative C" and should have labeled it "Alternative 3", however, it did not state or label "Alternative 4C" as the environmentally superior alternative.

Comment No. 5.04

The EIR states that Alternative Site 4c is the environmentally superior alternative. The proposed findings say that the Standalone Walmart Alternative is the environmentally superior alternative.

Response to Comment No. 5.04

See Response to Comment 5.03, above.

VI. Necessary Findings and Sufficiency of the Evidence

Comment No. 6.01

The draft EIR states that Alternative Site C is the environmentally superior alternative. However, you have not made the findings required under Public Resources Code Section 21081(a) and (b) to approve the project generally and as they relate to the environmentally superior alternative.

Response to Comment No. 6.01

The comment asserts that the City has not made the findings required under *Public Resources Code* Section 21081(a) and (b) to approve the project generally and as they relate to the environmentally superior alternative. *Public Resources Code* Section 21081(a) and (b) reads:

> Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:
>
> (a) The public agency makes one or more of the following findings with respect to each significant effect:
>
> (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
>
> (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

The Facts, Findings and Statement of Overriding Considerations prepared by the City for the project fully comply with and satisfy the City's obligations under *Public Resources Code* Section 21081(a) and (b).

Comment No. 6.02

To the extent that you have attempted to make all findings required under Public Resources Code Section 21081(a) and (b), such findings have not been supported by substantial evidence in the record.

Response to Comment No. 6.02

The comment alleges that the findings made by the City pursuant to *Public Resources Code* Section 21081(a) and (b) are not supported by substantial evidence in the record. As explained by Response to Comment 6.01 above, the Facts, Findings and Statement of Overriding Considerations prepared by the City for the Project fully comply with and satisfy the City's obligations under *Public Resources Code* Section 21081(a) and (b). Furthermore, these Facts, Findings and Statement of Overriding Considerations are based on substantial evidence, including the Draft and Final EIR and all other information in the record.

Comment No. 6.03

You have not made all of the necessary findings to support the parcel map. Alternatively, such findings are not supported by substantial evidence.

Response to Comment No. 6.03

The comment claims the City has not made all the necessary findings to support the parcel map or, alternatively, such findings are not supported by substantial evidence. Notably, Planning Commission approval of the project did not include consideration of parcel map. As such, the City did not attempt – nor was it obligated to – make any findings in support of a parcel map. Therefore, no further comment is warranted.

Comment No. 6.04

The statement that the project will maximize and broaden the City's sales tax base in excess of $496,000 is not supported by substantial evidence and in fact conflicts with figures provided in the EIR.

Response to Comment No. 6.04

The comment calls into question that the statement that the project will maximize and broaden the City's sales tax base in excess of $496,000. However, as set forth in Draft EIR Appendix L, Fiscal Impact Analysis, approximately $496,534 per year of new General Fund Revenue (inclusive of Sales Tax, Property Tax increment, Property Tax In Lieu of VLF, Utility Franchise Fees, and Business License Tax) is forecast to result from project implementation. Accordingly, this figure is supported by substantial evidence.

Comment No. 6.05

The statement that the project will maximize tax increment by approximately $176,800 per year that will accrue to the Tehachapi Redevelopment Agency is not supported by substantial evidence.

Response to Comment No. 6.05

The comment asserts the statement that the project will maximize tax increment by approximately $176,800 per year that will accrue to the Tehachapi Redevelopment Agency is not supported by substantial evidence. Contrary to this assertion, Draft EIR Appendix L, Fiscal Impact Analysis, demonstrates that, the project is forecast to generate approximately $176,800 per year in annual property tax increment, including $132,600 in unrestricted funds and $44,200 in Low-Moderate Income Housing Set-Aside funds. Accordingly, this figure is supported by substantial evidence.

Comment No. 6.06

The statement that the project will create additional employment-generating opportunities for the citizens of Tehachapi and the surrounding communities is not supported by substantial evidence. The proposed project is projected to result in the closure of a supermarket and the Kmart. Thus, the proposed project will also result in the loss of a certain number of jobs and the replacement jobs will likely pay less than the jobs being lost. *See* Ex. 6a.

Response to Comment No. 6.06

The comment argues the statement that the project will create additional employment-generating opportunities for the citizens of Tehachapi and the surrounding communities is not supported by substantial evidence because the project may result in the closure of a supermarket and the Kmart. This statement is misleading. The Draft EIR indicates that under a 'worst-case' scenario the development of the project could potentially cause one of the existing supermarkets in Tehachapi to close. The Dratf EIR's analysis conservatively uses the national median sales figure of $475 per square foot as a benchmark sales-per-square foot requirement for the existing Tehachapi supermarkets. This median does not necessarily reflect the break-even threshold for all supermarkets and is a relatively aggressive benchmark for estimating potential store closures. (The Draft EIR, pg. IV.B-19) Further, it is estimated that the two Tehachapi supermarkets have historically operated at sales volumes as low as $374 per square foot. (*Id.*) Accordingly, the future closure of one of the two Tehachapi supermarkets is not guaranteed to result from implementation of the Project.

Nevertheless, the Draft EIR assumes the potential closure of one of the two supermarkets in order to conservatively evaluate the Project's potential urban decay impacts. The Draft EIR also notes that the project's GAFO (General Merchandise, Apparel, Furniture/Appliances and Other/Specialty) retail space would be well within the envelope of available demand for new space and is in and of itself

unlikely to result in the closure of existing businesses (see Draft EIR, pg. IV.B-20). However, the Draft EIR notes that the Tehachapi Kmart is vulnerable to closure. This vulnerability primarily stems from the well-know financial weakness of the Kmart chain and is not specifically an impact of the project or an indication of insufficient market support for new GAFA stores in Tehachapi (see Draft EIR, pg. IV.B-21). Nonetheless, the Draft EIR concludes that even if one of the two Tehachapi supermarkets and the Kmart closed, there would be more than sufficient market support to re-occupy the resulting vacancies. Any job losses stemming from these store closures would feasibly be recouped by new GAFA retailers either re-tenanting the closed structures or entering the trade area at other locations. As such it would be overly speculative and inappropriate to attempt to identify the precise balance between jobs introduced by the Project and those jobs that might be temporarily displaced due to the potential closure of one of the Tehachapi supermarkets or the Kmart. Furthermore, CEQA does not require the City to disregard the clear gains in employment that will be generated by the project where the consistency of the underlying retail market may adjust in response to project implementation.

Comment No. 6.07

You have failed to adopt a program in compliance with Public Resources Code Section 21081.6.

Response to Comment No. 6.07

Commenter asserts that the City has failed to adopt a program in compliance with *Public Resources Code* Section 21081.6. *Public Resources Code* Section 21081.6(a)(1) reads:

(a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

The Mitigation Monitoring and Reporting Program prepared for by the City for the project fully comply with and satisfy the City's obligations under *Public Resources Code* Section 21081.6 and was properly adopted by the City at the January 31, 2011 Planning Commission hearing.

VII. Noise

Comment No. 7.01

The finding that the cumulative noise impacts would be significant triggered the obligation to consider mitigation measures. There is no evidence that nay mitigation measures were considered. As increased traffic is the primary cause of the noise impact, it would make sense to look at mitigation measures aimed at reducing traffic. There are feasible mitigation measures available that reduce traffic levels. For example, the CAPCLOA report ("Quantifying Greenhouse Gas Mitigation Measures") has an entire chapter dedicated to reducing traffic levels, that although aimed at mitigating greenhouse gas emissions

are equally applicable here. Such measures include increasing access to transit, developing the site in a way that promotes the use of alternative transportation, limiting parking supply, encouraging car-pooling, and taking measures that make alternative transportation more convenient (e.g., providing bike parking and showers on-site). Ex7a. These traffic-reduction measures should be exhausted before it is determined that there are no feasible mitigation measures that will reduce the noise impact to a level of insignificance.

Response to Comment No. 7.01

The comment suggests mitigation measures aimed at reducing traffic should be considered to address significant cumulative mobile source noise impacts. The measures urged by the commenter include increasing access to transit, developing the site in a way that promotes the use of alternative transportation, limiting parking supply, encouraging car-pooling, and taking measures that make alternative transportation more convenient. The measures referenced by the comment in the CAPCOA report, however, are directed toward the reduction of GHG emissions resulting from vehicle miles traveled (VMT) and do not quantify any potential reductions in the ITE trip generation rates used to determine intersection and roadway impacts. Accordingly, any purported reduction in trip generation rates resulting from the CAPCOA greenhouse gas reduction measures would be impermissibly speculative.

Nevertheless, it should be noted that many of the measures urged by the commenter are addressed in the Draft EIR. The project would encourage non-motorized travel. The project would create travel routes that ensure that destinations may be reached conveniently by public transportation, bicycling or walking. In addition, the project would provide adequate bicycle parking near building entrances to promote cyclist safety, security, and convenience (Draft EIR page IV.C-43). Further, the project is not expected to conflict with adopted policies, plans, or programs supporting alternative transportation and there would be no impact to adopted policies or existing alternative transportation facilities (Draft EIR pages IV.A-4 and IV.K-19).

As provided in the Draft EIR, cumulative development along with the project would increase local noise levels by a maximum of 10.3 dBA L_{dn} at the roadway segment of Mulberry Street, south of Tehachapi Boulevard. This increase would exceed the 5.0 dBA L_{dn} threshold and is considered to be substantial. The contribution of the project to the cumulative traffic noise increase on this roadway segment would only be 1.8dBA L_{dn}, which would be less than significant individually (Draft EIR pages IV.I-29 to IV.I-31). Notably, even absent the project's contribution of traffic, a cumulative increase of at least 8.5 dBA L_{dn} along this roadway segment would occur. The EIR correctly states that there are currently no feasible mitigation measures available to reduce the number of vehicle trips generated by the projected cumulative developments. The commenter does not provide any information which would suggest alternative mitigation measures exist that are capable of eliminating the significant cumulative traffic noise impacts along the roadway segment of Mulberry Street, south of Tehachapi Boulevard.

VIII. Traffic

Comment No. 8.01

The same mitigation measures should have been considered in relation to the project's traffic impact as discussed in Section 7.01 above.

Response to Comment No. 8.01

Commenter states, "[t]he same mitigation measures should have been considered in relation to the project's traffic impact as discussed in Section 7.01 above." Presumably, this comment is meant to suggest that mitigation measures aimed at reducing traffic should be considered to address significant cumulative intersection impacts. As explained in Response to Comment 7.01 above, the measures urged by comment include increasing access to transit, developing the site in a way that promotes the use of alternative transportation, limiting parking supply, encouraging car-pooling, and taking measure that make alternative transportation more convenient. The measures referenced by the comment in the CAPCOA report, however, are directed toward the reduction of GHG emissions resulting from vehicle miles traveled (VMT) and do not quantify any potential reductions in the ITE trip generation rates used to determine intersection and roadway impacts. Accordingly, any purported reduction in trip generation rates resulting from the CAPCOA greenhouse gas reduction measures would be impermissibly speculative.

As set forth in the Draft EIR, the project will contribute to cumulatively considerable impacts at the intersections of Sierra Vista Drive at Valley Boulevard (SR-202), Tucker Road at SR-58 Eastbound Ramps, and Tucker Road at Valley Boulevard (SR-202). The Draft EIR identifies mitigation measures capable of eliminating these impacts. However, the identified mitigation involves fair share payments toward intersection improvements that are not part of the Tehachapi Region Transportation Impact Fee Program and are subject to the exclusive jurisdiction of Caltrans. Although the project applicant would be required to pay its fair share contribution for each of these mitigation measures, the project cannot feasibly, or with certainty, provide for full implementation of these mitigation measures. Payment of fees to the Capital Improvement Fund as proposed will not guarantee timely construction of improvements providing for appropriate traffic impact mitigation at these intersections. The primary reason for infeasibility is that Caltrans does not have any plans to improve these intersections within the Project's estimated opening date and the City of Tehachapi does not have an existing agreement with Caltrans regarding the improvement or timing of improvement of these intersections. Therefore, the cumulative project impacts to these intersections will be significant and unavoidable even after the payment of fair share costs by the project applicant (see Draft EIR, pg. IV.K-106). The comment does not provide any information which would suggest alternative mitigation measures exist that are capable of eliminating the significant cumulative impacts at the intersections of Sierra Vista Drive at Valley Boulevard (SR-202), Tucker Road at SR-58 Eastbound Ramps, and Tucker Road at Valley Boulevard (SR-202).

IX. Cumulative Impacts

Comment No. 9.01

The same generic list of related projects was used for the cumulative impacts regardless of impact. The related projects should have focused on projects that would have contributed to the same environmental impact rather than be constrained by geography. For example, the cumulative impact on groundwater should take into account all past, present and future users of the groundwater basin, not just those on the project list.

Response to Comment No. 9.01

The comment appears to suggest the list of related projects used for cumulative impacts should have been adjusted (i.e. added to or subtracted from) depending on the particular impact under evaluation. The discussion of cumulative impacts, including the composition of the related projects list, "should be

guided by standards of practicality and reasonableness..." (see CEQA Guidelines Section 15130(b)) CEQA authorizes lead agencies to define the geographic scope of the area affected by the cumulative effect. (Section 15130(b)(3)). In accordance with these principles, the Draft EIR considers all proposed, recently approved, under construction, and reasonably foreseeable projects that could produce a related or cumulative impact on the local environment when considered in conjunction with the project. (see Draft EIR, pg. III-19). The comment neglects to identify any projects that should have been included or excluded from the list of related projects utilized by the Draft EIR.

Further, the comment misinterprets CEQA Guidelines Section 15130(b)(1)(B)(2), which provides, "[w]hen determining whether to include a related project...location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect." This language provides a clear example of when related projects may properly be excluded from an EIR's cumulative analysis; however, the language by no means mandates the inclusion of every past, present, and probable future project located within the groundwater basin. Nevertheless, the comment has not identified any projects within the Tehachapi Valley Groundwater Basin that were improperly excluded from the EIR's list of related projects.

X. Urban Decay

Comment No. 10.01

The conclusion that there are a number of retailers to reoccupy one the potentially vacant supermarkets is not very realistic. Table II-6 indicates that one supermarket that may have to be filled is 44,066 square feet and the other is 49,500 square feet. None of the examples provided is a good fit to reoccupy the stores. The average size of Staples is approximately 20,000 square feet (Ex. 10a), the average size of a Petsmart is around 19,000 to 26,000 square feet (Ex. 10b), the average size of a Big 5 Sporting Goods Store is 11,000 square feet (Ex. 10c), the average size of a Michaels is 18,300 square feet (Ex. 10d), the average size of a Ross Dress for Less is 30,000 square feet (Exs 10e-10g), the average size of a T.J. Maxx is 30,000 square feet (Ex. 10h), and the average size of a Marshalls is 30,000 square feet (Ex. 10h). In other words, none of the examples given are likely to fill the closed supermarket space.

Response to Comment No. 10.01

The comment questions the EIR's conclusion that there are a number of retailers that would be potential candidates to reoccupy one of the potential vacant supermarkets. Commenter notes that the typical size of a Staples, Pestsmart, Big 5 Sporting Goods Store, Michaels, Ross Dress for Less, T.J Maxx, and Marshalls do not mirror the exact square footage of either of the potentially vacant supermarket stores. This comment ignores the possibility that the vacant spaces could be reconfigured and subdivided for multiple tenants.

As noted in the Economic Study, Appendix C of the Draft EIR, page 16 (footnote 17), the sample list of tenants are *examples* of national retail chains that could potentially reoccupy a vacated supermarket space. It is recognized that the listed store types are generally smaller than a supermarket. The Economic Study did not claim that a *single* tenant from the listed examples would fully occupy a vacated supermarket. As documented below, reuse of vacant anchor tenant stores (including supermarkets and larger general merchandise tenants) often involves subdividing the vacated space into multiple smaller spaces. For instance, there are two examples in Tulare and Kings Counties where vacant supermarkets were subdivided for multiple uses:

- In 2006, A Monte Mart closed in the Porterville Marketplace located in the City of Porterville in Tulare County. The store was adapted for multi-tenant (3) retail users in 2008. Approximately 20,000 square feet of the store's original building space was demolished to accommodate an expanded Target store. Of the remaining building, Maurice's, a women's apparel store, occupied approximately 4,300 square feet in 2008. The remaining building space (approximately 30,000 square feet) is currently being marketed for re-tenanting and, as such, is being maintained in presentable condition.
- In 2006, a Monte Mart closed in Hanford Towne Center located in the City of Hanford in Kings County. The store was subdivided for multiple users, and approximately one-half of the space was reoccupied by a 99 Cent Only store in 2009. The remaining portion of the store is currently is being marketed for retail reuse.

Although not specifically mentioned in the Urban Decay Analysis, in addition to potential retail reuse options, vacant supermarket buildings are also strong candidates for some type of adaptive reuse, including uses ranging from recreational facilities (e.g., bowling alley, ice rink, fitness center) to institutional uses (e.g., government office facility, library, church) to office/service type uses (e.g., call centers). There are numerous examples of vacant supermarkets and vacant "big box" stores being converted for these types of uses. In Porterville, at the Eastridge Plaza center, a former Rite Aid store was converted into the Porterville Health Care Center in 2006. Additional examples include two former Fairway Market stores in Visalia.

A former Fairway Market supermarket in northeast Visalia on the southeast corner of East Houston and North Cain was converted into a Tulare County Department of Education adult training facility in 1999. After the County vacated the property in early 2008, the property was reoccupied by a military academy. A second former Fairway Market, located on 1845 North Dinuba Boulevard in Visalia, was recently converted to a Tulare County government complex.

Further underscoring the potential for adaptive reuse, an article that focused on redevelopment trends in a recent issue of *Urban Land*, published by the Urban Land Institute (ULI), discussed the types of properties which offer prime opportunities for redevelopment[2]. As stated by Gregory N. Senkevitch, chair of ULI's Urban Development/Mixed Use Council and principal of AGN Realty Partners, LLC:

> "[A] neighborhood shopping center that has lost its supermarket or drugstore tenant is a prime candidate for adaptive use. Here you have a structure that's one level with a lot of surface parking and multiple exit points. In some cases, the exits are even covered. Those can make great medical facilities, physical rehabilitation facilities, hospital facilities, doctors' practices, [and] senior citizens' center. These uses don't require a lot of windows."

Finally, the comment does not contest the EIR's determination that the demand for retail space in the City is expected to reach approximately 303,900 square feet in 2011, which will encourage the re-occupancy of a closed supermarket (see Draft EIR, pgs. IV.B-22 and -23).

Comment No. 10.02

The conclusion that the Kmart could feasibly be reconfigured and subdivided for multiple tenants does not address how likely it is that this will occur or how long it would likely take.

[2] Urban Land, September/October 2010.

Response to Comment No. 10.02

The table on the following page provides a list of closed Kmart stores in California that have been reconfigured or redeveloped for multiple users. As shown in the table, The Natelson Dale Group (authors of the Economic Study for the Tehachapi Walmart project) is aware of at least 11 former Kmart stores (just in California) that meet this criterion, providing strong substantiation of the conclusion that the Tehachapi Kmart store could feasibly reconfigured or subdivided for multiple tenants.

Closed K-Mart Store	New Tenants
Big Kmart 57725 29 Palms Highway Yucca Valley	Town Center Mall Multiple retail and medical office tenants in 73,000 square feet of space
Big Kmart 1050 W. Olive Ave Fresno	Super Mall 70+ individual retail shops Sizes range from 300 to 2,000 square feet
Big Kmart 4987 East Kings Canyon Rd Fresno	Fiesta Foods (now vacant) Fallas Paredes
Big Kmart 15440 Beach Blvd Westminster, CA	Westminster Superstore LLC (70,000 Square foot Asian supermarket with 35,000 square feet leased out to Ethnic Vietnamese stores)
Big Kmart 397 W Los Angeles Ave. Moorpark	Big Lots Do it Center Hardware
Big Kmart 39626 10th Street Palmdale	Sierra Commons Wickes Furniture (vacant) BevMo Michaels
Big Kmart 6100 Mack Road Sacramento	Susie's Deals Factory 2U Anna's Linens dd's discounts
Big Kmart 3315 Northgate Blvd Sacramento	dd's discounts Big Lots
Big Kmart 2749 Calloway Drive Bakersfield	xFitness Smart & Final Tractor supply
Big Kmart 5885 Lincoln Ave Buena Park	Jo-Ann Fabric All Brands Sewing Center
Big Kmart 1009 North H. St Lompoc	Coast Home Furnishings Dollar Tree Goodwill Sears (franchise store)

As indicated in the Economic Study (by The Natelson Dale Group), there would be sufficient residual demand to support reuse of the Kmart store if it were to close. Indentifying the precise length of time the store would remain vacant is not possible. However, it should be noted that a number of the stores listed above were vacant for six to seven years before finding suitable replacement tenants. From a practical standpoint, the process of identifying a reuse plan, getting municipal approvals for the proposed changes, and completing the building modifications takes time. From an urban decay perspective, the important consideration is that the very fact that there is sufficient demand for such

reuse to occur (and ample evidence based on the above examples that reuse is feasible) indicates that the property owner of the Tehachapi Kmart building would have strong incentive to maintain the building and not allow it to fall into disrepair during the period in which it is being positioned for remarketing.

Comment No. 10.03

There is no analysis of how long it would take to fill the vacant space. Even assuming that another retail use could use the vacated space or that the spaces could be reconfigured, there is no evidence or even an estimate of how long it would take for the spaces to be filled. Other projects have done some sort of vacancy analysis. *See* Ex 10i.

Response to Comment No. 10.03

Table II-7 in the Economic Study (by The Natelson Dale Group) provides the net demand for new retail space (that is, demand over and above the space as part of the proposed project). In addition, Table II-8 in the report provides similar information after accounting for all planned and pending projects in the trade area, along with a projected vacancy analysis during the study forecast period. As shown in the table, due the significant amount of projected residual demand, any potential vacant stores could be reoccupied relatively quickly.

Even in the worst-case scenario of one of the existing supermarkets and/or Kmart being vacant for an extended period of time, TNDG believes that, due to their strong re-tenanting potential (based on the projected net demand for new retail space shown on Table II-7 in the report), the owners of these buildings would not allow them to fall into disrepair. The example of a closed Save Mart store in the Eastridge Plaza Center in the City of Porterville illustrates the potential for re-tenanting closed supermarkets, even if they remain vacant for extended periods of time. This store remained vacant for approximately 15 years before Vallarta reoccupied the building in late 2009. Another example includes the closed Safeway store just northwest of downtown in the City of Tulare. In the early 1980s the Safeway store (located on 351 North K Street) closed, and it remained vacant until sometime in the mid 1990s when it was subdivided for multiple retail tenants – more than 10 years after the store closed. In 2002, the Tulare Joint Union High School District purchased the site and converted it into an adult school.

RESPONSE TO COMMENTS
AUTUMN WIND ASSOCIATES
ON BEHALF OF TEHACHAPI FIRST

Attachment D-2

CADENCE
ENVIRONMENTAL CONSULTANTS

Memo

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To: David James, City of Tehachapi
CC: Curtis Zacuto, EcoTierra Consulting
From: Michael Brown
Date: May 11, 2011

Regarding: Responses to Comments Identified in the March 24, 2011 Autumn Wind Associates Memorandum Regarding the Tehachapi Walmart EIR

The following discussions address the issues that are identified in the memorandum from Autumn Wind Associates dated March 24, 2011 regarding the Tehachapi Walmart EIR.

Construction Emissions

The commenter indicates that the EIR analysis of project-related construction emissions does not include the emissions from the proposed off site roadway and drainage improvements. The commenter claims that these activities include substantial activities that could more than double the total project emissions identified in the EIR.

According to the project engineer, the off site roadway and drainage improvements would involve approximately 41,400 square feet of demolition and the total area of disturbance for median improvements, street improvements, and off site utilities is approximately 79,800 square feet. These activities are expected to occur during the building construction phase of the Walmart store. The emissions associated with the off site improvements have been calculated utilizing the same URBEMIS 2007 computer model that was used to calculate the emissions for the EIR and the model result sheets are attached to the end of this memorandum. The emissions associated with the off site improvements have been added to the emissions from the EIR for the building construction phase in the following table. As shown, the off site construction activities would not double the total project construction emissions identified in the EIR and the total emissions would continue to be well below the Kern County thresholds of significance. Even with the addition of the off site emissions, the impacts associated with construction emissions would continue to be less than significant.

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Estimated Annual Project-Related Construction Emissions

Emissions Source	Emissions in Tons Per Year					
	ROG	NOx	CO	SOx	PM_{10}	$PM_{2.5}$
2010 Construction Emissions - EIR	0.63	5.89	3.64	0.01	2.37	0.70
Off Site Construction Emissions	0.09	0.72	0.38	0.00	0.13	0.05
Total Emissions	0.72	6.61	4.02	0.01	2.5	0.75
Kern County CEQA Implementation Document Annual Thresholds	25.00	25.00	NA	NA	15.00	NA
Significant Impact?	No	No	NA	NA	No	NA

Note: The Kern County CEQA Implementation Document does not establish significance thresholds for CO, SOx, or $PM_{2.5}$.

Missing Greenhouse Gas ("GHG") Data

The commenter states that EIR Appendix D does provide the GHG calculation data to support the information presented in the air quality section of the EIR. Unfortunately, Appendix D to the Draft EIR only included two of the five pages that show the calculation data for project GHG emissions and one of these two pages showed the incorrect data (the sheet showing the calculation data for GHG emissions from electricity generation is correct and matches the data presented in Tables IV.C-12, IV.C-13, IV.C-14, and IV.C-16). The correct data sheets are attached to the end of this memo. With the exception of GHG emissions associated with solid waste disposal, these sheets match the data presented in Tables IV.C-12, IV.C-13, IV.C-14, and IV.C-16. As stated in the Response to Comment 7-18, Table IV.C-12 has been corrected to show that there would be an increase of 108.36 metric tons of CO_2 emissions associated with solid waste generation at the project site.

The City is, however, unable to locate the appendix sheet(s) that calculate the reductions in GHG emissions associated with the Project Design Features (PDFs). These reductions are not based upon the URBEMIS 2007 model results, but are instead based upon the project GHG calculation sheets attached to this memo. That does not mean, however, that the reductions shown in Table IV.C-16 are inaccurate. The reduction percentages associated with natural gas consumption and electricity generation are consistent with data published by the United States Environmental Protection Agency in its Energy Star® and Other Climate Protection Partnerships annual reports (2008 is the latest annual report). The calculations assume that the project would, at a minimum, comply with the

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State-mandated 50-percent solid waste diversion target. According to corporate representatives, Walmart stores typically recycle approximately 80 percent of the waste materials that are generated at its stores. This makes sense given that the majority of the waste materials are packaging materials used to transport items to each store. The packaging materials are readily recyclable. The 4.5 percent reduction in GHG emissions from motor vehicles reflects adherence to State measures such as the Paveley I (AB 1493) regulation, which requires GHG emission reductions from passenger cars and light trucks and the California Low Carbon Fuel Standard.

The project is not required to meet a specific target in order to determine whether a significant impact would occur; only that the project incorporates features that would, in fact, reduce the amount of GHG emissions that could otherwise be generated by the proposed land uses. The proposed PDFs would reduce the GHG emissions associated with the project.

Significance Fact 1 and Business As Usual

The commenter states that the evaluation of project GHG impacts should be based upon a baseline of existing conditions as opposed to a business as usual ("BAU") baseline. However, the commenter is ignoring the fact that the EIR does not rely on a numeric threshold to determine the significance of the project's GHG emissions. The emissions are quantified in order to inform the City's decision-makers at to the amount of emissions that could be generated by the project and the reductions in emissions that occur with the proposed PDFs. However, in the absence of a numeric threshold of significance that is applicable to projects in Kern County, the EIR utilizes a qualitative approach to determining project consistency with state-mandated GHG reduction targets. This approach is consistent with CEQA Guidelines Section 15064.4(a)(1), which authorizes a lead agency to rely on a qualitative analysis when determining impacts related to GHG emissions. As such, the Draft EIR utilizes a qualitative analysis to evaluate compliance with the goals and objectives of AB 32 and Executive Order S-3-05 and the reduction requirements therein. The EIR identifies how the project's design features resulting in a reduction in GHG emissions will all assist in achievement of the AB 32 GHG reduction targets.

Factor 3 Analysis

The commenter states that Factor 3 does not apply to the proposed project. This is incorrect. The EIR correctly notes that, to date, no regulations or specific requirements have been adopted for Tehachapi or the KCAPCD to reduce or mitigate greenhouse gas emissions through a public review process. In the absence of any applicable adopted threshold, the EIR properly adopts and utilizes (pursuant to CEQA Guidelines Section 15064.4(a)) the Factor 3 analysis to evaluate the extent to which the project

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complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.

Factor 2 Analysis

The commenter claims that the Factor 2 analysis does not support the significance determination in the EIR. This is incorrect. The EIR notes that the project would constitute development within an established community and would not be opening up a new geographical area for development, resulting in mostly new vehicular trips, or substantially lengthening existing vehicular trips. Rather, development proposed under the project would provide an opportunity for nearby residents to shop closer to home. Most of the vehicle trips associated with the project would be coming from the immediate area. Given the location of other Walmart stores in Bakersfield, Lancaster, and Palmdale, customers that would otherwise travel to these locations would, with implementation of the project, have a store closer to home. There is anecdotal evidence to suggest that there is a substantial number of people traveling from Tehachapi for the explicit purpose of purchasing goods and services in either the Antelope Valley (Palmdale/Lancaster) or Bakersfield markets. This evidence presents itself in two forms: oral testimony from the public during the Planning Commission and City Council hearings for the project, and the extensive amount of retail leakage (out-shopping) that occurs within the Tehachapi Region. A round trip to either of the above-referenced locations translate into 90+/- vehicle miles traveled (VMT). The proposed Walmart is anticipated to capture a substantial amount of commercial leakage estimated to be $43,412,000 in new retail sales (net gain) to Tehachapi annually. Based upon research conducted by Thomas J. Holmes Federal Reserve Bank of Minneapolis, the average sales in a Walmart per visit is $71.27. This translates into approximately 609,000 visits per year as calculated below:

$\frac{\$43{,}412{,}000}{\$71.27}$ Sales per Year / Average Sales per Visit = 609,000 Visits per Year

Retail leakage assumes that purchases are either made elsewhere or purchases are simply forgone and not made at all in the absence of available goods and services. Assuming that only ½ of the aforementioned new Walmart visits would have made their purchases elsewhere (i.e., Palmdale/ Lancaster or Bakersfield), this represents approximately 27 million VMT eliminated from the highway in response to having a local Walmart in which to access goods and services as calculated below:

$\frac{609{,}000}{2}$ Store Visits x 90 Miles per Trip = 27 Million VMT

While the above analysis is rather anecdotal and qualitative, and makes no claim to be a guaranteed value for the proposed project, it never-the-less demonstrates that Walmart's presence in Tehachapi

will reduce VMTs and in so doing reduce the amount of auto (VMT) related pollutants (criteria pollutants as well as GHGs) from a regional perspective. On this basis, the EIR properly concludes that, taken together, the project location, design features, and operational programs, support attainment of the State's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in AB 32, and an 80-percent reduction in GHG emissions below 1990 levels by 2050 as stated in Executive Order S-3-05.

Although the commenter identifies three other agencies that have adopted thresholds of significance for GHG impacts, none of these are applicable to projects in the Mojave Desert Air Basin and the City is not required under CEQA to utilize thresholds of significance adopted by other agencies. The thresholds adopted by the Bay Area AQMD are unique to the geographic and political conditions in that region of the state. The City of Davis thresholds only apply to residential projects. And the South Coast Air Quality Management District has only adopted GHG thresholds of significance that they use internally for industrial projects. City of Tehachapi is not unique in that it does not have a quantified thresholds of significance for GHG emissions for commercial projects. It has, however, complied with CEQA by identifying thresholds of significance in the EIR and evaluated the impacts of the project against these thresholds.

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Urbemis 2007 Version 9.2.4

Combined Annual Emissions Reports (Tons/Year)

File Name:

Project Name: Tehachapi Walmart Off Site Improvements

Project Location: Kern County

On-Road Vehicle Emissions Based on: Version : Emfac2007 V2.3 Nov 1 2006

Off-Road Vehicle Emissions Based on: OFFROAD2007

Summary Report:

CONSTRUCTION EMISSION ESTIMATES

	ROG	NOx	CO	SO2	PM10 Dust	PM10 Exhaust	PM10	PM2.5 Dust	PM2.5 Exhaust	PM2.5
2010 TOTALS (tons/year unmitigated)	0.09	0.72	0.38	0.00	0.09	0.04	0.13	0.02	0.03	0.05

Construction Unmitigated Detail Report:

CONSTRUCTION EMISSION ESTIMATES Annual Tons Per Year, Unmitigated

	ROG	NOx	CO	SO2	PM10 Dust	PM10 Exhaust	PM10	PM2.5 Dust	PM2.5 Exhaust	PM2.5

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2010	0.09	0.72	0.38	0.00	0.09	0.04	0.13	0.02	0.03	0.05
Demolition 08/01/2010-08/14/2010	0.03	0.35	0.15	0.00	0.01	0.01	0.03	0.00	0.01	0.02
Fugitive Dust	0.00	0.00	0.00	0.00	3.37	0.00	3.37	0.70	0.00	0.70
Demo Off Road Diesel	0.03	0.34	0.13	0.00	0.00	0.01	0.01	0.00	0.01	0.01
Demo On Road Diesel	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Demo Worker Trips	0.00	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trenching 08/15/2010-08/31/2010	0.01	0.07	0.05	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trenching Off Road Diesel	0.01	0.07	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trenching Worker Trips	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fine Grading 09/01/2010-09/18/2010	0.03	0.21	0.12	0.00	0.08	0.01	0.09	0.02	0.01	0.03
Fine Grading Dust	0.00	0.00	0.00	0.00	0.08	0.00	0.08	0.02	0.00	0.02
Fine Grading Off Road Diesel	0.03	0.21	0.11	0.00	0.00	0.01	0.01	0.00	0.01	0.01
Fine Grading On Road Diesel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fine Grading Worker Trips	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Asphalt 09/19/2010-09/30/2010	0.02	0.09	0.06	0.00	0.00	0.01	0.01	0.00	0.01	0.01
Paving Off-Gas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Paving Off Road Diesel	0.01	0.08	0.05	0.00	0.00	0.01	0.01	0.00	0.01	0.01
Paving On Road Diesel	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Paving Worker Trips	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Phase Assumptions

Phase: Demolition 8/1/2010 - 8/14/2010 - Existing infrastructure demolition

Building Volume Total (cubic feet): 41700

Building Volume Daily (cubic feet): 4170

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On Road Truck Travel (VMT): 57.92

Off-Road Equipment:

2 Concrete/Industrial Saws (10 hp) operating at a 0.73 load factor for 5 hours per day

2 Generator Sets (549 hp) operating at a 0.74 load factor for 6 hours per day

1 Rubber Tired Dozers (357 hp) operating at a 0.59 load factor for 1 hours per day

1 Rubber Tired Loaders (164 hp) operating at a 0.54 load factor for 6 hours per day

2 Signal Boards (15 hp) operating at a 0.78 load factor for 8 hours per day

1 Sweepers/Scrubbers (91 hp) operating at a 0.68 load factor for 2 hours per day

2 Tractors/Loaders/Backhoes (108 hp) operating at a 0.55 load factor for 6 hours per day

1 Water Trucks (189 hp) operating at a 0.5 load factor for 2 hours per day

Phase: Fine Grading 9/1/2010 - 9/18/2010 - grading for new roadway surfaces

Total Acres Disturbed: 1.83

Maximum Daily Acreage Disturbed: 0.5

Fugitive Dust Level of Detail: Default

20 lbs per acre-day

On Road Truck Travel (VMT): 0

Off-Road Equipment:

1 Graders (174 hp) operating at a 0.61 load factor for 6 hours per day

1 Rubber Tired Dozers (357 hp) operating at a 0.59 load factor for 6 hours per day

2 Signal Boards (15 hp) operating at a 0.78 load factor for 8 hours per day

1 Tractors/Loaders/Backhoes (108 hp) operating at a 0.55 load factor for 7 hours per day

1 Water Trucks (189 hp) operating at a 0.5 load factor for 8 hours per day

Phase: Trenching 8/15/2010 - 8/31/2010 - Trenching for off site drainage

Off-Road Equipment:

1 Excavators (168 hp) operating at a 0.57 load factor for 8 hours per day

2 Signal Boards (15 hp) operating at a 0.78 load factor for 8 hours per day

1 Sweepers/Scrubbers (91 hp) operating at a 0.68 load factor for 2 hours per day

1 Tractors/Loaders/Backhoes (108 hp) operating at a 0.55 load factor for 0 hours per day

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1 Water Trucks (189 hp) operating at a 0.5 load factor for 2 hours per day

Phase: Paving 9/19/2010 - 9/30/2010 - Paving of new roadway surfaces

Acres to be Paved: 1.83

Off-Road Equipment:

4 Cement and Mortar Mixers (10 hp) operating at a 0.56 load factor for 6 hours per day

1 Pavers (100 hp) operating at a 0.62 load factor for 7 hours per day

1 Paving Equipment (104 hp) operating at a 0.53 load factor for 8 hours per day

1 Rollers (95 hp) operating at a 0.56 load factor for 7 hours per day

1 Tractors/Loaders/Backhoes (108 hp) operating at a 0.55 load factor for 7 hours per day

EMISSIONS OF GREENHOUSE GAS EMISSIONS FROM NATURAL GAS CONSUMPTION

Project Name: Tehachapi Walmart
Analysis Year: 2011
Analysis Scenario: Walmart + 3 out lots

NATURAL GAS DEMAND

Land Use	Units	Consumption Rate (cubic feet/ unit/month)	Natural Gas Demand (cubic feet/ month)
Retail/Shopping (square feet):	176,800	2.9	512,720.0

Natural Gas Demand (cubic feet/month)	512,720.0
Heating Value of Natural Gas (Btu/cubic foot):	1,020.0
Monthly BTU:	522,974,400.0
Monthly Million Btu (MMBtu):	523.0

GREENHOUSE GAS EMISSIONS

Emissions	Emission Factors (kg/MMBtu)	Emissions (metric tons/year)	CO_2 Equivalency Factors	CO_2 Equivalent Emissions (tons per year)
Carbon Dioxide	53.06	332.99	1	332.99
Methane	0.00500	0.031	21	0.66
Nitrous Oxide	0.00010	0.00063	310	0.19
	Total Emissions:			333.84

Source of natural gas demand: SCAQMD. CEQA Air Quality Handbook, April 1993. Table A9-12-A.
Source of greenhouse gas emission factors: *California Climate Action Registry General Reporting Protocol*, v.3.1 January 2009.

EMISSIONS OF GREENHOUSE GAS EMISSIONS FROM ELECTRICITY GENERATION

Project Name: Tehachapi Walmart
Analysis Year: 2011
Analysis Scenario: Walmart + 3 out lots

ELECTRICITY DEMAND

Land Use	Units	Useage Rate (KWh/ unit/year)	Electricity Demand (KWh/ year)
Restaurant (square feet):	6600	47.45	313,170.0
Retail (square feet):	170200	13.55	2,306,210.0
		Total Electricity Demand:	2,619,380.0
Electrical Demand per Year (kWh/year)		2,619,380.0	
Electrical Demand per Year (MWh/year)		2,619.4	

GREENHOUSE GAS EMISSIONS

Emissions	Emission Factors (lbs/MWh)	Emissions (metric tons)	CO_2 Equivalency Factors	CO_2 Equivalent Emissions (tons per year)
Carbon Dioxide	724.12	860.35	1	860.35
Methane	0.030	0.036	23	0.83
Nitrous Oxide	0.008	0.010	296	2.85
	Total Emissions:			864.02

Source of electricity demand: SCAQMD. CEQA Air Quality Handbook, April 1993. Table A9-11-A.
Carbon dioxide emission factor for electricity provided by Los Angeles Department of Water and Power obtained from the California Climate Action Registry Database.

Methane and nitrous oxide emission factor for electricity from California Climate Action Registry General Reporting Protocol v 3.1, January 2009. Table C. SCE-specific methane and nitrous oxide emission factors were not available.

EMISSIONS OF GREENHOUSE GAS EMISSIONS FROM SOLID WASTE GENERATION

Project Name: Tehachapi Walmart
Analysis Year: 2011
Analysis Scenario: Walmart + 3 out lots

WASTE

Land Use	Units	Waste Generation Rate (lbs/ unit/day)	Expected Waste Flow (lbs/ year)
Restaurant (1,000 square feet)	6.6	5	12,045
Retail (1,000 square feet)	170.2	5	310,615

Waste generation (tons/year)		161.33
Diversion Rate	Percent	50%
Material to landfill	tons/yr	80.67

GREENHOUSE GAS EMISSIONS

Emissions	Emission Factors (metric tons/ton)	CO_2 Equivalent Emissions (metric tons/year)
Carbon dioxide equivalent	1.51	121.80
	Total Emissions:	121.80

Source of waste generation rate: : Cal Recycle website: http://www.calrecycle.ca.gov/WasteChar/WasteGenRates/Commercial.htm, November 12, 2009.

Source of greenhouse gas emission factor: The gross emissions of GHGs from mixed municipal solid waste landfill based on the EPA's Solid Waste Management and Greenhouse Gases: A life-Cycle Assessment of Emissions and Sinks as calculated by the EPA WARM model.

The 50% diversion rate of mixed municipal solid waste is based on requirement in California Assembly Bill (AB) 939.

EMISSIONS OF GREENHOUSE GAS EMISSIONS FROM WATER USE

Project Name: Tehachapi Walmart
Analysis Year: 2011
Analysis Scenario: Walmart + 3 out lots

WATER

Land Use	Units	Water Generatic Rate (gal/ unit/day)	Expected Water Use (gal/ year)
Retail (1000 sf)	170.2	114	7,082,022.0
Restaurant (1000 sf)	6.6	1075	2,589,675.0
		Total Daily Water Use:	9,671,697.0

Water Use (MG/year)	9.67
Water Use Intensities (kwh/MG)	12700
Total Megawatt Hours (MWh) per Year	122.8305519

GREENHOUSE GAS EMISSIONS

Emissions	Emission Factors (lbs/MWh)	Emissions (metric tons)	CO_2 Equivalency Factors	CO_2 Equivalent Emissions (tons per year)
Carbon Dioxide	724.12	40.34	1	40.34
Methane	0.030	0.00168	21	0.04
Nitrous Oxide	0.008	0.00045	310	0.14
	Total Emissions:	40.35		40.52

Source of water use rates: City of Tehachapi Community Development Department.

Source of Water Use Intensity: California Energy Commission. Water-Energy Relationship 2005. Value of 12,700 kwh/MG is specific to Southern California and includes water supply conveyance, water treatment, water distrubtion, and wastewater treatment. Recycled water energy intensity of 1,200 kwh/MG is the upper bound value for the state.
Source of greenhouse gas emission factors: See electrical use.

EMISSIONS OF GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES

Project Name: Tehachapi Walmart
Analysis Year: 2011
Analysis Scenario: Walmart + 3 out lots

Vehicle Miles Per Day:	50,344.75
Days of Operation Per Year:	365

Vehicle Fleet Mix

Vehicle Type	Percent Type	Non-Catalyst	Catalyst	Diesel	Assumed mpg
Light Auto	49.90%	1.00%	98.70%	0.30%	29.8
Light Truck <3,750 lbs	15.00%	2.50%	90.80%	6.70%	22.0
Light Truck 3,751-5,750	25.70%	1.00%	98.50%	0.50%	22.0
Medium Truck 5,751-8,500	1.10%	0.80%	99.20%	0.00%	17.6
Light Heavy 8,501-10,000	0.30%	0.00%	72.40%	27.60%	14.3
Light Heavy 10,001-14,000	0.10%	0.00%	50.00%	50.00%	10.5
Med-Heavy 14,001-33,000	0.10%	0.00%	15.40%	84.60%	8.0
Heavy-Heavy 33,001-60,000	0.40%	0.00%	0.00%	100.00%	5.7
Other Bus	0.00%	0.00%	0.00%	0.00%	5.7
Urban Bus	0.00%	0.00%	0.00%	0.00%	5.7
Motorcycle	5.50%	63.60%	36.40%	0.00%	27.5
School Bus	0.30%	0.00%	0.00%	100.00%	14.3
Motor Home	1.60%	0.00%	84.60%	15.40%	8.0

Mobile Source Emision Factors

	Carbon Dioxide (kg/gallon)		Methane (g/mile)		Nitrous Oxide (g/mile)	
Vehicle Type	Gasoline	Diesel	Gasoline	Diesel	Gasoline	Diesel
Light Auto	8.81	10.15	0.0147	0.0005	0.0079	0.0010
Light Truck <3,750 lbs	8.81	10.15	0.0157	0.0010	0.0101	0.0015
Light Truck 3,751-5,750	8.81	10.15	0.0157	0.0010	0.0101	0.0015
Medium Truck 5,751-8,500	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Light Heavy 8,501-10,000	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Light Heavy 10,001-14,000	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Med-Heavy 14,001-33,000	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Heavy-Heavy 33,001-60,000	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Line Haul >60,000 lbs	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Urban Bus	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Motorcycle	8.81	10.15	0.0900	0.0000	0.0100	0.0000
School Bus	8.81	10.15	0.0326	0.0051	0.0177	0.0051
Motor Home	8.81	10.15	0.0326	0.0051	0.0177	0.0051

Greenhouse Gas Emissions (metric tons per year)

	Carbon Dioxide		Methane		Nitrous Oxide	
Vehicle Type	Gasoline	Diesel	Gasoline	Diesel	Gasoline	Diesel
Light Auto	2,702.73	9.37	0.0045	0.0000	0.0024	0.0000
Light Truck <3,750 lbs	1,029.85	85.20	0.0018	0.0000	0.0012	0.0000
Light Truck 3,751-5,750	1,881.73	10.89	0.0034	0.0000	0.0022	0.0000
Medium Truck 5,751-8,500	101.18	-	0.0004	-	0.0002	-
Light Heavy 8,501-10,000	24.59	10.80	0.0001	0.0000	0.0000	0.0000
Light Heavy 10,001-14,000	7.71	8.88	0.0000	0.0000	0.0000	0.0000
Med-Heavy 14,001-33,000	3.12	19.72	0.0000	0.0000	0.0000	0.0000
Heavy-Heavy 33,001-60,000	-	130.89	-	0.0001	-	0.0001
Line Haul >60,000 lbs	-	-	-	-	-	-
Urban Bus	-	-	-	-	-	-
Motorcycle	323.78	-	0.0033	-	0.0004	-
School Bus	-	39.13	-	0.0000	-	0.0000
Motor Home	273.92	57.45	0.0010	0.0000	0.0006	0.0000
Total Emissions by Fuel Type:	6,348.60	372.34	0.0145	0.0001	0.0070	0.0001
Total Emissions by Pollutant:	6720.94		0.0147		0.0071	
CO_2 Equivalency Factors	1.00		21.00		310.00	
CO_2 Equivalent Emissions:	6720.94		0.31		2.20	
Total Emissions (CO_2e):	6,723.45					

Source of vehicle miles per day and vehicle fleet mix: URBEMIS 2007 model results for this analysis.
Sources of assumed mpg: National Highway Traffic Safety Administration Summary of Fuel Economy Performance (for passenger vehicles and light trucks for model years 2000-2008) (November 25, 2008); U.S. Department of Energy Transportation Energy Book:Edition 27 (2008)
Source of greenhouse gas emission factors: *California Climate Action Registry General Reporting Protocol*, v.3.1. January 2009.

RESPONSE TO COMMENTS
WILSON IHRIG & ASSOCIATES
ON BEHALF OF TEHACHAPI FIRST

Attachment D-3

CADENCE
ENVIRONMENTAL CONSULTANTS

Memo

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To: David James, City of Tehachapi
CC: Curtis Zacuto, EcoTierra Consulting
From: Michael Brown
Date: May 11, 2011

Regarding: Responses to Comments Identified in the March 24, 2011 Wilson Ihrig & Associates Memorandum Regarding the Tehachapi Walmart EIR

The following discussions address the issues that are identified in the memorandum from Wilson Ihrig & Associates dated March 24, 2011 regarding the Tehachapi Walmart EIR.

Relevant EIR Noise Analysis Guidelines

The commenter states that the EIR analysis disregards the CEQA Guidelines Appendix G Noise Guideline A threshold. This is incorrect and the commenter is applying his own interpretation of the City's noise standards to the project.

The City uses an exterior noise standard of 65 dBA L_{dn} or CNEL to determine the compatibility of a new land use with the ambient noise environment at the project site. As stated on page 39 of the Noise Element of the City of Tehachapi General Plan, the identified sensitive uses should be discouraged/prohibited in areas where the exterior noise levels exceed 65 dBA CNEL unless measures are implemented which reduce the noise exposure level below this level. This applies to proposed new uses. It does not apply to existing uses. The City's interpretation of the Use Sensitivity Standards cited by the commenter and presented in Table 2 of the Noise Element is that they also apply to proposed new land uses rather than existing uses. In fact, page 20 of the Noise Element states that the criteria developed by the Environmental Protection Agency (as presented in Table 2 "are issued as information only, not as standards" and that "states and and localities will approach this information according to individual needs and situations. As the lead agency for the project, and as the author of its General Plan, it is the interpretation of the City of Tehachapi that applies to the use of the Guideline A threshold in its environmental documents; not the interpretation of the commenter.

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The Guideline A threshold is used properly in the EIR according to the City's proper interpretation of its standards. The Guideline A threshold was used to determine whether the proposed land uses would be exposed to noise levels that exceed the standards adopted by the City. As discussed on page IV.I-28, the proposed project is not considered be a noise-sensitive use. As such, airport-related noise levels of less than 60 dBA CNEL would not expose people working at the project site to excessive levels. The 65 dBA L_{dn} standard is also utilized to determine whether activities at the project site would significantly impact adjacent uses that are sensitive to noise. As such, the EIR does utilize this threshold to determine the noise impacts of the proposed project. The City does not, however, utilize the commenter's methodology of assuming that any potential change in noise level at a location remote from the project site where the noise levels changes from less than 65.0 dBA L_{dn} to 65.0 dBA L_{dn} or greater at an existing sensitive use would constitute a significant impact.

Traffic Volumes in the Noise Analysis are Inconsistent with Those in the Traffic Analysis

The commenter states that the traffic data used in the noise analysis is markedly different than that used in the traffic flow analysis. In this case, the commenter is correct. It appears that traffic data from the original November 17, 2009 Traffic Impact Analysis Report may have been used to calculate roadway noise levels for the EIR, but that the noise level calculations were not updated when the February 24, 2010 Traffic Impact Analysis was completed. In response to this discrepancy, the existing and future roadway noise levels have been calculated utilizing the roadway traffic volumes identified in the February 24, 2010 Traffic Impact Analysis. The updated traffic calculation data is attached to the end of this memo.

The commenter also claims that the EIR consultant did not calibrate their model results with any field measurements. It is our understanding that the data used to calculate the roadway noise levels in the EIR were based upon field observations by the EIR consultant. This was adequate to calculate the project-related increases in roadway traffic volumes since the environmental conditions of the roadway and receptors would not change. And as discussed in the previous response, the commenters use of the the 65 DBA L_{dn} standard as a threshold of significance is not applicable to the proposed project.

The roadway noise impact of the proposed project compared to existing roadway noise levels is identified below as a replacement for EIR Table IV.I-13. As shown, the proposed project would increase local noise levels by a maximum of 1.0 dBA L_{dn}, which would not exceed the EIR thresholds of significance. This would continue to be a less than significant impact.

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Table IV.I-13
Project Roadway Noise Impacts at Locations Off Site

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}				
		Existing Traffic Volumes	Existing + Project Traffic	Increase	Significance Threshold	Significant?
Valley Boulevard (SR-202), Waterford Tehachapi Rd to Sage Ln	Rural Residential	68.4	68.9	0.5	3.0	No
Valley Boulevard (SR-202), Sierra Vista Dr to Tucker Rd	Residential	68.4	68.9	0.5	3.0	No
Valley Boulevard (SR-202), Weir St to Beech St	Residential	66.7	67.4	0.7	3.0	No
Valley Boulevard (SR-202), Mill St to Curry St	Residential	65.1	66.0	0.9	3.0	No
Red Apple Avenue, Reeves St to Tucker Rd	Residential	68.2	69.1	0.9	3.0	No
Tucker Road, north of Red Apple Av/Tehachapi Bl	Residential	68.3	68.7	0.4	3.0	No
Tucker Road, Red Apple/ Tehachapi to Conway	Commercial	69.9	70.8	0.9	5.0	No
Tucker Road, Conway Av to Valley Bl (SR-202)	Residential	70.5	71.5	1.0	3.0	No
Tucker Road, Valley Bl (SR-202) to Cherry Ln	Residential	65.5	65.9	0.4	3.0	No
Tehachapi Boulevard, Tucker Rd to Mountain View Av	Commercial	66.0	66.9	0.9	5.0	No
Tehachapi Boulevard, Mulberry St to Mill St	Commercial	65.1	65.8	0.7	5.0	No

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Table IV.I-13
Project Roadway Noise Impacts at Locations Off Site

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}				
		Existing Traffic Volumes	Existing + Project Traffic	Increase	Significance Threshold	Significant?
Curry Street, Valley Bl to Highland Rd	Residential	66.7	67.5	0.8	3.0	No
Mulberry Street, south of Tehachapi Bl	Commercial	54.8	55.1	0.3	5.0	No

The roadway noise impact of cumulative development is identified below as a replacement for EIR Table IV.I-17. As shown, cumulative development including the proposed project would increase local noise levels by a maximum of 2.6 dBA L_{dn}, which would not exceed the EIR thresholds of significance. The EIR concluded that a significant cumulative noise increase of 10.3 dBA L_{dn} would occur along Mulberry Street south of Tehachapi Boulevard. As shown below, use of the correct traffic data results in a total cumulative increase of 0.9 dBA Ldn along this roadway segment. This means that the significant cumulative noise impacts identified in the EIR would no longer occur.

Table IV.I-17
Cumulative Project Roadway Noise Impacts at Locations Off Site

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}				
		Existing Traffic Volumes	Future (2011) + Project Traffic	Increase	Significance Threshold	Significant?
Valley Boulevard (SR-202), Waterford Tehachapi Rd to Sage Ln	Rural Residential	68.4	70.3	1.9	3.0	No
Valley Boulevard (SR-202), Sierra Vista Dr to Tucker Rd	Residential	68.4	70.3	1.9	3.0	No

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Table IV.I-17

Cumulative Project Roadway Noise Impacts at Locations Off Site

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}				
		Existing Traffic Volumes	Future (2011) + Project Traffic	Increase	Significance Threshold	Significant?
Valley Boulevard (SR-202), Weir St to Beech St	Residential	66.7	68.6	1.9	3.0	No
Valley Boulevard (SR-202), Mill St to Curry St	Residential	65.1	67.6	2.5	3.0	No
Red Apple Avenue, Reeves St to Tucker Rd	Residential	68.2	70.2	2.0	3.0	No
Tucker Road, north of Red Apple Av/Tehachapi Bl	Residential	68.3	70.1	1.8	3.0	No
Tucker Road, Red Apple/ Tehachapi to Conway	Commercial	69.9	71.8	1.9	5.0	No
Tucker Road, Conway Av to Valley Bl (SR-202)	Residential	70.5	72.9	2.4	3.0	No
Tucker Road, Valley Bl (SR-202) to Cherry Ln	Residential	65.5	67.6	2.1	3.0	No
Tehachapi Boulevard, Tucker Rd to Mountain View Av	Commercial	66.0	68.0	2.0	5.0	No
Tehachapi Boulevard, Mulberry St to Mill St	Commercial	65.1	67.0	1.9	5.0	No
Curry Street, Valley Bl to Highland Rd	Residential	66.7	69.3	2.6	3.0	No
Mulberry Street, south of Tehachapi Bl	Commercial	54.8	55.7	0.9	5.0	No

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General Plan Buildout Noise Levels

The commenter states that an EIR noise analysis generally examines long-term impacts as well as near-term ones. While this is true, the evaluation of long-term impacts in a project-level EIR is generally limited to development of the identified related or cumulative projects. The EIR has complied with this requirement and additional information regarding cumulative impacts is presented above. Project-level EIRs are not, however, required to address the impacts of buildout under the applicable General Plan. The impacts of General Plan buildout have already been evaluated in the EIR for the General Plan. It must be remembered that the proposed project site is designated for commercial and the proposed project is consistent with this designation. As such, the roadway noise levels associated with the development of commercial uses at the project site have already been assumed in the Noise Element of the City of Tehachapi General Plan.

In the interest of disclosure, the roadway noise levels associated with General Plan Buildout without and with the proposed project have been calculated using the traffic data provided in the February 24, 2010 Traffic Impact Analysis. The results of these calculations are provided below. As shown, the proposed project would contribute a maximum of 1.7 dBA L_{dn} to the General Plan buildout noise levels. This increase would occur at one location and the increase associated with the project at all other locations would be less than 1 dBA L_{dn}.

General Plan Buildout Roadway Noise Levels

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}		
		GP Buildout Without Project	GP Buildout With Project	Increase
Valley Boulevard (SR-202), Weir St to Beech St	Residential	72.2	72.4	0.2
Tucker Road, north of Red Apple Av/Tehachapi Bl	Residential	69.0	69.3	0.3
Tucker Road, Red Apple/Tehachapi to Conway	Commercial	68.7	69.9	0.2
Tucker Road, Conway Av to Valley Bl (SR-202)	Residential	68.2	69.9	1.7
Tucker Road, Valley Bl (SR-202) to Cherry Ln	Residential	61.8	62.7	0.9

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General Plan Buildout Roadway Noise Levels

Roadway Segment	Existing Land Uses Located Along Roadway Segment	Noise Levels in dBA L_{dn}		
		GP Buildout Without Project	GP Buildout With Project	Increase
Tehachapi Boulevard, Tucker Rd to Mountain View Av	Commercial	69.9	70.3	0.4
Curry Street, Valley Bl to Highland Rd	Residential	70.3	70.7	0.4

Sleep Disturbance

The commenter states that sleep disturbance associated with nighttime operations should have been specifically evaluated in the EIR. The EIR does evaluate the noise impacts of 24-hour operations at the project site and compares the estimated noise levels to the City's applicable noise standards. The City's 65 dBA L_{dn} standard for sensitive uses takes into consideration the increased sensitivity of residents to noise levels generated a night when most people are sleeping. The City's exterior noise standard (as well as the State's Land Use Compatibility standards identified in Figure 4 of the Noise Element of the City of Tehachapi General Plan) are also based on windows being closed.

As discussed on page IV.I-25 of the EIR, the estimated 24-hour noise level of 54 dBA L_{dn} at the single family homes located south of the project site is well below the City's standard for sensitive uses. This noise level also did not take into consideration the new wall that would be constructed along the southern perimeter of the project site. This solid wall would further reduce the noise levels experienced at these homes.

The majority of deliveries to the Walmart would occur during the daytime and evening. Very few deliveries would occur at night (after 10:00 P.M.). This is similar to existing situation at the Albertson's market in Tehachapi, which accepts nighttime deliveries and has residential units along it's rear boundary. As of the date that this memo was prepared, City staff indicate that the City has not received any complaints regarding sleep disturbance associated with nighttime deliveries to the Albertson's store.

Based on this information, the proposed project is not expected to adversely disturb the sleep of the existing residents to the south of the project site.

TRAFFIC NOISE LEVELS

Project Name: Tehachapi Walmart

Background Information

Model Description: FHWA Highway Noise Prediction Model (FHWA-RD-77-108) with California Vehicle Noise (CALVENO) Emission Levels.
Analysis Scenario(s): Existing and Future Traffic Volumes
Source of Traffic Volumes: Linscott, Law & Greenspan, Engineers, February 24, 2010
Community Noise Descriptor: L_{dn}: X CNEL:

Assumed 24-Hour Traffic Distribution:	Day	Evening	Night
Total ADT Volumes	77.70%	12.70%	9.60%
Medium-Duty Trucks	87.43%	5.05%	7.52%
Heavy-Duty Trucks	89.10%	2.84%	8.06%

Traffic Noise Levels

Analysis Condition Roadway Name Roadway Segment	Land Use	Lanes	Median Width	Peak Hour Volume	ADT Volume	Design Speed (mph)	Dist. from Center to Receptor[1]	Alpha Factor	Barrier Attn. dB(A)	Vehicle Mix Medium Trucks	Vehicle Mix Heavy Trucks	Peak Hour dB(A) L_{eq}	24-Hour dB(A) Ldn
Existing Off Site Traffic Volumes													
Valley Boulevard (SR-202)													
Waterford Tehachapi Rd to Sage Ln	Rural Residential	2	12	0	17,698	40	50	0.5	0	1.8%	0.7%	0.0	68.4
Sierra Vista Dr to Tucker Rd	Residential	2	12	0	17,669	40	50	0.5	0	1.8%	0.7%	0.0	68.4
Weir St to Beech St	Residential	2	0	0	12,339	40	50	0.5	0	1.8%	0.7%	0.0	66.7
Mill St to Curry St	Residential	2	0	0	8,537	40	50	0.5	0	1.8%	0.7%	0.0	65.1
Red Apple Avenue													
Reeves St to Tucker Rd	Residential	2	0	0	12,971	45	50	0.5	0	1.8%	0.7%	0.0	68.2
Tucker Road													
north of Red Apple Av/Tehachapi Bl	Residential	2	12	0	12,773	45	50	0.5	0	1.8%	0.7%	0.0	68.3
Red Apple Av/Tehachapi Bl to Conway	Commercial	4	12	0	15,962	45	50	0.5	0	1.8%	0.7%	0.0	69.9
Conway Av to Valley Bl (SR-202)	Residential	4	12	0	18,041	45	50	0.5	0	1.8%	0.7%	0.0	70.5
Valley Bl (SR-202) to Cherry Ln	Residential	4	12	0	5,800	45	50	0.5	0	1.8%	0.7%	0.0	65.5
Tehachapi Boulevard													
Tucker Rd to Mountain View Av	Commercial	4	12	0	12,008	35	50	0.5	0	1.8%	0.7%	0.0	66.0
Mulberry St to Mill St	Commercial	4	0	0	10,736	35	50	0.5	0	1.8%	0.7%	0.0	65.1
Curry Street													
Valley Bl to Highland Rd	Residential	2	12	0	6,158	45	40	0.5	0	1.8%	0.7%	0.0	66.7
Mulberry Street													
south of Tehachapi Bl	Commercial	2	0	71	568	40	40	0.5	0	1.8%	0.7%	56.9	54.8
Existing + Project Off Site Traffic Volumes													
Valley Boulevard (SR-202)													
Waterford Tehachapi Rd to Sage Ln	Rural Residential	2	12	0	19,906	40	50	0.5	0	1.8%	0.7%	0.0	68.9
Sierra Vista Dr to Tucker Rd	Residential	2	12	0	19,877	40	50	0.5	0	1.8%	0.7%	0.0	68.9
Weir St to Beech St	Residential	2	0	0	14,547	40	50	0.5	0	1.8%	0.7%	0.0	67.4
Mill St to Curry St	Residential	2	0	0	10,415	40	50	0.5	0	1.8%	0.7%	0.0	66.0
Red Apple Avenue													
Reeves St to Tucker Rd	Residential	2	0	0	15,731	45	50	0.5	0	1.8%	0.7%	0.0	69.1
Tucker Road													
north of Red Apple Av/Tehachapi Bl	Residential	2	12	0	13,878	45	50	0.5	0	1.8%	0.7%	0.0	68.7
Red Apple Av/Tehachapi Bl to Conway	Commercial	4	12	0	19,670	45	50	0.5	0	1.8%	0.7%	0.0	70.8
Conway Av to Valley Bl (SR-202)	Residential	4	12	0	23,009	45	50	0.5	0	1.8%	0.7%	0.0	71.5
Valley Bl (SR-202) to Cherry Ln	Residential	4	12	0	6,352	45	50	0.5	0	1.8%	0.7%	0.0	65.9
Tehachapi Boulevard													
Tucker Rd to Mountain View Av	Commercial	4	12	0	14,848	35	50	0.5	0	1.8%	0.7%	0.0	66.9
Mulberry St to Mill St	Commercial	4	0	0	12,723	35	50	0.5	0	1.8%	0.7%	0.0	65.8
Curry Street													
Valley Bl to Highland Rd	Residential	2	12	0	7,484	45	40	0.5	0	1.8%	0.7%	0.0	67.5
Mulberry Street													
south of Tehachapi Bl	Commercial	2	0	75	600	40	40	0.5	0	1.8%	0.7%	57.2	55.1
Year 2011 Plus Project Off Site traffic Volumes													
Valley Boulevard (SR-202)													
Waterford Tehachapi Rd to Sage Ln	Rural Residential	2	12	0	27,055	40	50	0.5	0	1.8%	0.7%	0.0	70.3
Sierra Vista Dr to Tucker Rd	Residential	2	12	0	27,222	40	50	0.5	0	1.8%	0.7%	0.0	70.3
Weir St to Beech St	Residential	2	0	0	19,275	40	50	0.5	0	1.8%	0.7%	0.0	68.6
Mill St to Curry St	Residential	2	0	0	15,011	40	50	0.5	0	1.8%	0.7%	0.0	67.6
Red Apple Avenue													
Reeves St to Tucker Rd	Residential	2	0	0	20,433	45	50	0.5	0	1.8%	0.7%	0.0	70.2
Tucker Road													
north of Red Apple Av/Tehachapi Bl	Residential	2	12	0	19,283	45	50	0.5	0	1.8%	0.7%	0.0	70.1
Red Apple Av/Tehachapi Bl to Conway	Commercial	4	12	0	24,576	45	50	0.5	0	1.8%	0.7%	0.0	71.8
Conway Av to Valley Bl (SR-202)	Residential	4	12	0	31,411	45	50	0.5	0	1.8%	0.7%	0.0	72.9
Valley Bl (SR-202) to Cherry Ln	Residential	4	12	0	9,275	45	50	0.5	0	1.8%	0.7%	0.0	67.6
Tehachapi Boulevard													
Tucker Rd to Mountain View Av	Commercial	4	12	0	19,169	35	50	0.5	0	1.8%	0.7%	0.0	68.0
Mulberry St to Mill St	Commercial	4	0	0	16,774	35	50	0.5	0	1.8%	0.7%	0.0	67.0
Curry Street													
Valley Bl to Highland Rd	Residential	2	12	0	11,337	45	40	0.5	0	1.8%	0.7%	0.0	69.3
Mulberry Street													
south of Tehachapi Bl	Commercial	2	0	87	696	40	40	0.5	0	1.8%	0.7%	57.8	55.7
General Plan Buildout Without Project Off Site Traffic Volumes													
Valley Boulevard (SR-202)													
Weir St to Beech St	Residential	2	0	0	44,113	40	50	0.5	0	1.8%	0.7%	0.0	72.2
Tucker Road													
north of Red Apple Av/Tehachapi Bl	Residential	2	12	0	15,145	45	50	0.5	0	1.8%	0.7%	0.0	69.0
Red Apple Av/Tehachapi Bl to Conway	Commercial	4	12	0	12,092	45	50	0.5	0	1.8%	0.7%	0.0	68.7
Conway Av to Valley Bl (SR-202)	Residential	4	12	0	10,832	45	50	0.5	0	1.8%	0.7%	0.0	68.2
Valley Bl (SR-202) to Cherry Ln	Residential	4	12	0	2,443	45	50	0.5	0	1.8%	0.7%	0.0	61.8
Tehachapi Boulevard													
Tucker Rd to Mountain View Av	Commercial	4	12	0	29,905	35	50	0.5	0	1.8%	0.7%	0.0	69.9
Curry Street													
Valley Bl to Highland Rd	Residential	2	12	0	14,115	45	40	0.5	0	1.8%	0.7%	0.0	70.3
General Plan Buildout Plus Project Off Site Traffic Volumes													
Valley Boulevard (SR-202)													
Weir St to Beech St	Residential	2	0	0	46,321	40	50	0.5	0	1.8%	0.7%	0.0	72.4
Tucker Road													
north of Red Apple Av/Tehachapi Bl	Residential	2	12	0	16,250	45	50	0.5	0	1.8%	0.7%	0.0	69.3
Red Apple Av/Tehachapi Bl to Conway	Commercial	4	12	0	15,800	45	50	0.5	0	1.8%	0.7%	0.0	69.9
Conway Av to Valley Bl (SR-202)	Residential	4	12	0	15,800	45	50	0.5	0	1.8%	0.7%	0.0	69.9
Valley Bl (SR-202) to Cherry Ln	Residential	4	12	0	2,995	45	50	0.5	0	1.8%	0.7%	0.0	62.7
Tehachapi Boulevard													
Tucker Rd to Mountain View Av	Commercial	4	12	0	32,745	35	50	0.5	0	1.8%	0.7%	0.0	70.3
Curry Street													
Valley Bl to Highland Rd	Residential	2	12	0	15,441	45	40	0.5	0	1.8%	0.7%	0.0	70.7

[1] Distance is from the centerline of the roadway segment to the receptor location.

INDEMNIFICATION AGREEMENT

Attachment E

INDEMNITY AGREEMENT

THIS AGREEMENT made this ___ day of _____, 2011 by and between the CITY OF TEHACHAPI, a Municipal Corporation ("City") and WAL-MART STORES, INC., a Delaware corporation ("Applicant").

W I T N E S S E T H:

WHEREAS, Applicant has requested that the City approve the following project (the "Project"): an architectural design and site plan review seeking approval for construction of 165,000 square foot Wal-Mart Supercenter located east of and adjacent to Tucker Road (SR 202), north of an adjacent to the Sail Thru Car Wash and the Las Colinas Subdivision; and

WHEREAS, the Project will require that City exercise its discretion in approving same; and

WHEREAS, in consideration of City's granting the Project, subject to certain conditions imposed by City, Applicant desires to defend and indemnify City from liability or loss connected with approval of the Project as provided in this Agreement.

NOW, THEREFORE, it is mutually agreed between City and Applicant as follows:

1. Applicant shall defend, indemnify, and hold harmless City, its officers, councilpersons, employees, consultants, and agents (collectively, "Indemnified Parties") from any and all costs, expenses, liabilities, losses, claims, actions, proceedings or damages of whatever nature against the Indemnified Parties to attack, set aside, void, or annul any Project-related discretionary approval or condition of approval established by Indemnified Parties or any claim, action or proceeding seeking to impose liability against Indemnified Parties as a result of their involvement in the Project including without limitation any claim for private attorney general fees claimed by or awarded to any part and payable by City or its officers, councilmembers, employees, consultants, or agents.

2. City will promptly notify Applicant in writing of any such claim, action, or proceeding within ten business days of the date that the City is served with same. City shall cooperate fully in the defense of any action or claim relating to the Project.

3. City may, within its unlimited discretion, participate in the defense of any such claim, action, or proceeding provided City bears its own attorney's fees and costs.

4. The term of this Agreement shall be until completion of all litigation, proceedings, or other actions relating to the Project and payment in full of all judgments, costs, and other awards thereunder by Applicant or, alternatively, if no action, proceeding, or other challenge has been filed, the elapsing of all statutes of limitation applying to the foregoing actions, proceedings, or other matters which may be filed against City regarding the Project. Notwithstanding the foregoing, City may terminate this Agreement by written notice to Applicant.

5. All notices to Applicant under this Agreement shall be deemed valid and effective upon deposit in the United States mail, postage prepaid, certified and/or registered mail or by confirmed facsimile or electronic mail addressed as follows:

If to Wal-Mart:

Wal-Mart Stores, Inc.
Attn: Real Estate Manager
(Ref: Tehachapi, California
Store No. 4317-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

If to City:

City of Tehachapi
Attn: City Manager
115 South Robinson Street
Tehachapi, CA 93561
(661) 822-2249
ggarrett@tehachapicityhall.com

With a Copy to:

Gresham Savage Nolan & Tilden
Attn: Mark A. Ostoich, Esq.
or J. Matthew Wilcox, Esq.
(Ref: Tehachapi, California
Store No. 4317-00)
550 E. Hospitality Lane, Suite 300
San Bernardino, CA 92408-4205

With a Copy to:

Wal-Mart Stores, Inc.
Attn: George J. Bacso, Esq.
(Ref: Tehachapi, California
Store No. 4317-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

Notices shall be deemed effective upon receipt or rejection only.

6. Applicant shall not assign its interest herein or any part thereof and any attempted assignment shall be void.

7. Time is of the essence with regard to each covenant, condition and provision of this Agreement.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9. This Agreement constitutes the entire Agreement between the parties with regard to the subject matter herein and supersedes all prior oral and written agreements and understandings between the parties with respect thereto.

10. This Agreement may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties.

11. In the event any action or proceeding is instituted arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and actual costs.

12. This Agreement may be executed in counterparts.

13. Waiver by a party of any provision of this Agreement shall not be considered a continuing waiver or a waiver of any other provision, including the time for performance of any such provision.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns.

15. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and not be affected, impaired, or invalidated thereby.

16. City and Applicant each acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties. This Agreement shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the party so drafting the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

_____
ED GRIMES, Mayor of the
City of Tehachapi, California, **"City"**

WAL-MART STORES, INC., a Delaware
corporation, "Applicant"

By:_____
Name:_____