

Lompoc City Council Agenda Item

CITY COUNCIL MEETING DATE: May 3, 2011

TO: Laurel M. Barcelona, City Administrator

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SUBJECT: APPEAL OF PLANNING COMMISSION APPROVAL OF THE DEVELOPMENT PLAN FOR THE WALMART EXPANSION PROJECT (Planning Division File No. DR 08-09).

An appeal, by Robert Cuthbert on behalf of the Citizens Against Walmart Expansion (CAWE), of the Planning Commission decision of February 9, 2011, adopting Resolution No. 683 (11) approving the Walmart Expansion project. The Development Plan (DR 08-09) request was for the addition of 41,433 net square feet of retail area to an existing 104,453 square foot existing facility and an amendment to the approved sign program. The project is located at 701 West Central Avenue at the northeast corner of the intersection of West Central Avenue and North O Street. (Assessor Parcel Number: 93-450-36).

RECOMMENDATION:

1. Receive the staff report and consider the written material presented;
2. Open public hearing; receive input from the appellant and the project representative; take public comments; close public hearing; and
3. After deliberation and decision, direct staff to prepare a resolution(s) reflecting the City Council's determination. Potential options for Council action are as follows:

OPTIONS:

- 1) Direct staff to prepare a City Council Resolution upholding the appeal and denying the Development Plan (DR 08-09) for the Walmart Expansion project.
- 2) Direct staff to prepare a City Council Resolution denying the appeal and upholding the Planning Commission determination of February 9, 2011 to approve the Walmart Expansion project Development Plan (DR 08-09).
- 3) Provide alternate direction to staff.

BACKGROUND:

- On August 25, September 22, and October 13, 2010, the Planning Commission held public hearings to review a request from Amanda Neufeld, representing the property owner, to:
 - 1) **Certify the Final Environmental Impact Report** – An Environmental Impact Report (EIR 09-02) was prepared for the project and circulated through the State Clearinghouse (SCH No. 2009081045) pursuant to the requirements of the California Environmental Quality Act (CEQA); and
 - 2) **Approve a Development Plan** – A Development Plan for the addition of approximately 41,433 new net square feet of retail area to an existing 104,453 square foot Walmart store. The application includes a request to amend the approved sign program for the shopping center.

The project is proposed on approximately 12.03 acres located at 701 West Central Avenue at the northeast corner of the intersection of West Central Avenue and North O Street (Assessor Parcel Number 93-450-36).

- On October 13, 2010, after reviewing the staff report, taking public testimony, and discussing the project with the applicant, the Planning Commission:
 - 1) Adopted Resolution No. 682 (10) denying certification of the Final Environmental Impact Report (EIR 09-02), on a 5-0 vote; and
 - 2) Took no action on the requested Development Plan, which could not be approved without an adopted environmental document.
- November 16, 2010 – City Council set January 18, 2011 as the date to hear the appeal of the Planning Commission October 13, 2010 denial to certify the FEIR.
- January 18, 2011 – City Council held a public hearing to consider the appeal and certified the Final Environmental Impact Report; returned the Development Plan to Planning Commission for review.
- February 9, 2011 – Planning Commission held a public hearing and adopted Resolution No. 683 (11) approving the Development Plan (DR 08-09) including Conditions of Approval.

The Planning Commission staff report, adopted Resolution, and minutes for the February 9, 2011 meeting are attached for Council review (Attachments 2, 3, & 4).

- February 22, 2011 – Mr. Robert Cuthbert, on behalf of Citizens Against Walmart Expansion (CAWE), timely filed an appeal requesting that the City Council review the Planning Commission action of February 9, 2011.

- March 15, 2011 – City Council set May 3, 2011 as the date to hear the appeal of the Planning Commission’s February 9, 2011 approval of the Walmart Expansion Project.

PROJECT DESCRIPTION:

The applicant is proposing an expansion of the existing approximately 104,453 square foot Walmart store. The project includes demolition and removal of the existing Tire & Lube Express facility and a portion of the garden center to accommodate an increase in general merchandise area. The expansion will result in an increase in the total square footage of the facility to approximately 151,271 square feet, inclusive of an approximately 5,385 square foot garden center. The front parking lot will also be re-surfaced and re-striped. The request includes consideration of an amendment to the existing sign program for the shopping center.

Surrounding uses include a wine processing facility immediately to the north with the Lompoc Airport beyond; an existing retail center to the east; Central Avenue and an existing residential neighborhood to the south; and O Street, an equipment rental facility, and vacant property to the west of the site.

The proposed project and conformance with the Zoning Ordinance development standards was analyzed in the Planning Commission staff report of August 25, 2010, a copy of which is attached hereto as Attachment No. 6.

DISCUSSION:

On February 9, 2011, the Planning Commission adopted Resolution 683 (11) approving the Development Plan on a 3-1-1 vote, with Commissioner Griffith voting no and Commissioner Hain not participating. The findings made by the Planning Commission and set forth in the Resolution were as follows:

- A. The site for the proposed use is adequate in size and topography to accommodate said use, and all yards, spaces, walls and fences, parking, loading, and landscaping are adequate to properly adjust such use with the land and uses in the vicinity. The expansion of the building complies with the City’s development standards in all respects. No variances have been requested or granted.
- B. The conditions stated in the decision are deemed necessary to protect the public health, safety, and welfare in that they require mitigation of project impacts identified in the FEIR and require compliance with the City’s engineering, building and planning policies and regulations.
- C. The proposed revisions to the sign program, as outlined in Condition of Approval P45 and attached as Exhibit C, are appropriate for the project.

- D. The site of the proposed use relates to streets and highways adequate in width and pavement to carry the quantity and kind of traffic generated by the proposed use. Mitigation of traffic and circulation impacts during construction is required as a condition of this approval. Operational traffic and circulation impacts on the intersection of H Street and Central Avenue identified in the FEIR will be mitigated to a level of less than significant by the City's proposed improvements to the intersection. The applicant is required to pay its fair share of the cost of those improvements prior to issuance of building permits.
- E. The proposed use will have no adverse effect upon the abutting and surrounding property from the permitted use thereof. Impacts on abutting and surrounding uses were analyzed in the FEIR and were found either to be less than significant or to be capable of being mitigated to a less than significant level. Mitigation measures identified in the FEIR are being imposed as conditions on the approval of the project.
- F. The Mitigation Measures attached as Exhibit B to this Resolution are included for conformance with the FEIR.
- G. The proposed project is subject to architectural review by the Planning Commission pursuant to Lompoc Municipal Code section 17.104.030(B)(1). The architectural plans and drawings for the proposed improvements are hereby approved as required by Lompoc Municipal Code section 17.104.080. The Planning Commission reviewed the architecture and found the project generally conforms with the City's Architectural Review Guidelines.

APPEAL:

Mr. Robert Cuthbert, on behalf of Citizens Against Walmart Expansion (CAWE) has filed a timely appeal requesting that the City Council review the Planning Commission action of February 9, 2011.

Mr. Cuthbert is requesting that the Council:

"Review specific issues in the ATTACHMENT DEVELOPMENT PLAN and deny DR 08-09."

A copy of the notice of appeal is included in this report as Attachment No. 1. A letter from the Law Office of Marc Chytilo regarding the grounds for the appeal was submitted on behalf of CAWE on April 15, 2011, a copy of which is attached as Attachment No. 2.

Among other things, the letter from the Law Office of Marc Chytilo argues the City Council has the discretion to deny the Walmart Expansion Project. In the case cited in the letter, *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, the Court of Appeal concluded the city council had discretion to adopt a zoning ordinance prohibiting the development of discount superstores with full grocery departments in order to further a land use policy decision to encourage the distribution of neighborhood serving shopping centers. The decision before the City Council on this appeal is not a legislative decision such as the one involved in the *Turlock* case; it is a decision which requires applying the specific standards for development review set forth in Lompoc Municipal Code §17.048.040 which address a limited set of issues. If the evidence supports findings those standards are met, the City Council does not have the discretion to ignore the evidence.

The grounds for the appeal are detailed below, with staff's response.

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1	<p>The Commission failed to both consider the evidence presented by the public, and give due deliberation to the matters presented by the public.</p> <ul style="list-style-type: none"> a. Public Safety was not discussed. b. Public Health, Safety, and general welfare were not discussed. c. Noise levels in the general area were not discussed. d. Adverse effects upon abutting properties were not discussed. <p>See also, Letter from the Law Office of Marc Chytilo</p>	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p> <ul style="list-style-type: none"> • Public Safety (Fire and Police Protection) was discussed in <u>Section 8.0</u> of the EIR -- <u>Effects Found Not to be Significant</u> • Noise (Construction & Operational) was discussed in <u>Section 4.2 -- Noise</u> of the EIR, and found to be "less than significant". • In approving the project, PC Resolution No, 683(11) Finding E reads: "The proposed use will have no adverse effect upon the abutting and surrounding property from the permitted use thereof. Impacts on abutting and surrounding uses were analyzed in the FEIR and were found either to be less than significant or to be capable of being mitigated to a less than significant level. Mitigation measures identified in the FEIR are being imposed as conditions on the approval of the project." • All of the above issues were discussed during the Planning Commission hearing on February 9, 2011.

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2	<p>On the date of the Commission hearing, at approximately 12 PM, the City made public a significantly amended resolution not allowing the public time to respond (Resolution No. 683).</p> <ul style="list-style-type: none"> a. The amended resolution for the first time identified the evidentiary basis for required approval findings, depriving the public of the ability to review and comment. b. The late noticing to commission members (2/8/11) of the amended resolution is inconsistent with the City's common, standard, and accepted practices. <ul style="list-style-type: none"> i. According to the City Commission Handbook, "Each [commission member] has an obligation to prepare, discuss, evaluate, review, and select the best possible alternatives." The late notice did not allow for proper preparation. ii. The City's Handbook for commissions sets a policy of 72 hours prior notification of all agenda items (1990). The revised City Council Handbook (2010) states, "Agenda packets include staff reports, correspondence, maps, and other information to supplement the agenda descriptions. Each item on the agenda is numbered consecutively for cross reference to supporting data in the agenda packet. A copy of the complete agenda packet is available for public review at least seventy-two (72) hours before the meeting." The late release of changes to the resolution and supplemental information did not allow the public to meaningfully review these materials. 	<ul style="list-style-type: none"> • Resolution No. 683 (11) was distributed to the Planning Commission on Feb. 2, 2011, as listed on the Planning Commission 2011 Calendar and posted on the City website on Feb. 3, 2011. • Feb. 8, 2011, additional language supporting the findings of fact were distributed to the Planning Commission. The evidentiary information added to the draft resolution to support the findings was based on information previously provided to the Planning Commissioners. Resolutions provided to the PC are in draft form until adopted. A request to add the evidentiary information could have been made by the Planning Commission during the meeting. • Resolution No. 683(11) will be superseded by the City Council's action on this appeal.
3	<p>The expansion eliminates significant parking directly in front of the store, and the Parking area Walmart is using in its calculation is up to 100 feet east of the main parking area.</p> <ul style="list-style-type: none"> a. This creates a safety hazard as customers would need to cross two lanes, and return with purchases. b. There are several businesses in the east parking area using the existing parking. Their customers would be adversely impacted. c. The expansion will cause an overflow into the east parking area during peak periods. d. At the Planning Commission hearing on 2/9/11 City staff and Walmart representatives were unable to give definitive answers on several pertinent questions asked by commissioners – specifically the location of 	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p> <ul style="list-style-type: none"> • The proposed project provides 765 on-site parking spaces, located on 356,000 square feet of paved parking spaces, roads, and walkways. One of the project's objectives is to "Provide sufficient off-street parking to meet the City of Lompoc's standards in order to ensure that adequate on-site parking is provided for store customers and

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	<p>actual parking areas and number of spaces in the respective parking areas remains unknown. (The main entrance divides the parking lots with a two lane road and landscaping on both sides.)</p> <p>See also, Letter from the Law Office of Marc Chytilo, pages 7, 8</p>	<p>employees." (See EIR, Executive Summary, pages 2.0-1 through 2.0-2.)</p> <ul style="list-style-type: none"> ● The City of Lompoc Zoning Ordinance standard calls for 1 parking space per 250 square feet of gross floor area for shopping centers. (City of Lompoc, Zoning Ordinance, Sec. 17.112.020.) The project is proposing to add 41,433 square feet to the existing 104,453-square-foot Walmart building, for a total size of 145,886 square feet. The total proposed store area equals 151,271 square feet assuming the garden center. Application of the 1 space per 250 sf standard to the proposed 151,271 Walmart store (including garden center) yields a requirement of 605 parking spaces. The parking calculations prepared for the proposed project show that a minimum of 728 spaces would be provided for the expanded Walmart store, which exceeds the Zoning Ordinance requirement of 605 spaces. ● The parking calculations for the entire shopping center show that a total of 1,280 parking spaces would be provided. This ratio equates to 4.5 spaces per 1,000 sf assuming the 41,433-sf expansion, which exceeds the 4.0 spaces per 1,000 sf required by the zoning ordinance. (See EIR, Executive Summary, page 2.0-20.) ● The two lanes that customers would have to cross from the eastern portion of the lot are interior driveway lanes within the parking area. (See, EIR, Project Description, Figure 3.0-3.) Customers are assumed to be accustomed to navigating amongst slow moving cars entering and exiting parking facilities. ● Parking for the proposed project was analyzed in the Planning Commission staff report dated Feb. 9, 2011. The number of parking spaces on the project parcel is in excess of the City Zoning Ordinance requirements. The shopping center has a recorded agreement, Easements with Covenants and Restrictions Affecting Land ("ECR"), allowing use of all of the parking in the center by customers of all of the retail uses in the shopping center. ● As currently designed, there are already two traffic lanes between the

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		<p>store front and the closest parking spaces.</p> <ul style="list-style-type: none"> Other businesses in the shopping center have not expressed concern about the impact of the Walmart expansion on the amount of parking available to them.
4	<p>The required finding that the proposed use will have no adverse effect upon abutting property cannot be made because the Project will have an adverse effect on Foods Co. (located on the abutting property in the same strip-mall.)</p> <ol style="list-style-type: none"> Walmart's predatory pricing practices will have a detrimental effect upon Foods Co. and could cause it to close. The EIR and Urban Decay Supplement do not analyze the impact on Foods Co. caused by adding the Walmart grocery store to the same strip-mall, and the FEIR even admits that "[t]he development of the proposed project could potentially cause one of the existing supermarkets in Lompoc to close." (p. 2.2-20). Since the EIR did not evaluate the Foods Co. impact, there is no other evidence in the record to support the Planning Commission's finding of no adverse effect on the abutting property. <p>See also, Letter from the Law Office of Marc Chytilo, page 5-7, 9.</p>	<ul style="list-style-type: none"> PC Resolution No, 683(11) Finding E reads: <i>"The proposed use will have no adverse effect upon the abutting and surrounding property from the permitted use thereof. Impacts on abutting and surrounding uses were analyzed in the FEIR and were found either to be less than significant or to be capable of being mitigated to a less than significant level. Mitigation measures identified in the FEIR are being imposed as conditions on the approval of the project."</i> The Updated Urban Decay Study dated Dec. 17, 2010, found <i>"The Natelson Dale Group (TNDG) believes that the pending closure of the Ocean Avenue Von's store reflects the outdated and undersized format of that store compared to contemporary standards for supermarkets. In terms of TNDG's analysis it is significant in that it makes it much less likely that even a single supermarket would close as a result of the proposed project. Even in the worst case event of another supermarket closing, the building conditions and locations of the remaining competitive supermarkets are such that they would be strong candidates for reuse and would tend to remain in good physical condition during any period of repositioning."</i> The appeal is not accompanied by any expert opinion or reports specific to the Lompoc Walmart. Based on the EIR and the Updated Urban Decay Study (Dec. 17, 2010), the City has found that potential urban decay impacts resulting from the 41,433 square foot expansion of the existing Walmart store would be less than significant. The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid

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		unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)
5	<p>The required finding that the site is adequate to carry traffic generated by the proposed use cannot be made because the H-Street/Central Ave. intersection will operate below an acceptable level of service (LOS D) under cumulative conditions, and will further worsen under cumulative + Project conditions.</p> <p>a. Contributing its fair share to improving the intersection may be adequate from a CEQA perspective, but is itself insufficient to fund the required improvement, leaving the intersection at an unacceptable LOS.</p> <p>b. The traffic generated by the Project is underestimated in the EIR, particularly traffic from Buellton and south Santa Barbara County. This additional traffic would further degrade the H-Street/Central Ave. intersection.</p> <p>See also, Letter from the Law Office of Marc Chytilo, page 4-5, 7-8</p>	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p> <ul style="list-style-type: none"> • <u>Transportation & Circulation</u> was discussed in <u>Section 4.3</u> of the EIR. The traffic analysis found that the project would not result in significant traffic impacts at a project level. However, taking into account other proposed projects, the traffic analysis concluded that the H Street/Central Avenue intersection is forecast to operate at LOS D under cumulative and cumulative plus project conditions. The City has identified improvements for the intersection. The improvement plan is to install dual left-turn lanes on the northbound and southbound approaches at the intersection. The City has been collecting fees from individual developments located in the study area to fund the implementation of this cumulative improvement. (EIR, Traffic Section, pages 4.3-21 and 4.3-29.) • No specific data or traffic study is provided to support the assertion the EIR underestimated traffic generation. • The EIR determined that, with implementation of proposed mitigation measures which were adopted as conditions of approval, the project- and cumulative-level impacts are less than significant. (EIR, Traffic Section, page 4.3-35.) The EIR included the following mitigation measure: MM 4.3-1: The proposed project shall contribute its fair share contribution to the City's improvement plan for the H Street/Central Avenue intersection. The City identified improvements for the H Street/Central Avenue intersection include the installation of dual left-turn lanes on the northbound and southbound approaches at the intersection. The proposed project's fair share contribution shall be 12.8 percent of the total cost of

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		<p>the intersection improvement in current dollars. Payment of fees shall occur prior to issuance of building permits.</p> <ul style="list-style-type: none"> • The EIR contained a comprehensive traffic analysis that compared the total projected traffic from this project, and from other projects in the area that were approved but not built, against an established capacity threshold for each road segment. It identified potential impacts and the programs designed to address these areas of concern, and recommended mitigation in the form of pro rata fees paid to street improvement and traffic signal impact fee programs established by the City's ordinance and designed to implement road improvements as needed. Fee-based mitigation programs — based on fair-share infrastructure contributions by individual projects — have been found to be adequate mitigation measures under CEQA. These mitigation fees are part of a reasonable plan of actual mitigation that the City of Lompoc has committed itself to implementing. The CEQA Guidelines recognize that when an impact is not unique to a single project, but is instead the result of cumulative conditions, the only feasible mitigation may involve adoption of ordinances or other regulations designed to address the cumulative impact. (Guidelines, § 15130, subd. (c).) Section 15130 of the Guidelines specifically provides that an EIR may determine that a project's contribution to a cumulative impact may be mitigated by requiring the project "to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (Guidelines, § 15130, subd. (a)(3).) Furthermore, CEQA requires that mitigation measures be roughly proportional to the impacts of the project; a single project is not required to pay to mitigate effects caused by other users. (CEQA Guidelines, § 15126.4, subd. (a)(4)(B).) • With respect to the claim that the traffic generated by the Project is underestimated in the EIR with respect to traffic from Buellton and south Santa Barbara County, no evidence has been presented to support this assertion. The

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		<p>cumulative analysis was based on the list of approved and pending projects, which includes all projects within the City as well as projects adjacent to the City, and was analyzed by both the Intersection Capacity Utilization (ICU) and HCM 2000 methodologies for purposes of the H Street/Central Avenue intersection. As the EIR has been certified and is conclusively presumed valid, no further response is required.</p>
<p>6a</p>	<p>The conditions proposed for the Project are inadequate to safeguard the public health, safety and general welfare.</p> <p>a. It is common knowledge that the Lompoc Police and Fire Departments are understaffed. Adding greater traffic, shrinking the parking available, and opening 24 hours a day will increase demands on public safety agencies while these agencies do not have the capacity to increase levels of service. An impact that the EIR improperly finds is insignificant (see DEIR p. 8.0-21).</p> <p>i. In the Police Services Study (Organizational Effectiveness Consulting 12/20/2006) under "Major Findings" it is stated, "Based upon a detailed workload analysis, the Police Department is currently understaffed. For all intents and purposes, staffing is at the absolute minimum acceptable level." The study finds a "mismatch between workload and staffing" that is "most apparent in the sworn ranks." The study also states, "As the City grows at a projected slow rate, additional personnel will be required to effectively handle the associated increase in workload."</p> <p>ii. The City has not sufficiently expanded law enforcement and public safety forces despite population and economic growth.</p> <p>iii. In the Fire Protection Services for the City of Lompoc report (Olson Associates 1/15/07) found that the Department needs "additional resources to address the impacts of community growth and increasing service demands." The report found that "facilities are inadequate" and</p>	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p> <ul style="list-style-type: none"> ● Public Safety (Fire and Police Protection) was discussed in <u>Section 8.0</u> of the EIR -- <u>Effects Found Not to be Significant</u> ● Although the Walmart store has not operated on a 24-hour basis in recent years, the existing permits for the Walmart store allow 24-hour operation and the store has operated on a 24-hour basis in the past. Therefore, 24-hour operation does not represent a change in the existing project or a change in the permits for the project. ● The studies referred to in the appeal predate the EIR. The Police Chief and representatives of the Fire Department have assured the City Council they are able to provide adequate public safety and fire protection services to the expanded Walmart. ● The assertion on page 4 of the Letter from the Law Office of Marc Chytilo to the effect crime would increase as a result of 24-hour operations is not supported by any evidence that an increase in crime occurs where businesses operate on a 24-hour basis. ● With respect to police services, the City of Lompoc Police Department (LPD) provides police services in the project area. The LPD operates one station, located at 107 Civic Center Plaza, approximately 2.4 miles southeast of the project site. As the station is

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	<p>that "staffing levels should be increased as soon as possible because of the current workload and to meet the expected increases in service demands."</p> <p>iv. In August 2005 the Ad Hoc Public Safety Committee Report, repeatedly used the word "inadequate" referring to all aspects of police and fire services and staffing. This citizens group made a report to the City Council, and the 2006 Police Services Study, and the 2007 Fire Protection Services reports essentially verified its findings.</p> <p>v. Proposed mitigations by Walmart are wholly inadequate. Walmart "security personnel" are typically tasked to a number of functions and rarely dedicated to security services only. Private security forces cannot fulfill the same functions as law enforcement, thus cannot, even if not compromised by other functions, fully offset the increased law enforcement demands created by the Project. Private security forces cannot provide medical care provided by fire personnel. As such this mitigation is inadequate to compensate for the City's currently inadequate law enforcement and public safety resources.</p> <p>See also, Letter from the Law Office of Marc Chytilo, pages 2-3, 8</p>	<p>approximately 2.4 miles from the site, response time for emergency calls would be within the 3- and 5-minute goal. The proposed project would potentially increase the existing workload of the LPD in a minor way, but not to a level the LPD considers to be problematic, based on a telephone conversation between Police Chief Timothy Dabney of LPD and the City's environmental consultant, Impact Sciences, on July 22, 2009. Accordingly, because of its relatively small size, the project would not result in the need for new or physically altered police facilities, the construction of which could cause significant environmental impacts. The proposed project would also be required to pay applicable City development impact fees, which are used to reduce development impacts and fund police services.</p> <ul style="list-style-type: none"> • The expanded Walmart would continue to provide onsite security personnel who would monitor and patrol the store and parking areas. Other measures incorporated into the existing Walmart and provided under the expanded Walmart would include: <ul style="list-style-type: none"> • Closed-circuit camera systems (surveillance cameras) inside and outside the store. • A parking lot patrol, which assists customers, ensures safety, and takes action to identify and prevent any suspicious activity (such as loitering and vandalism) during both the day and nighttime hours. • Plainclothes patrol inside the store to ensure safety and security. • A Risk Control Team, which is a team of associates responsible and trained to identify and correct safety and security issues at the site. • Lighting in the parking areas that will help to ensure public safety. • Prohibit consumption of alcohol in the parking lots by having associates regularly "patrol" the parking areas while collecting

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		<p>shopping carts, and report any inappropriate activity to the store managers. (Also, in accordance with state law, alcohol sales will be prohibited between 2 a.m and 6 a.m.)</p> <ul style="list-style-type: none"> ● Based on the required development impact fees and project design features listed above, the EIR concluded that impacts to police services would be less than significant with the implementation of the project. ● With respect to fire services, as indicated in the Draft EIR, the City of Lompoc Fire Department (LFD) provides fire services in the project area. The fire station that would provide first response to the site is Fire Station No. 2, located at 1100 North D Street and approximately 1.1 miles to the southeast of the project site. Based on telephone communication between Fire Chief Linual White of the LFD and the City's environmental consultant, Impact Sciences, on July 22, 2009, the EIR concluded that, because of the relatively small size of the Walmart expansion (41,433 square feet), the project would not result in the need for new or physically altered fire facilities, the construction of which could cause significant environmental impacts. Additionally, as part of the review process, LFD will review final project plans and make recommendations for fire protection services and fire flow rates. Depending on the outcome of the review, improvements to the water system (e.g., additional hydrants) may be required, at the cost of the applicant, to provide the required fire flow for the project. In addition, the proposed project would be required to comply with all applicable state and local codes and ordinances, as well as pay applicable City development impact fees, which are used to reduce development impacts and fund fire services. Therefore, the EIR concluded that impacts to fire services would be less than significant with the implementation of the project. ● Fee-based mitigation programs — based on fair-share contributions by individual projects — have been found to be adequate mitigation measures under

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		<p>CEQA. The City's development impact fees are part of a reasonable plan of actual mitigation that the City commits itself to implementing. The CEQA Guidelines recognize that when an impact is not unique to a single project, but is instead the result of cumulative conditions, the only feasible mitigation may involve adoption of ordinances or other regulations designed to address the cumulative impact. (Guidelines, § 15130, subd. (c).) Section 15130 of the Guidelines specifically provides that an EIR may determine that a project's contribution to a cumulative impact may be mitigated by requiring the project "to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (Guidelines, § 15130, subd. (a)(3).) Furthermore, CEQA requires that mitigation measures be roughly proportional to the impacts of the project; a single project is not required to pay to mitigate effects caused by other users. (CEQA Guidelines, § 15126.4, subd. (a)(4)(B).)</p>
<p>6b</p>	<p>The conditions proposed for the Project are inadequate to safeguard the public health, safety and general welfare.</p> <p>b. Allowing 24-hour operations will cause unacceptable noise levels in the adjacent residential neighborhood that were not adequately analyzed or mitigated in the EIR.</p> <p>See also, Letter from the Law Office of Marc Chytilo, pages 3-4, 8-9</p>	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p> <ul style="list-style-type: none"> • Noise (Construction & Operational) was discussed in <u>Section 4.2 -- Noise</u> of the EIR, and found to be "less than significant". • The EIR analysis determined, based on the Noise Study (December 2009) at Appendix 4.2 of the EIR, that the increase in traffic noise levels resulting from additional delivery truck trips would not exceed the identified thresholds of significance. (Draft EIR, Noise Section, at 4.2-23.) Additionally, the loading docks and trash collection equipment associated with the proposed expansion would be located on the north side of the building, facing the new wine-making facility, with ingress and egress points for delivery trucks and trash collection trucks

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		<p>located off of North O Street. The uses that would be most affected by noise generated at and around the loading docks and trash collection facilities would be the Walmart building itself, the rear of the existing commercial buildings to the east of the Walmart building, and the new wine-making facility, and could intermittently reach up to 75 dB(A) L_{eq} for these rear commercial uses; however, the 24-hour noise levels from these activities would be less than 55 dB(A) CNEL at the rear of the shopping center. These noise levels would not exceed the City's 65 dB(A) CNEL exterior noise standard for retail uses or the 75 dB(A) CNEL exterior noise standard for manufacturing uses that is applicable to the nearby winery facility. The nearest sensitive receptor to the ingress/egress access roads are the single-family residences located approximately 850 feet to the south of the proposed loading docks and trash collection area. Although loading and trash collection activities may produce noise levels as high as 75 dB(A) L_{eq} at 50 feet from the source, the existing Walmart and non-Walmart buildings would act as intervening structures that would attenuate noise produced by the loading docks and trash collection facilities. Based on this attenuation, the EIR shows that noise from the proposed loading docks and trash collection facilities would be reduced by at least 17.5 dB(A). (See EIR, Noise Section, page 4.2-2, Table 4.2-1.) Taking into consideration that the nearest residential uses are also located behind a noise wall, the noise level from loading activities at the project site would be further reduced to approximately 45 dB(A) L_{eq}. (See EIR, Noise Section, page 4.2-26.) The sound would be even further reduced by the attenuation of the residence structure itself – reduced by 17 dB(A) if windows are open and 25 dB(A) if residents' windows are closed. (See EIR, Noise Section, page 4.2-6, Table 4.2-2.) These sound reductions will be more than sufficient to meet the noise standards under the Lompoc General Plan, which require residential interior noise be less than 45 dB(A). (See EIR, Noise Section, page 4.2-2, Table 4.2-1.)</p>

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		<p>Furthermore, the EIR assessed the loudest potential nighttime parking lot noise sources (including car alarms activating, car doors slamming, and tires squealing), and determined that, given that these noise-sensitive residential receptors are located behind a noise wall and the exterior-to-interior noise attenuation provided by closed windows at these receptors, the interior noise level at the nearby residential properties would be approximately 33 dB(A), which would not exceed 45 dB(A). (See EIR, Noise Section, page 4.2-26. <i>Note that interior noise levels with windows open would be 41 dB(A) based on page 4.2-6, Table 4.2-2.</i>) Thus, the operational noise generated from the project would not be high enough to disrupt the off-site resident's ability to sleep during the nighttime. Therefore, based on the EIR and technical study, noise levels generated within the loading dock and trash collection area or in the parking lot would not increase noise levels at the nearest homes to the project site. Impacts would be less than significant. (See EIR, Noise Section, pages 4.2-24 through 4.2-25.)</p>
7	<p>The Findings of Fact in the 2/9/11 Resolution are inadequate.</p> <ul style="list-style-type: none"> a. The Resolution merely recites the findings of approval for the Preliminary Development Plan, and provides conclusory statements regarding how Project conforms to the standards in those Findings. <ul style="list-style-type: none"> i. The findings fail to reveal the analytic route from evidence to conclusions, as the law requires. ii. The findings lack substantial evidence. 	<p>The findings of fact in Resolution 683 (11) provide the basis for the Planning Commission approval of the Development Plan based upon the written staff report, the testimony provided and the material in the administrative record. In any event, Resolution 683(11) will be superseded by the City Council's action on this appeal.</p>
8	<p>The expansion will likely cause blight with economic impacts at the shopping center and elsewhere in Lompoc.</p> <ul style="list-style-type: none"> a. The EIR and Urban Decay Study Update ignored blight as a precursor to Urban Decay, and failed to address local community standards. b. There is existing empty retail space in 	<p>The City Council certified the Final Environmental Impact Report (FEIR) for the Walmart Expansion Project on January 18, 2011. Once an EIR for a particular project has been certified, that EIR is conclusively presumed valid unless a lawsuit to challenge the EIR is timely filed. (Pub. Res. Code, §21167.2.)</p>

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	<p>Lompoc, and the Walmart expansion will likely cause more businesses to close.</p> <p>c. Foods Co. will be directly impacted and may close, creating an open space only suited to grocery retail that would likely remain vacant given competition from the adjacent Walmart grocery.</p> <p>See also, Letter from the Law Office of Marc Chytilo, pages 5-7, 9</p>	<ul style="list-style-type: none"> ● Although the EIR's analysis concludes that the proposed project could potentially cause the closure of an existing supermarket, the analysis provides substantial evidence that any such closure would not result in urban decay. In particular, the EIR includes an extensive analysis of demand to re-tenant any vacant space resulting from the proposed project. (See EIR, Section 4.4, Urban Decay, and Appendix 4.4, Updated Urban Decay Study dated Dec. 17, 2010.) It is acknowledged that the current severe recession may delay the re-tenancing of vacant retail space in the community, but the City is aware of a number of examples of large stores that are currently being re-tenanted throughout the State despite the present economic conditions. The EIR also provides a number of examples, specific to Lompoc, of major retail spaces that remained vacant for extended periods of time (as long as nine years) before being successfully re-tenanted. Whereas it is impossible to predict when the economy will fully recover, the EIR's analysis provides substantial evidence that the long-term prospects for reuse of vacant space in Lompoc are strong and that the trade area has historically demonstrated a capacity to maintain vacant properties in usable condition (such that urban decay does not result) for extended periods of time. ● The Updated Urban Decay Study dated Dec. 17, 2010, found <i>"The Natelson Dale Group (TNDG) believes that the pending closure of the Ocean Avenue Son's store reflects the outdated and undersized format of that store compared to contemporary standards for supermarkets. In terms of TNDG's analysis it is significant in that it makes it much less likely that even a single supermarket would close as a result of the proposed project. Even in the worst case event of another supermarket closing, the buildings conditions and locations of the remaining competitive supermarkets are such that they would be strong candidates for reuse and would tend to remain in good physical condition during any period of repositioning."</i> ● The appeal is not accompanied by any

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		<p>expert opinion or reports specific to the Lompoc Walmart.</p> <ul style="list-style-type: none"> ● Based on the EIR and the Updated Urban Decay Study (Dec. 17, 2010), the City has found that potential urban decay impacts resulting from the 41,433 square foot expansion of the existing Walmart store would be less than significant. ● An EIR is required to disclose and analyze the direct and the reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (Guidelines, §§ 15126.2, 15064, subd. (d)(3).) Economic and social impacts of proposed projects are outside CEQA's purview. Yet, if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting <i>physical impacts</i>. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes. (See Guidelines, § 15131(a).) However, CEQA is not a fair competition statutory scheme. Therefore, despite concerns regarding Walmart's pricing practices, these are not subject to environmental review under CEQA, as they are not likely to result in a physical impact on the environment. ● The Letter from the Law Office of Marc Chytilo is accompanied by a study that apparently is purported to refute the result of the Urban Decay Study. The study provided by the Law Office of Marc Chytilo is inadequate for that purpose because: (1) the study is seven years old; (2) the study pertains to an unidentified suburban grocery store in an unidentified small town in the East Coast region of the United States; and (3) it does not reach any conclusions regarding urban decay. The study is old, is not specific to the conditions existing in

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		<p>Lompoc and does not provide any conclusions useful to analysis of the application before the City Council.</p> <ul style="list-style-type: none"> ● The Walmart has always sold some food products. ● Statements in the letter from the Law Office of Marc Chytilo to the effect Foods Co. will lose more customer to Walmart than other supermarkets (page 6) and “it is difficult to envision a scenario where Wal-Mart would <i>not</i> cause Foods Co. to close” are not supported by facts or expert opinion. ● The assertion on page 9 of the letter from the Law Office of Marc Chytilo that closure of Foods Co. “would create an open space only suited to grocery retail” ignores the fact larger spaces can be demised into smaller leasable spaces to facilitate re-tenanting.
<p>9</p>	<p>The proposed façade is a significant departure from the style and color scheme of the existing relatively new shopping center, creating a conflict with the Architectural Review Guidelines including section III.A.23.</p> <p>See also, Letter from Law Office of Marc Chytilo, page 9</p>	<p>In approving the project, PC Resolution No. 683(11) Finding G reads: “The proposed project is subject to architectural review by the Planning Commission pursuant to Lompoc Municipal Code section 17.104.030 (B)(1). The architectural plans and drawings for the proposed improvements are hereby approved as required by Lompoc Municipal Code section 17.104.080. The Planning Commission reviewed the architecture and found the project generally conforms with the City’s Architectural Review Guidelines.”</p> <ul style="list-style-type: none"> ● The Architectural Review Guidelines do not require absolute uniformity among elevations of buildings in a shopping center. The buildings in the shopping center are already somewhat varied in appearance. The purpose of the Architectural Guidelines is not to prohibit creativity nor require changes in building facades to be postponed until all can be modified at once.

Correspondence was received dated April 27, 2011 from Ms. Ellen M. Berkowitz of Manatt, Phelps & Phillips, LLP, the representative for Walmart Stores, Inc. The correspondence is in response to Mr. Cuthbert’s appeal and the letter from the Law Office of Marc Chytilo (Attachment 9).

Lucille T. Breese, AICP
Planning Manager

Keith C. Neubert
Principal Planner

Attachments:

1. Notice of Appeal dated February 22, 2011
2. Correspondence from the Law Office of Marc Chytilo representing Citizens Against Walmart (CAWE) dated April 14, 2011
3. Planning Commission Staff Report dated February 9, 2011
4. Minutes of the February 9, 2011 Planning Commission Meeting
5. Planning Commission Resolution No. 683 (11)
6. Planning Commission Staff Report dated August 25, 2010
7. Minutes of the August 25, 2010 Planning Commission Meeting
8. Site Plan, Elevations, and Map
(City Council only, available in Planning Division for review)
9. Correspondence from Ellen M. Berkowitz of Manatt, Phelps & Phillips, LLP, representing Walmart Stores, Inc., dated April 27, 2011

APPROVED FOR SUBMITTAL TO THE CITY ADMINISTRATOR:

Arleen T. Pelster, AICP, Community Development Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Laurel M. Barcelona, City Administrator