

April 27, 2011

Client-Matter: 24583-649

**VIA E-MAIL AND U.S. MAIL**

Honorable Lompoc City Council  
City of Lompoc  
100 Civic Center Plaza  
Lompoc, CA 93436

**Re: Response to Mr. Robert Cuthbert's Appeal of the Lompoc Planning Commission's Approval of Development Plan Review DR-08-09**

Dear Honorable Councilmembers:

This firm represents Wal-Mart Stores, Inc. and the Wal-Mart Real Estate Business Trust (collectively, "Walmart" or "the Applicant") in connection with Walmart's application to construct a 41,433 square foot expansion to its existing Lompoc store (the "Project"). We are writing in response to Mr. Robert Cuthbert's February 22, 2011 appeal of the Lompoc Planning Commission's February 9, 2011 approval of Development Plan DR-08-09, purportedly filed on behalf of "Citizens Against Wal-Mart Expansion," as well as the supplemental letter dated April 14, 2011 from the Law Office of Marc Chytilo.<sup>1</sup>

Mr. Cuthbert would like to pretend that his appeal of the Development Plan is a second bite at the apple to address anything and everything related to the Project. In reality, however, the City Council has already certified the Project's Final Environmental Impact Report ("Final EIR") – a decision that is no longer subject to administrative appeal. In certifying the EIR, the Council found that the Project will not create any significant impacts and made findings of fact pursuant to the California Environmental Quality Act ("CEQA") on almost all of the issues Mr. Cuthbert raises, and has been raising for over six months now. Accordingly, Mr. Cuthbert's appeal – which was supposed to address the Planning Commission's determinations on the *Development Plan* – must be rejected.

**A. INTRODUCTION.**

Walmart respects Mr. Cuthbert's right to disagree with the majority of Lompoc residents about the degree to which Walmart benefits its customers and the City as a whole (and we do not

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<sup>1</sup> For simplicity, both Mr. Cuthbert's appeal and the supplemental letter are addressed interchangeably.

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question whether he truly loves Lompoc or believes he has its best interests at heart). Nevertheless, Mr. Cuthbert's appeal of the Project's Development Plan is frivolous.

First, the appeal does nothing but rehash issues that the *City Council* put to bed when it: (1) adopted Resolution 5687(11) (Exhibit A), certifying the Project's Final EIR (FEIR 09-02) and (2) adopted findings of fact pursuant to CEQA stating that "*there are no unavoidable significant adverse environmental impacts that will not be fully mitigated.*"<sup>2</sup> (CEQA Findings for the Walmart Expansion Project, p. 22)(Exhibit B). Second, the City's Development Plan Review is a quasi-judicial entitlement dealing with land use and zoning issues; unlike a legislative act of general applicability, political ideology and philosophical beliefs have no place in this process.

While purporting to attack the Development Plan approval, Mr. Cuthbert – with the sole exception of parking – does not raise any of the issues that may appropriately be covered in an appeal of a Development Plan – issues such as yards, walls, fences, loading, signage, landscaping, loading docks, etc. Rather, Mr. Cuthbert asks the Council (the same Council that certified the Final EIR and found the Project not to have any significant environmental impacts) to arrive at precisely the *opposite* conclusion relative to issues it decided a few months ago when it certified the EIR and made findings of fact pursuant to CEQA. By asking the Council to so blatantly contradict itself on the same Project, Mr. Cuthbert is in essence asking the Council to make an irrational decision on this appeal that cannot be supported by substantial evidence, and that moreover, would be arbitrary and capricious (one of the most deferential levels of review applied by courts).<sup>3</sup> Governmental action cannot be legally supported if it is "... irrational or

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<sup>2</sup> Mr. Cuthbert's appeal does raise one procedural issue, namely that at noon on the day of the Planning Commission hearing, City staff amended the draft Planning Commission resolution. Mr. Cuthbert alleges that the amendment had the effect of not giving Commissioners enough time to prepare. This argument is a red herring, however. Not only did Assistant City Attorney June Ailin reject this argument at the hearing, the changes consisted of a mere *ten* sentences added to the draft findings in response to a letter that *Mr. Cuthbert* had sent the day before. If Mr. Cuthbert's argument were accepted, this would mean that anyone attempting to derail a project would be able to introduce evidence into the record the day before the hearing, and then demand that the City postpone the hearing. The practical effect of Mr. Cuthbert's argument is that a single individual may delay a project for an infinite period of time by making last-minute submissions into the record. In any event, the 10 sentences added to the draft findings did not change any substantive conclusions, but simply added detail to further clarify the conclusions already set forth in the findings. Moreover, these sentences could have been added at the hearing without running afoul of any alleged procedures. The fact that the City instead revised the findings and distributed them in advance of the hearing was a courtesy to Mr. Cuthbert and other interested parties, who now had the opportunity to look at them before the hearing began.

<sup>3</sup> In fact, if the Council were to accept Mr. Cuthbert's arguments after just having found differently a few months ago, such a decision would be the very essence of "capricious" under any standard dictionary definition. (Black's Law Dictionary (Seventh Edition), for example, defines capricious as "[t]he disposition to change one's mind impulsively.").

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plainly arbitrary.” *Squaw Valley Dev. Co. v. Goldberg* (9th Cir. Cal. 2004) 375 F.3d 936, 944 (quoting *Lockary v. Kayfetz* (9th Cir. 1990) 917 F.2d 1150, 1155 (as amended)).

Accordingly, Walmart respectfully requests that the City Council reject Mr. Cuthbert’s appeal and uphold the Planning Commission’s determination. Mr. Cuthbert’s appeal has almost nothing to do with the issues decided by the Planning Commission that are the subject of this appeal: the Development Plan and the Project’s architecture. Instead, it reflects Mr. Cuthbert’s philosophical and political objections to Walmart, which he has espoused for several years now, and which the majority of Lompoc’s electorate recently rejected when they did not elect candidates whose political platform centered around opposition to Walmart. There is no question that Mr. Cuthbert, and the vocal minority he represents, do not like Walmart as a corporate entity. The relevant questions for the Council, however, are whether animus toward a particular company can form the basis for a denial of a basic land use entitlement having to do with the location of loading docks, parking, signage, architecture, and the like, or if the City Council can take a position on environmental impacts and General Plan consistency that would be completely at odds with their decision of just a few months ago. The answer is most certainly no.

**B. THE CITY COUNCIL HAS ALREADY CERTIFIED THE FINAL EIR, MAKING MR. CUTHBERT’S ARGUMENTS ABOUT ENVIRONMENTAL IMPACTS MOOT.**

Almost all of Mr. Cuthbert’s appeal is indisputably about environmental matters that were already the subject of a prior appeal, were voted upon, and were finalized by the City Council decision to certify the Project’s Final EIR on February 1, 2011. In connection with that certification, the Council not only found that the document as a whole was legally adequate and that it reflected the City’s own independent judgment, but that the Project would not have any significant environmental impacts after mitigation.

We do not know if Mr. Cuthbert’s new attorneys have had the opportunity to review the entire administrative record yet; however, it is readily apparent that many of the arguments raised in the April 14, 2011 letter from the Law Office of Marc Chytilo directly contradict the positions taken by the *City Council*. In other words, the author of the letter appears not to understand that the City Council already approved the EIR, and that the City Council’s decision on the EIR is *not* the subject of this appeal. For example, pages 2 through 5 of the letter take the position that the City Council can deny the Project on the grounds that it is inconsistent with the General Plan. However, the *City Council* is the body that already certified the Final EIR stating that the Project is consistent with the General Plan.<sup>4</sup> Likewise, the rest of the letter (pages 5-10)

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<sup>4</sup> The EIR states: “The proposed project’s current General Plan Land Use designation is GC and zoning is PCD. This land use designation and zoning allow for a wide variety of retail, office, and service-oriented enterprises to

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makes claims about police and fire services, urban decay, and traffic – all issues that the *City Council* addressed and settled in connection with certification of the Final EIR. The letter does not focus on appealing the issues decided by the *Planning Commission*, which are the only issues now before the Council.

Importantly, one of the Development Plan approval findings (“that the proposed use will have no adverse effect upon abutting property from the permitted use thereof”) subsumes the findings of the EIR, which is required to analyze and make determinations relative to a project’s impacts not only on abutting properties, but the surrounding community. For this finding, Planning Commission Resolution No. 683(11) approving the Development Plan found that “[t]he 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.*” (See Exhibit C)(Emphasis added). Because the Planning Commission’s initial reticence to certify the EIR was overturned by the City Council on appeal, the Planning Commission’s only legally defensible finding about environmental impacts, once the Development Plan returned to it, had to be consistent with the City Council’s finding that the EIR reflected the City’s independent judgment and that the Project would not create an adverse impact.

The Council’s certification of the EIR and associated findings about the Project’s environmental impacts – on issues such as Noise, Transportation and Circulation, Public Services, and Urban Decay – are final and cannot be disturbed. Specifically, the Council found in certifying the EIR:

- **Public Services, Land Use, and Aesthetics:** “Finding – The City Council hereby finds that no potential significant environmental effects on the environment will result from the Walmart Expansion Project in the categories listed above.” Those categories include: Public Services, Land Use and Planning, Recreation, and Aesthetics, among others. (Resolution No. 5687, Exhibit A, pg. 7.)
- **Noise:** “Finding – The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant

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meet the needs of residents and visitors. *The proposed project would not conflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect. The proposed project is consistent with the City’s General Plan and zoning.*” (Emphasis added) (Draft EIR, p. 8.0-18).

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environmental effect on the environment to below a level of significance.” (Resolution No. 5687, Exhibit A, §4.2.)

- **Transportation and Circulation:** “Finding – The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.” (Resolution No. 5687, Exhibit A, §4.3.) The City’s approval of the Final EIR specifically cites to an analysis of the H Street/Central Avenue intersection. (*Id.*)
- **Urban Decay:** “Finding – The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.” (Resolution No. 5687, Exhibit A, §4.4.) The update to the Urban Decay Study was found to “be accurate and legally adequate for purposes of CEQA.” (Resolution No. 5687, Exhibit A, pg. 6.) The City’s approval of the Final EIR specifically addresses the issues of store closures and long-term vacancies, finding no significant impact.

**C. THE PROJECT IS CONSISTENT WITH THE GENERAL PLAN.**

As stated above, the City Council has already found the Project consistent with the General Plan. While nothing else needs to be said on this issue, the City Council’s findings about the Project and its consistency with the General Plan were, in fact, correct. Mr. Cuthbert’s attorneys cite to three General Plan policies that the Project allegedly violates. However, upon reviewing these policies it becomes patently clear that Mr. Cuthbert’s appeal is unavailing.

**1. THE PROJECT IS CONSISTENT WITH LAND USE ELEMENT POLICY 4.2.**

Land Use Element Policy 4.2 states that the City “shall allow development *only in areas* where adequate public facilities or services will be available at the time of development.” (Emphasis added). This policy has to do with allowing development in new, undeveloped areas of the City where there may not yet be sewer connections, an electric power grid, police and fire facilities, etc. – it most certainly has nothing to do with development within an existing shopping center. There is no question that the existing shopping center is an area where adequate public facilities and services exist.

Moreover, Mr. Cuthbert’s argument that the Lompoc fire and police departments would benefit from more funding has already been addressed in the EIR and has nothing to do with Land Use Element Policy 4.2. Very few cities in California today have as much funding for their

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police and fire departments as they would like; this does not mean that all development must come to a stand-still or that all development will somehow have a significant impact on the environment. Public services, and specifically fire and police services, were fully analyzed in the EIR (See FEIR § 8.0) and the City Council found the Project's fire and police service impacts not to be significant. Finally, Mr. Cuthbert's position would lead to absurd results. His suggestion that the overall staffing levels of the police and fire departments make the Project violate Land Use Policy 4.2 and should result in denial of the Project would mean that any and all development in the City would violate this policy and have to be denied. If Mr. Cuthbert were truly concerned about police and fire services, he would appear at every Planning Commission and City Council hearing to make the same point about every other project.

## **2. THE PROJECT IS CONSISTENT WITH LAND USE ELEMENT POLICY 2.3.**

Land Use Element Policy 2.3 provides that the "City shall prohibit *new* land uses within or adjacent to residential neighborhoods when such land uses would adversely affect the character of the neighborhood." (Emphasis added). As a threshold matter, Walmart is not a new land use – both the Walmart store and other retail uses already coexist with the adjacent residential neighborhood in this well-established commercial center.

With respect to Mr. Cuthbert's specific argument about noise, his attorneys assert that noise will impact the neighborhoods around the Project. As with everything in Mr. Cuthbert's appeal, however, the City Council has already addressed this issue and found impacts to be less than significant. (See Draft EIR § 4.2). The EIR also analyzed nighttime noise, finding that "single-event noise levels generated at the on-site parking lot during nighttime hours would not be high enough to disrupt the off-site residents' ability to sleep. Impacts would be less than significant." (Draft EIR, p. 4.2-27). The specific argument that loading dock activities, and their impacts on the homes, were not appropriately analyzed, if anything, indicate that Mr. Cuthbert's attorneys are unfamiliar with the Project site. The Project's loading docks are approximately 850 feet away from the homes and further separated from the homes by the entire Walmart building. Likewise, the appellant is in error when he argues that the EIR reaches a conclusion of no significant nighttime impact based only on an assumption that neighbors will sleep with their windows closed. This is simply untrue. The EIR assumes that nighttime shoppers will park at the southernmost section of the parking lot (something which obviously will not happen because the number of nighttime customers will be very limited and it belies common sense that customers will park as far away from the store as possible), and even then, that interior noise levels would reach only approximately 33 dB(A). (DEIR, p. 4.2-26, 27). This is significantly lower than the 45dB(A) level that can disrupt sleep. (*Id.*). Most importantly, however, the EIR has already been certified and environmental issues related to noise impacts are no longer open to appeal.

**3. THE PROJECT IS CONSISTENT WITH CIRCULATION ELEMENT POLICY 1.4.**

Land Use Element Policy 1.4 provides that the City “shall only allow development in areas where adequate circulation facilities and/or services will be available at the time of development.” Mr. Cuthbert cites to the H-Street and Central Ave. intersection. Once again, however, the Council has already made a final determination on this issue. Specifically, in certifying the Final EIR, the Council found with respect to traffic and circulation that “existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.” (Resolution No. 5687, Exhibit A, §4.3). This issue relates to the certified Final EIR, and does not relate to the Planning Commission’s decision on the Development Plan and architectural review that are the subject of this appeal.

**D. SHIELDING COMPETITORS FROM ECONOMIC IMPACTS IS NOT WITHIN THE PURVIEW OF A DEVELOPMENT PLAN DETERMINATION, NOR IS IT LEGALLY PERMISSIBLE.**

Mr. Cuthbert’s appeal asks the City to essentially make zoning decisions based on political and economic reasons (which is not allowed under the law) and that it not apply the City’s planning and zoning laws to Walmart in a consistent fashion. Specifically, Mr. Cuthbert asserts that the required finding under Lompoc Municipal Code (“LMC”) § 17.048.040 regarding “adverse effect[s] upon abutting property from the permitted use thereof” should be interpreted to include economic impacts that the Walmart expansion might have on the neighboring Foods Co. store – something that is not only legally impermissible but would be completely inconsistent with the City’s prior practices.

First, for approval of an on-site development, the City is prohibited from considering purely economic impacts on abutting competitors. See, e.g., *LaFranchi v. City of Santa Rosa* (1937) 8 Cal. 2d 331, 338 (holding that zoning laws cannot be used to shield a competitor from economic impacts); also see *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1013 (2000) (citing to *Ross v. City of Yorba Linda* (1991) 1 Cal. App. 4th 954, 964-968) ( A city “does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like.”). Zoning laws “cannot be used unqualifiedly to restrict competition.” *McDonald's Systems of California, Inc. v. Board of Permit Appeals* (1975) 44 Cal. App. 3d 525, 548. Also see *Pacific P. Assn. v. Huntington Beach* (1925) 196 Cal. 211, 216. While it is true that zoning ordinances may be used “to address [] urban/suburban decay,” zoning can “not legitimately be used to control economic competition.” *Hernandez v. City of Hanford*, 41 Cal. 4th 279, 296 (2007) (quoting *Wal-Mart v. Turlock*, 138 Cal.App.4th 273, 302). Mr. Cuthbert asserts that the City should deny the Project because of purely economic impacts it may have on its neighbors. The

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case law is clear that zoning cannot be used to restrict competition or to shield certain existing businesses from competition, regardless of how much Mr. Cuthbert does not like Walmart.<sup>5</sup>

Secondly, Mr. Cuthbert asks the City to subject Walmart to scrutiny never once applied through Development Plan Review to other businesses in Lompoc. Mr. Cuthbert's argument that the City should consider economic competition and economic impacts under Development Plan findings has no merit. Such a decision would violate Walmart's right to equal protection under the law. When the Home Depot project – a much larger development than the proposed Walmart expansion – was before the City for approval, the City did not require its EIR to even *analyze* urban decay or consider impacts on existing Lompoc businesses. More recently, when Tesco came before the City with a proposal for a new Fresh & Easy store, not once did the City inquire about the store's competitive impact on existing grocery stores.

For equal protection claims based on "selective enforcement of valid laws," a plaintiff can show a constitutional violation by showing that supposed rational basis for selectively enforcing the law is merely a pretext for "an impermissible motive." *Freeman v. City of Santa Ana* (9th Cir. 1995) 68 F.3d 1180, 1187-88. Mr. Cuthbert's appeal asks the City Council to engage in three impermissible and unconstitutional acts that violate Walmart's right to equal protection under the law: (1) to readdress issues already voted on and decided by this Council; (2) to engage in economic protectionism and (3) to interpret the required findings under the LMC in ways never before interpreted in the City's history in order to deny the Project.

Moreover, the finding on abutting properties is, on its face, about those impacts that apply directly and more intensely to *abutting properties* because of their direct proximity to the new use. For example, a sports stadium proposed to be located next to a school or library may cause certain specific adverse noise impacts due to its proximity. That certainly is not the case here, and the certified Final EIR already has determined that there are no significant impacts on abutting properties, as well as the surrounding community. The "adverse effects on abutting property" finding does not and should not apply to impacts that are strictly economic in nature and that would apply equally to a property down the street as they would to a property that shares walls or property lines with the new use. This finding has, to the best of Walmart's knowledge,

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<sup>5</sup> To the extent Mr. Cuthbert argues that there will be physical impacts on Foods Co., for example a vacancy that could be caused if the store closed, the Final EIR certified by the City Council directly refutes that argument. The Final EIR and its urban decay study analyzed the Project's impacts on urban decay in extensive detail and found that the Projects' effects on urban decay were *not significant*. With respect to the issue of store closures alone (i.e., apart from urban decay considerations), the very exhaustive urban decay study prepared for the Project's EIR did not conclude that a store would close if the Project were built; rather, it said that one store could possibly close, although other grocery stores have operated with similar levels of demand. Furthermore, the subsequent update determined that with the impending closure of the Vons on Ocean, the market for groceries in Lompoc would not be oversaturated even with operation of the Project.



*never been applied* to an applicant in the City of Lompoc to limit pure economic competition that stems from putting two uses next to each other.

**E. THE PROJECT'S PARKING IS MORE THAN ADEQUATE.**

Mr. Cuthbert also argues that the Project will have adverse impacts on parking because one parking area proposed for Walmart's use is approximately 100 feet east of the proposed Project. While we appreciate that this topic is at least appropriate for an appeal of a Development Plan, the argument has no basis in fact because Walmart is not proposing to count new spaces in any area of its property that it did not previously count. Whatever area Mr. Cuthbert has expressed concerns with has always been owned by Walmart and has always been used for Walmart parking. Accordingly, the proposed Project is not changing anything in this regard. Moreover, even though the Code requires that Walmart provide 605 spaces, the Project, will provide 655 spaces, significantly exceeding the City's parking requirement. Simply put, Mr. Cuthbert has no valid argument that parking issues will affect abutting owners.

**F. THE BUILDING'S FAÇADE IS CONSISTENT WITH THE CITY'S ARCHITECTURAL GUIDELINES.**

Finally, Mr. Cuthbert – in one sentence – states that the Project is inconsistent with the City's Architectural Review Guidelines. Even Mr. Cuthbert cannot seriously believe this. The proposed Project, merely an expansion of an existing store, is completely consistent with the existing building and was designed with full consideration of the City's architectural guidelines. (See LMC § 17.104.020). Mr. Cuthbert has failed to point out how the architecture of the proposed expansion is inconsistent with the guidelines or the existing building; it is thus difficult to respond to the baseless assertions. Surely Mr. Cuthbert is not suggesting that, in order to make the store look just like the rest of the development, Walmart should build it in an outdated style or not upgrade the paint and façade.

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In conclusion, Mr. Cuthbert's appeal fails to present a single meritorious issue that has not already been decided by this Council. The essence of his appeal is that the City Council should find a way to deny the Project just because the applicant is Walmart. Fortunately, the law prohibits the City from applying its zoning and planning laws inconsistently, and in ways that discriminate against individual applicants. The City Council, in certifying the EIR, has already shown that it can, and will do the right thing to comply with the law and we are confident it will do so again. We respectfully request that the City deny Mr. Cuthbert's appeal so that Walmart can continue to serve the City as a successful business and invest in building a better City with you.

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Thank you very much for your consideration.

Very truly yours,

Ellen M. Berkowitz  
Manatt, Phelps & Phillips, LLP

cc: Ms. Laurel Barcelona, City Administrator  
Ms. Arleen Pelster, AICP, Community Development Director  
Ms. Lucille Breese, AICP, Planning Manager  
Mr. Joseph Pannone, Esq., City Attorney  
Ms. June Ailin, Esq., Assistant City Attorney  
Ms. Amelia Neufeld, Walmart Public Affairs Senior Manager  
Mr. Victor De la Cruz, Esq., Manatt, Phelps & Phillips, LLP

# EXHIBIT A

**RESOLUTION NO. 5687 (11)**

**A Resolution of The Council of the City of Lompoc, County of Santa Barbara, State of California, upholding the Appeal submitted by Ellen Berkowitz of Manatt, Phelps & Phillips on behalf of Walmart Real Estate Trust, Inc. the applicant, of the Planning Commission determination of October 13, 2010 denying certification of the Final Environmental Impact Report (FEIR 09-02). 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 Numbers: 93-450-36).  
(Planning Division File No. FEIR 09-02)**

**WHEREAS**, the Planning Commission held duly noticed public hearings on August 25, September 22, and October 13, 2010 for consideration of the Final Environmental Impact Report (FEIR 09-02) ("FEIR") for an approximately 41,433 square foot addition to an existing 104,453 square foot Walmart store, including a request to amend the approved sign program for the shopping center at 701 West Central Avenue; and

**WHEREAS**, after considering the staff report and hearing testimony from the applicant and the public, at the October 13, 2010 meeting, the Planning Commission adopted Resolution No. 682 (10) denying certification of the FEIR on a 5-0 vote due to concerns the Urban Decay Study prepared for the FEIR was out of date; and

**WHEREAS**, a timely appeal of the Planning Commission action was filed by Ellen Berkowitz of Manatt, Phelps & Phillips on behalf of Walmart Real Estate Trust, Inc. Barbara for City Council review and consideration of the Planning Commission's October 13, 2010, action; and

**WHEREAS**, the applicant submitted an Update to the Urban Decay Study for the Expansion of Lompoc Walmart dated December 17, 2010 ("Update") with information updating and supporting the original report dated December 28, 2009. The Update is included in the FEIR, and hereby incorporated in all references to the FEIR. Both the original December 2009 report and the December 2010 Update were prepared by The Natelson Dale Group, Inc. and determined that the proposed project would not result in urban decay in the City; and

**WHEREAS**, Impact Sciences, the consultant who prepared the EIR, and the City's special counsel have independently reviewed the Update to the Urban Decay Study and concluded the methodology used in the Update is consistent with industry standards and is therefore adequate for purposes of CEQA; and

**WHEREAS**, at a duly noticed public hearing on January 18, 2011, the City Council considered the staff report, heard testimony from the applicant and members of the public, and received evidence.

**NOW, THEREFORE, THE CITY COUNCIL RESOLVES AND DETERMINES AS FOLLOWS:**

**SECTION 1:** Based on the FEIR, the staff report, and the testimony and other evidence received at the public hearing, the City Council upholds the appeal.

**SECTION 2:** After reviewing and considering the FEIR and the Findings of Fact attached hereto as Exhibit A, hearing testimony, considering the evidence presented, and due deliberation on the matters presented, the City Council hereby (a) adopts the Findings of Fact attached hereto as Exhibit A, and (b) certifies the Final Environmental Impact Report (FEIR 09-02) for the Walmart Expansion Project as complete and in compliance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.).

**SECTION 3:** In certifying the Final Environmental Impact Report FEIR 09-02 for the Walmart Expansion Project, the City Council has independently reviewed the report and considered the information contained therein. Therefore, the City Council finds the Final Environmental Impact Report FEIR 09-02 for the Walmart Expansion Project reflects the independent judgment of the City of Lompoc.

**SECTION 4:** The City Council hereby adopts the Mitigation and Monitoring Program attached hereto as Exhibit B and finds the Mitigation and Monitoring Program meets the requirements of and is in compliance with Public Resources Code Section 21081.6. The City Council further finds the mitigation measures set forth in the Mitigation and Monitoring Program will mitigate all adverse environmental impacts of the proposed project to a level of less than significant and therefore no statement of overriding considerations is required.

**SECTION 5:** The Planning Commission is hereby directed to consider the Development Plan (DR 08-09) for the Walmart Expansion on the next available agenda.

**SECTION 6:** This Resolution is effective upon adoption.

The foregoing Resolution was proposed by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and duly passed and adopted by the City Council of the City of Lompoc at its regular meeting on February 1, 2011 by the following electronic vote:

AYE: Councilmember(s):

NO: Councilmember(s):

\_\_\_\_\_  
John H. Linn, Mayor  
City of Lompoc

ATTEST:

\_\_\_\_\_  
Stacy Alvarez, City Clerk  
City of Lompoc

Attachments: Exhibit A – Findings of Fact  
Exhibit B – Mitigation and Monitoring Program

# EXHIBIT B

**RECOMMENDED CEQA FINDINGS  
FOR THE WALMART EXPANSION PROJECT  
Final Environmental Impact Report  
EIR 09-02 – SCH No. 2009081045**

**INTRODUCTION**

The California Environmental Quality Act (CEQA) requires that the environmental impacts of a project be examined and disclosed prior to approval of a project. CEQA Guidelines Section 15091 provides the following guidance regarding findings:

*“(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*

*(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*

*(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*

*(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”*

CEQA Guidelines Section 15093 provides the following additional guidance regarding a Statement of Overriding Considerations:

*“(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”*

*(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.”*



The City of Lompoc, as Lead Agency, has subjected both the Draft and Final EIRs for the Walmart Expansion Project to the agency's own review and analysis, in order to ensure their adequacy and objectivity, as mandated under CEQA Guideline §15084. The Draft EIR that was circulated for public review on May 3, 2010 reflected the independent judgment of the City of Lompoc. Having received, independently reviewed, and considered the Final Environmental Impact Report for the Walmart Expansion Project, SCH #2009081045 (FEIR), as well as all other information in the record of proceedings on this matter, the following Findings of Fact regarding the Final Environmental Impact Report for the Walmart Expansion Project (Findings) are hereby adopted by the City of Lompoc for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the Walmart Expansion Project. For purposes of these Findings, references to the Final EIR for the Walmart Expansion Project include the Final EIR document as well as the Draft EIR, which is incorporated by reference.

### **PROJECT SUMMARY**

The project consists of an addition of approximately 41,433 new net square feet of retail area to an existing 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 the total square footage of the facility at approximately 151,271 square feet, inclusive of an approximately 5,385 square foot garden center.

The property is 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 in the City of Lompoc (Assessor Parcel Number 93-450-36). The existing General Plan land use designation for the site is General Commercial (GC) and the zoning designation is Planned Commercial Development (PCD).

The existing store operates between the hours of 8:00 AM and 10:00 PM, with the expanded store operating 24 hours per day. The expanded Walmart would provide for the additional employment of approximately 85 permanent staff members and 20 temporary staff members within the City of Lompoc. This number may vary during holiday seasons. The expanded Walmart would offer a full-service supermarket, garden center, pharmacy/medical clinic, optical center, and 1-hour photo processing lab.

Access to the project site is provided by Central Avenue and O Street. Central Avenue provides one signalized access driveway midway between O Street and L Street. O Street provides four access driveways for the existing Walmart store. These include two access driveways for the Shopping Center, one access driveway to the Tire & Lube Express Facility, and one access driveway located at the northern boundary of the project site for delivery trucks. The proposed project does not include any modification to existing access points.

The City of Lompoc Zoning Ordinance standard requires 1 parking space per 250 square feet of gross floor area for shopping centers. The total proposed store would equal 151,271 square feet (including the garden center), which results in 605 required parking spaces. The proposed project provides 655 spaces. In addition to these parking spaces, per Section 17.112.30 of the Lompoc Municipal Code, the project would be required to provide one motorcycle space per 20 vehicle spaces, one bicycle space per 20 motor vehicle spaces, and one loading space.

One loading dock is planned to be added under the expansion of the Walmart store and would be located along the northern portion of the Walmart building. The new loading dock well would be a depressed concrete driveway enclosed within the loading bay. The building profile at the location of the loading dock protrudes outward, which allows for the loading dock to be located parallel to the building footprint. This design results in loading activity occurring within the interior of the building.

Water service, sewer service, and storm drainage for the project site will utilize existing infrastructure. No new off-site water mains or laterals, off-site sewer lines or laterals, or off-site storm drainage lines would be required to serve the proposed project. Additionally, electricity and natural gas transmission infrastructure presently exists on, and in the vicinity of, the project site along O Street. Utility lines extending from the proposed building would connect to these existing electrical and natural gas lines. No new off-site service lines would be required to serve the proposed project.

The proposed project would consist of demolition, grading, construction, and repaving activities and would be constructed in three primary phases. Overall, the construction period is anticipated to last up to 12 months.

The City of Lompoc requires projects located along Central Avenue and in the vicinity of Highway 1 to undergo design review. The design review process applies to the site plan, exterior elevations, building design and materials, signage, landscaping, parking, alterations adjacent to public roadways, grading and drainage, and other aspects of the project, as determined by the Planning Division. As such, the discretionary approvals required for the project include the approval of a Development Plan Review Permit (DR 08-09).

The following project objectives have been identified for the Walmart Expansion Project:

- Maximize affordable grocery shopping options for residents of the City and the immediate surrounding area.
- Expand an existing retail facility to maximize employment opportunities for City residents.
- Provide a significant tax revenue generator the flexibility to adapt its existing store to meet market demands through expansion in lieu of new ground-up construction.
- Update an existing facility's architectural design to improve upon the existing façade.
- Design a project consistent with the City of Lompoc General Plan and Zoning Ordinance.
- Create a pleasant and attractive shopping experience for City residents.
- Perform interior renovation work as part of an expansion of an existing facility to incorporate a variety of sustainability features that should reduce the expanded building's demand for energy and other resources.

- 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 employees.

## ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

A Final Environmental Impact Report (FEIR) has been prepared for the proposed Walmart Expansion Project by Impact Sciences of Camarillo, under contract with the City of Lompoc. The document was prepared pursuant to the provisions of the California Environmental Quality Act (CEQA). The purpose of the FEIR is to evaluate the project and identify potential environmental impacts on the community. The EIR is required by CEQA to be "an informational document." (Public Resources Code §21061.) "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (*Ibid.*) "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure." (CEQA Guidelines §15003(i).)

A Notice of Preparation (NOP) was prepared and circulated by the City of Lompoc on August 12, 2009 for the required 30-day review period. A Scoping Meeting was held on August 26, 2009 to solicit public input regarding environmental issues that would be addressed in the EIR.

The Draft EIR (DEIR) was circulated to the State Clearinghouse on May 3, 2010 for distribution to responsible agencies. A Notice of Availability was filed with the Santa Barbara County Clerk of the Board, posted on the project site, and mailed to interested parties advising that the DEIR was available for public review and comment. The public review period for comments began on May 3, 2010 and ended on June 17, 2010.

Based upon a review of the project and the CEQA Initial Study checklist, the Draft EIR was prepared to address specific areas of concern. The Draft EIR did not identify any impacts as *Significant and Unavoidable*.

Thirty-seven comments on the DEIR were received from individuals, agencies, and interested parties:

- No. 1 Governor's Office of Planning and Research, dated June 17, 2010
- No. 2 California Department of Transportation, dated June 10, 2010
- No. 3 Santa Barbara County Air Pollution Control District, dated June 9, 2010
- No. 4 Richard and Carol Quesnel, dated June 18, 2010
- No. 5 Brad Damschroder, dated May 8, 2010
- No. 6 Frank Grube, dated May 8, 2010
- No. 7 Phyllis Cox, received June 3, 2010
- No. 8 John Corral, received June 3, 2010

- No. 9 Robena Stroud, received June 3, 2010
- No. 10 Jorice Garcia, received June 3, 2010
- No. 11 Marcelino Delierdo, received June 3, 2010
- No. 12 Keloina Martin, received June 3, 2010
- No. 13 Cindy Berry, received June 3, 2010
- No. 14 Phillip Ornelas, received June 3, 2010
- No. 15 Bob Willoughby, received June 3, 2010
- No. 16 William Goodlett, received June 3, 2010
- No. 17 LJ Martin, received June 7, 2010
- No. 18 Betty Hines, dated June 18, 2010
- No. 19 [sallie12@verizon.net](mailto:sallie12@verizon.net), dated June 17, 2010
- No. 20 Susan Goodman, dated June 17, 2010
- No. 21 Rosie Chandler, dated June 17, 2010
- No. 22 Bridget Horne, dated June 17, 2010
- No. 23 Marty Paulin, dated June 17, 2010
- No. 24 Wilhelmenia Fortson, received June 14, 2010
- No. 25 Rigaberto Samaniego, received June 14, 2010
- No. 26 Regina Todd, received June 14, 2010
- No. 27 Debbie Regis, received June 14, 2010
- No. 28 Sheri Hill, received June 15, 2010
- No. 29 Veronica Cavazos, received June 16, 2010
- No. 30 Daren Gee, undated
- No. 31 Ralph Harmon, dated June 14, 2010
- No. 32 Harry Keim, dated June 2010
- No. 33 Harry Keim, dated June 16, 2010
- No. 34 Harry Keim, dated June 16, 2010

- No. 35 Robert Cuthbert, dated June 17, 2010
- No. 36 David Grill, dated June 17, 2010
- No. 37 J. Doris Carper, received June 7, 2010

Responses were prepared to the comments and are included in the Final EIR, pursuant to CEQA Guidelines sections 15025 and 15088. City of Lompoc staff, in conjunction with Impact Sciences Incorporated, has independently prepared and reviewed the responses to comments provided in the Final EIR.

On December 17, 2010, an update to the Urban Decay Study for the Expansion of Lompoc Walmart was prepared by The Natelson Dale Group, Inc. This document supplemented the original Urban Decay Study, dated December 28, 2009, which was included in the Draft EIR. City of Lompoc staff, in conjunction with Impact Sciences Incorporated, independently reviewed the update to the Urban Decay Study, and found it to be accurate and legally adequate for purposes of CEQA. The update to the Urban Decay Study for the Expansion of Lompoc Walmart (December 17, 2010) is included and incorporated by this reference in the Final EIR for the Lompoc Expansion Project. All references to the Final EIR should be read to include this document.

Based on the City of Lompoc staff's independent analysis of the Draft and Final EIRs for the Walmart Expansion Project, SCH #2009081045 (FEIR), as well as all other information in the record of proceedings on this matter, the City's Staff Report and Findings were prepared for consideration by the Planning Commission and City Council of the City of Lompoc.

A Mitigation Monitoring and Reporting Program has been prepared and is included in the EIR as Section 9.0, pursuant to CEQA Guidelines section 15097.

Notice of the Planning Commission public hearing on August 25, 2010 was published in the Lompoc Record on August 13, 2010. A notice was mailed to all property owners of record, within 300 feet of the subject site and persons indicating interest in the project on August 13, 2010. The site was also posted. On October 13, 2010, the Planning Commission adopted Resolution No. 682 (10) denying certification of the FEIR. The determination was appealed to the City Council.

Notice of the City Council public hearing on January 18, 2011 was published in the Lompoc Record on January 7, 2011. A notice was mailed to all property owners of record, within 300 feet of the subject site and persons indicating interest in the project on January 7, 2011. Notice was also posted on the site. On January 18, 2011, the City Council certified that the EIR was complete and adequate, based on its independent review and judgment, and ordered staff to memorialize its Findings.

Therefore, the Lompoc City Council finds that this project and its accompanying FEIR have been properly noticed and proper procedures followed, ensuring full participation in the process by interested parties.

## **FINDINGS ON IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT**

Section 15128 of the California Environmental Quality Act (CEQA) Guidelines requires an Environmental Impact Report (EIR) to briefly describe any possible significant effects that were determined not to be significant and were, therefore, not discussed in detail in the EIR. The EIR includes a discussion of such environmental effects that were determined by the City of Lompoc to be either less than significant or reduced to less than significant through the incorporation of project design features and/or project conditions. The City determined that the project's potential environmental effects were not significant, following the distribution of a Notice of Preparation, responses to the Notice of Preparation, and as a result of the scoping meeting. The City finds, based upon the analysis presented in Section 8.0 of the Draft EIR, Effects Found Not to Be Significant, that the following environmental effects are not significant.

- Agriculture
- Biological Resources
- Geology and Soils
- Hydrology and Water Quality
- Mineral Resources
- Public Services
- Aesthetics
- Cultural Resources
- Land Use and Planning
- Population and Housing
- Recreation
- Utilities and Service Systems

**Finding --** The City Council hereby finds that no potentially significant environmental effects on the environment will result from the Walmart Expansion Project in the categories listed above. In addition, a number of public comment letters raised concerns regarding potential impacts to public services. The City of Lompoc has independently reviewed the comments, Section 3.0 of the Final EIR (Responses to Comments), communications with Fire Chief Linual White of the Lompoc Fire Department, and the Lompoc Police Department Memorandum dated July 15, 2010, provided in the Final EIR at Appendix B. Based on that information, the City has verified that impacts to police and fire services would be less than significant with the implementation of the project.

## **FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS WHICH CAN BE MITIGATED TO A LEVEL OF LESS THAN SIGNIFICANT**

Based on the City's review of the Walmart Expansion Project Final EIR, the City of Lompoc determined that several potentially significant impacts will be reduced to a level of less than significant with the implementation of feasible mitigation measures that are identified in the FEIR. These measures will also be adopted by the City as conditions of project approval. Based upon the environmental analysis presented in Section 4.0 of the Draft EIR, no substantial evidence has been submitted to, or identified by, the City that indicates that the impacts in the following areas would occur at levels that would require adoption of a statement of overriding considerations. Mitigation Measures identified in the Final EIR will be adopted for the following areas:

- Section 4.1 -- Air Quality
- Section 4.2 -- Noise
- Section 4.3 -- Transportation and Circulation
- Section 4.4 -- Urban Decay
- Section 4.5 -- Energy, Electricity, and Natural Gas
- Section 4.6 -- Hazards and Hazardous Materials

#### 4.1 -- Air Quality

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** -- Section 4.1 of the Final EIR (Air Quality); Appendix 4.1 to the Draft EIR (Christopher A. Joseph & Associates, *Air Quality Impact Analysis – Lompoc Walmart Expansion*, dated March 2010); Section 3.0 to the Final EIR (Responses to Comments)

**Facts in Support of Finding: Air Quality** -- As shown in Section 4.1 of the EIR, emissions generated during the construction of the proposed project would be well under the SBCAPCD guidelines; and, therefore, would be less than significant. Additionally, operational emissions generated by the proposed project after buildout would not exceed the SBCAPCD thresholds for stationary or mobile sources. In addition, the proposed project would not exceed the new vehicular trips threshold of 25 pounds per day for ROC and NO<sub>x</sub>. Therefore, with implementation of PDF 4.1-1 through 4.1-30, the proposed project would result in less than significant operational impacts on local and regional air quality.

The proposed project would not be subjected to increased health impacts relative to Toxic Air Contaminants (TACs), and impacts with respect to objectionable odors would be less than significant.

The proposed project would not result in a direct population increase, as the proposed project does not contain any residential units. Any indirect increase in population growth would only be a fraction of the growth forecasts; therefore, the proposed project would also be consistent with the 2007 Clean Air Plan (CAP) emission projections, and impacts would be less than significant.

A project that does not exceed the Santa Barbara County Air Pollution Control District (SBCAPCD) project-specific thresholds and that is consistent with the CAP is considered to have a less than significant cumulative air quality impact. Because the proposed project's net emissions would not exceed the SBCAPCD project-specific thresholds and the project is consistent with the 2007 CAP, cumulative impacts would also be less than significant.

**Facts in Support of Finding: Global Climate Change** -- The proposed project would interfere neither with the state's mandate to reduce Greenhouse Gas (GHG) emissions to 1990 levels by the year 2020 nor the state's goal to reduce GHG emissions 80 percent below 1990 levels by 2050.

As identified by the SBCAPCD, air quality standards, including GHG emissions, were calculated using South Coast Air Quality Management District (SCAQMD's) CEQA Air Quality Handbook rather than the 2006 California Commercial End-use Survey. When applying the 2006 California Commercial End-use Survey to the energy and natural gas consumption projections, consumption of electricity

by the expansion portion of the project decreased by 2% (from 561,418 kWh/yr to 549,259 kWh), and projected consumption of natural gas by the expansion portion of the project decreased by 92% (from 1,485,126 kBtu/yr to 111,768 kBtu/yr). The reduction in natural gas consumption is significant because the previous data used relied on URBEMIS2007 modeling, which utilizes factors for retail/commercial land uses that incorporate higher natural gas consumption uses (e.g. restaurant uses). The new modeling, utilizing the 2006 California Commercial End-use Survey, applies a factor designed for retail uses by building type and end use. Since energy consumption was reduced below data provided in the Draft EIR, and the Draft EIR determined that no GHG impacts would occur, the City determined that no additional GHG emission analysis was required. The analysis in Section 4.1, Air Quality (including Table 4.1-10), provides a conservative estimate of the proposed project's GHG emissions and impacts, and determines that climate change impacts resulting from the proposed Walmart expansion would be less than significant.

**Project Design Features/Mitigation Measures** – PDFs 4.1-1 through 4.1-30 will be required to be implemented as a condition of project approval. With implementation of these measures, the project's project- and cumulative-level impacts will be mitigated to a less-than-significant level.

#### 4.2 -- Noise

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** – Section 4.2 of the Final EIR (Transportation and Circulation); Appendix 4.2 to the Draft EIR (Christopher A. Joseph & Associates, *Environmental Noise Impact Analysis – Lompoc Walmart Expansion*, dated December 2009); Section 3.0 to the Final EIR (Responses to Comments)

**Facts in Support of Finding** – First, with respect to construction noise, the nearest sensitive receptors to the project site are the single-family residences located approximately 650 feet to the south of the proposed construction area, and those located 690 feet southwest of the proposed construction area. Construction noise levels experienced at the property line of the nearest homes would not result in an increase of 5 dB(A) at the single-family homes located south or southwest of the project site, and would therefore not result in a significant increase in existing ambient noise levels.

With respect to groundborne vibrations, the single-family residences could be exposed to groundborne vibration levels of approximately 46.3 VdB; therefore, these residential uses would not be exposed to vibration levels that approach the FTA threshold of 72 VdB for residential uses and impacts would be considered less than significant.

With respect to operational noise, the project site is located beyond the anticipated location of the 60 CNEL contour for the year 2015. The noise levels



at the Walmart expansion site would be well below the City's 65 dB(A) CNEL exterior noise standard for commercial uses. This would be a less than significant impact. Similarly, off-site vehicular noise and project delivery trucks were analyzed in Section 4.2, and the increase in traffic noise levels would not exceed the identified thresholds of significance.

With respect to intermittent operational noise impacts, 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. The noise levels would occur for short periods when deliveries are made and when trash collections are compacted. These noise levels would not exceed the City's requirements or the CNEL exterior noise standards for retail uses or manufacturing uses that is applicable to the nearby winery facility. Noise levels generated within the loading dock and trash collection area would not increase noise levels at any nearby sensitive receptors (the nearest homes to the project site). Similarly, noise impacts from HVAC and parking facilities would not result in a significant impact, and would not increase existing noise levels at any nearby sensitive receptors (the homes nearest the project site). Impacts would be less than significant.

With respect to cumulative noise impacts, development of the proposed project in conjunction with other new development projects would result in an increase in construction-related and traffic-related noise in this already urbanized area of the City of Lompoc. However, each of the related projects would be subject to the Lompoc Municipal Code, which limits the hours of allowable construction activities. Conformance with these City policies would reduce construction-related noise for the related projects. Cumulative construction noise-related impacts would be less than significant. Additionally, cumulative traffic-related noise impacts to the surrounding environment would be less than significant.

**Project Design Features/Mitigation Measures** -- No mitigation measures are required as a condition of project approval, because project- and cumulative-level impacts would be less than significant.

#### **4.3 -- Transportation and Circulation**

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** -- Section 4.3 of the Final EIR; Appendix 4.3 to the Draft EIR (Associated Transportation Engineers, *Traffic and Circulation Study*, dated October 15, 2009); Appendix 4.3 of the Final EIR (Associated Transportation Engineers, *Updated Cumulative Traffic Analysis for the Walmart Expansion Project*, dated June 17, 2010); Section 3.0 to the Final EIR (Responses to Comments)

**Facts in Support of Finding** – As shown in Section 4.3 of the EIR, the trip generation analysis assumes a net increase of 45,000 square feet (sf) in order to provide a conservative analysis (the project only proposes a 41,433-square-foot addition), which would generate a total of 2,391 average daily trips (ADTs), 76 AM peak hour trips, and 208 PM peak hour trips (see Table 4.3-3).

With respect to construction-related traffic, conditions in the project area during construction activities would be disrupted on a short-term basis, primarily due to the hauling of equipment and materials on and off site. In order to minimize potential conflicts between construction activity and through traffic, a construction traffic control plan would be developed for use during construction activity. The plan would identify all traffic control measures, signs, and delineators to be implemented by the construction contractor during the duration of demolition and construction activity and shall comply with the provisions of the City of Lompoc "Standard Requirements for the Design and Construction of Subdivisions and Special Developments." With the implementation of a traffic control plan and City requirements set forth in Project Design Features PDF 4.3-1 through PDF 4.3-9, and because the majority of vehicle trips associated with construction activities would occur during off-peak hours, potential impacts would be reduced to less than significant.

With respect to operational impacts at a project-level of analysis, the existing levels of service for the seven studied intersections within the study area are all at an acceptable LOS C or better. The project would not significantly impact the operation of the area intersections during either the AM or PM peak hour periods on weekdays or weekends. Impacts would be less than significant.

Additionally, the H Street/Central Avenue intersection, within the project's study area, is located on the Congestion Management Program (CMP) roadway network. Therefore, CMP analysis was performed on this intersection. This analysis showed that the H Street/Central Avenue intersection would operate in the LOS D range during the PM peak period with only cumulative conditions and cumulative plus proposed project conditions. The proposed project would add 73 peak hour trips to the intersection, which exceeds the CMP threshold of 20 added trips for intersections operating in the LOS D range. Therefore, the impacts would be potentially significant. Implementing Mitigation Measure MM 4.3-1, which would include a fair-share contribution toward the installation of dual left-turn lanes on the northbound and southbound approaches, would provide LOS B under cumulative plus proposed project conditions and reduce the CMP cumulative impact to less than significant.

No significant impacts were found to affect site access, emergency access, or parking facilities for the project site. Additionally, the proposed project will not impact existing public transportation facilities or bikeways, and COLT Route 2-2A serves the project site via bus stops on the north and south sides of Central Avenue at the shopping center, with service provided from 6:30 AM to 8:00 PM on weekdays, and from 9:00 AM to 5:00 PM on Saturday.

The proposed project would generate a minor increase in traffic during the A.M. peak period when school children are going to the area schools. The project would result in a net increase of 10 trips on "V" Street, 17 trips on "O" Street, and

7 trips on "H" Street south of Central Avenue during the A.M. peak hour period. These minor additions would not significantly impact pedestrian safety (including school children). Furthermore, the City of Lompoc Police Department provides the school districts in the Lompoc area with crossing guards at potentially unsafe locations, specifically at H, O, and V, Streets in the area of nearby schools. These existing crossing guards would alleviate any unsafe traffic conditions.

With respect to cumulative impacts, it came to the City's attention during the public comment period that the Draft EIR's related projects list, which was used to calculate cumulative traffic impacts, inadvertently excluded some projects for which entitlement applications had been filed prior to this Draft EIR's Notice of Preparation. To ensure that the proposed project's cumulative impacts were fully analyzed, a revised traffic analysis was prepared that accounted for the previously omitted related projects pending review by the City. The revised traffic analysis, which the City has independently reviewed for accuracy, is in Appendix 4.3 to the Final EIR, and the revised calculations are provided in Section 4.0, Errata Pages of the Final EIR. The revised data presented in this section at Tables 4.3-11 and 4.3-12 show that the H Street/Central Avenue intersection is forecast to operate at LOS D during the PM peak hour period under cumulative conditions (without the proposed project) and cumulative plus the proposed project conditions, which exceeds the City's LOS C performance standard. The remaining study-area intersections are forecast to operate at LOS C or better under cumulative and cumulative plus project conditions. However, with implementation of Mitigation Measure MM 4.3-1, which includes a fair-share contribution toward the installation of dual left-turn lanes on the northbound and southbound approaches, the intersection is forecast to operate at LOS C under cumulative plus the proposed project PM peak hour conditions, thus meeting the City's LOS C standard.

As the errata pages indicate, the changes to the analysis in the Draft EIR are negligible and no changes in cumulative LOS values from those reported in the Draft EIR resulted from the additional related projects. With the implementation of PDFs 4.3-1 through 4.3-9 and Mitigation Measure 4.3-1, all of the proposed project's traffic impacts remain less than significant.

**Project Design Features/Mitigation Measures** – PDFs 4.3-1 through 4.3-9 and Mitigation Measure 4.3-1 will be required to be implemented as a condition of project approval. With implementation of these measures, the project's project- and cumulative-level impacts will be mitigated to a less-than-significant level.

#### **4.4 -- Urban Decay**

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** – Section 4.4 of the Final EIR (Urban Decay); Appendix 4.4 to the Draft EIR (The Natelson Dale Group, Inc., *Urban Decay Study for Expansion of Lompoc Walmart*, dated December 28, 2009); Section 3.0 to the Final EIR

(Responses to Comments); The Natelson Dale Group, Inc., Update to Urban Decay Study for Expansion of Lompoc Walmart, dated December 17, 2010.

**Facts in Support of Finding** -- As shown in Section 4.4 of the EIR, the trade area currently has four major supermarkets—Albertsons, Vons (2), and Foods Co.—which are all located in the City of Lompoc, totaling an estimated 183,042 square feet (sf). In addition, a 15,000-square-foot specialty supermarket, Fresh & Easy, recently opened in the trade area. Although the trade area has a relatively high number of vacancies, due in part to the current severe economic downturn, there do not appear to be long-term indications of physical decline or urban decay in the trade area. With one exception (a vacant restaurant located at 1601 North H Street that exhibits graffiti and signs of deferred maintenance), the vacant stores do not exhibit significant deterioration of the building structures and/or their surroundings.

The proposed project would create more competition for goods in the local retail and grocery markets; however, based on the analysis provided in Section 4.4 and Appendix of the Draft EIR and the Update to Urban Decay Study for Expansion of Lompoc Walmart (December 17, 2010), it would not cause a chain reaction of store closures and long-term vacancies that would threaten to dilapidate or decay the urban area in the City of Lompoc. Overall, the approximately 40,000 square foot expansion is too small to have a tangible effect on Lompoc's physical landscape. Accordingly, although in a worst case scenario one supermarket could close, there is no foreseeable significant change to Lompoc's strong community fabric evident in the upkeep of City streets, and the lack of major graffiti, litter, or other tangible signs of urban decay.

Although the current vacancies in the downtown region, and any potential further vacancies, are clearly undesirable from the standpoint of commercial property owners and the City of Lompoc, it is not likely to result in urban decay, based on the analysis provided in Section 4.4 and Appendix of the Draft EIR and the Update to Urban Decay Study for Expansion of Lompoc Walmart (December 17, 2010). Urban decay is a potential consequence of a downward spiral of store closures and long-term vacancies when property owners reduce property maintenance activities below that required to keep their properties in good condition. Store closures and vacancies, in and of themselves, do not meet the above criteria. While the closure of a business is clearly an impact to the owners and employees of that business, within the context of CEQA it is only significant if it results in sustained vacancies which in turn result in deterioration of the physical condition of the vacant building(s), thereby affecting the environment. Based on the analysis in the EIR, the fact that the supermarkets in the region have been well maintained, and due to recent examples of successful re-tenanting of vacant supermarkets and big-box stores, the City finds that property owners would have sufficient economic incentives to maintain these properties based on the potential for some type of retail reuse. The Draft EIR 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 Draft and Final EIR's analyses 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. Accordingly, although it is possible that this or another store in Lompoc may close, there is no reason to believe that conditions of urban decay would ensue, and, therefore, potential impacts on urban decay would be less than significant.

The project's potential cumulative impacts were analyzed based on all known pending retail projects (including the proposed project) in the trade area. At the time of the urban study, there were two known planned and/or pending commercial retail projects in the trade area, and neither are expected to have an impact on grocery store sales or potential urban decay. (See Section 4.4 and Appendix of the Draft EIR; Update to Urban Decay Study for Expansion of Lompoc Walmart (December 17, 2010).) Therefore, the City finds that cumulative impacts would be less than significant.

**Project Design Features/Mitigation Measures** – No mitigation measures are required as a condition of project approval, because project- and cumulative-level impacts would be less than significant.

#### **4.5 -- Energy, Electricity, and Natural Gas**

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** – Section 4.5 of the Final EIR (Energy, Electricity, and Natural Gas); Appendix 4.5 to the Draft EIR (Christopher A. Joseph & Associates, *Technical Study – Energy Conservation Electricity and Natural Gas for Lompoc Walmart*, dated December 2009); Section 3.0 to the Final EIR (Responses to Comments)

**Facts in Support of Finding** -- As shown in Section 4.5 of the EIR, the proposed project is projected to require 549,259 kilowatt hours (kWh) of electricity per year, and 111,768 kilo British Thermal Units (kBtu) of natural gas per year, based on calculations and factors derived from the 2006 California Commercial End-use Survey. As the proposed project would be an expansion of an existing building, necessary infrastructure is in place and there would be no need for new distribution infrastructure or capacity-enhancing alterations to existing facilities. The City's electric utility routinely undertakes expansion and/or modification of electricity distribution infrastructure in order to serve future growth in the City as it is required in the normal process of providing electrical service. Additionally, the City purchases renewable energy from various sources namely geothermal and hydroelectricity. Also in 2012, the City will purchase additional energy from a natural gas power plant being built near Lodi. The electricity and natural gas supplies currently available to the City are adequate to accommodate the needs of the proposed project, and there are no existing or foreseeable supply constraints that would prevent the City from obtaining additional energy resources.

Title 24 of the California Code of Regulations establishes energy conservation standards for new construction, including residential and non-residential buildings. The proposed project would comply, and in many cases exceed, Title 24 energy conservation standards for insulation, glazing, lighting, shading, and water- and space-heating systems in all new construction. The project will implement modern energy-efficient construction materials and practices, including, but not limited to: the use of poured concrete that includes 15 to 20 percent fly ash; recycling of plastic, steel, and other materials; energy efficient HVAC units; implementation of a central energy management system; the use of light sensors; implementation of a dehumidifying system; condensation-resistant freezer door lining materials; heat recapture for water heating; installation of white roofs; a retrofit program to more efficient lighting fixtures; LED signage illumination; water-conservation fixtures; and ozone-friendly refrigerants. Therefore, project impacts to energy resources would be less than significant.

Cumulative projects in the region must also abide by the same statutes, regulations, and programs that mandate or encourage energy conservation. Utility providers are also required to plan for necessary upgrades and expansions to their systems to ensure that adequate service will be provided for other projects and there is no evidence to suggest that the City will not be able to purchase the necessary electricity. As such, cumulative energy supply impacts would be less than significant.

**Project Design Features/Mitigation Measures** – No mitigation measures are required as a condition of project approval, because project- and cumulative-level impacts would be less than significant.

#### **4.6 -- Hazards and Hazardous Materials**

**Finding** -- The City Council hereby finds that existing regulatory requirements, project design features, and/or project conditions have been incorporated into the Walmart Expansion Project which avoid or substantially lessen the potentially significant environmental effect on the environment to below a level of significance.

**References** – Section 4.6 of the Final EIR (Hazards and Hazardous Materials); Appendix 4.6 to the Draft EIR (Rincon Consultants, Inc., *Phase I Environmental Site Assessment for Walmart Store No. 1989*, dated July 11, 2008); Appendix 8.0 to the Draft EIR (Federal Aviation Administration, *Determination of No Hazard to Air Navigation*, dated August 25, 2009); Section 3.0 to the Final EIR (Responses to Comments)

**Facts in Support of Finding** – The existing Walmart sells and stores materials considered to be hazardous such as paint and paint thinners, bleaches, household cleaning substances, pesticides, fertilizers, pool chemicals, and automotive materials such as new and used oil, batteries, and tires. The expansion of the Walmart store could increase the use and sale of these materials on site due to an increase in available floor space. Additionally, storage of containers of spilled chemicals, propane tanks and gasoline canisters is contained in a portion of the warehouse area of the Walmart store. The storage containers appeared to be properly stored, sealed, and labeled and

were located within appropriate secondary containments. A variety of state and federal laws govern the transport, generation, treating, or disposal of hazardous wastes. The City of Lompoc and Santa Barbara County have the authority to inspect on-site uses and to enforce state and federal laws governing the storage, use, transport, and disposal of hazardous materials and wastes. In addition, the City of Lompoc and Santa Barbara County currently require that an annual inventory of hazardous materials in use on site and a business emergency plan be submitted for an annual review, as required by Chapter 6.95 of the California Health and Safety Code. Chapter 6.95 of the California Health and Safety Code requires any business handling or storing in excess of 55 gallons or 500 pounds of a solid or liquid hazardous material or 200 cubic feet of gas to submit hazardous materials management business plans (HMBPs). Given the type and quantity of potentially hazardous materials at the site, coupled with California Health and Safety Code Chapter 6.95 compliance, impacts are considered to be less than significant with the implementation of the project.

As shown in Section 4.6 and Appendix 4.6 of the Draft EIR, known or suspect environmental conditions associated with the project site include the following: the former agricultural use of the site; the former presence of a waste oil underground storage tank (UST) on the site; the operation of the automotive Tire & Lube Express on the site; and the presence of an oil/water separator within the Tire & Lube Express on the site. However, since the site was graded prior to the construction of the Walmart store and the majority of the site has been paved, any residual pesticides are considered a de minimis condition, not warranting further investigation. Furthermore, the former waste oil UST on site was removed from the project site intact in 1999, with no visible cracks or breaches and no staining of the soil beneath the removed UST. Laboratory analytical results of the soil samples collected below the tank and associated product piping indicated that it was not contaminated, and closure for the former UST was granted by the SBCFPD. Consequently, potential impacts associated with the former UST are considered to be less than significant.

With respect to the Tire & Lube Express facility on the northwest portion of the project site, this facility contains several aboveground tanks of waste oil and unused motor oil, several 55-gallon drums of automotive lubricants, battery storage, tire storage, and the presence of an underground oil/water separator. The proposed project would eliminate the Tire & Lube Express; however, there is a possibility that undetected soil contamination could be present within this area. Consequently, impacts are considered to be potentially significant. However, with implementation of Mitigation Measures 4.6-1 and 4.6-2, these impacts are reduced to a less than significant level.

Olive Grove Charter School, located approximately 750 feet to the southeast of the project site, was not found to be affected by the hazardous materials stored on the project site. The proposed project is not located on a site that is included on a list of hazardous materials sites, pursuant to Government Code Section 65962.5 (Cortese List).

With respect to surrounding airports (both Lompoc Airport and Vandenberg Air Force Base), reports were furnished to the City of Lompoc verifying that no aircraft safety hazard impacts would occur with the implementation of the project as designed.

With respect to emergency response or evacuation routing plans, implementation of the project would neither result in a reduction of the number of lanes along these roadway segments in the area nor result in the placement of an impediment to the flow of traffic such as medians. In the event of an emergency, all lanes would be opened to allow traffic to flow in one direction; traffic would be controlled by appropriate agencies, such as the Lompoc Police Department. During the construction activities, the project would not include short-term single-lane closures along these routes. No impact would occur with the implementation of the project.

Cumulative impacts were analyzed in Section 4.6 of the Draft EIR, and based on that evaluation, the City of Lompoc determines that the project's contribution to these impacts would not be cumulatively considerable and would be less than significant. This includes the incremental increase in the amount of hazardous materials transported, used, treated, stored, and disposed areawide, which is subject to Title 24 of the Code of Federal Regulations and Chapter 6.95 of the California Health and Safety Code. This also includes the possibility that cumulative projects could expose construction workers and other persons to contaminated soil or groundwater. Future development would adhere to applicable federal, state, or local laws, and regulations that govern underground storage tanks, as well as the disposal and cleanup of contaminants. Mitigation has been included for the project that would reduce any impact associated with upset or accident conditions, and, therefore, impacts would not be cumulatively significant.

**Project Design Features/Mitigation Measures** – Mitigation Measures 4.6-1 through 4.6-2 will be required to be implemented as a condition of project approval. With implementation of these measures, the project's project- and cumulative-level impacts will be mitigated to a less-than-significant level.

## **FINDINGS ON MITIGATION MEASURES**

The City Council finds, based on substantial evidence in the Final EIR for the Walmart Expansion Project and all other information in the record of proceedings on this matter, that no mitigation measures considered for application to this project that would serve to avoid or lessen significant and unavoidable impacts have been rejected or found to be infeasible. The mitigation measures presented in the record of proceedings will be effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. Therefore, all mitigation measures presented in the EIR will be included in the adopted mitigation monitoring and reporting program (MMRP). The MMRP will be designed to ensure compliance during project implementation, and its implementation is a condition of the project's approval.



## **FINDINGS ON SIGNIFICANT AND UNAVOIDABLE IMPACTS**

The City Council finds that no impacts of the proposed project have been determined to be significant and unavoidable.

## **FINDINGS ON PROJECT ALTERNATIVES**

CEQA requires that reasonable alternatives to the proposed project be reviewed in the EIR. The alternatives should not be remote or speculative and do not need to be analyzed in the same level of detail as the proposed project. CEQA Section 15126.6 (c) states, "[a]mong the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts. Section 5.0, Alternatives, in the Draft EIR discusses each of the identified project alternatives in greater detail. The City Council finds that the project Alternatives 1, 2, 3, and 4 analyzed in EIR 09-02 for the Walmart Expansion Project do not meet the objectives of the project set forth in the EIR's project description, as explained in below:

### **Alternative 1: No Project /No Development Alternative**

Under the No Project/No Development Alternative the site would not be expanded with additional square feet for the existing store or include a grocery component; it would remain in its current state. None of the impacts associated with construction and operational activities would occur if this alternative were selected.

The City Council finds that Alternative 1 would not meet the following project objectives/benefits:

- Maximize affordable grocery shopping options for residents of the City and the immediate surrounding area.
- Expand an existing retail facility to maximize employment opportunities for City residents.
- Provide a significant tax revenue generator with the flexibility to adapt its existing store to meet market demands through expansion in lieu of new ground-up construction.
- Update an existing facility's architectural design to improve upon the existing facade.
- Design a project consistent with the City of Lompoc General Plan and Zoning Ordinance.
- Perform interior renovation work as part of an expansion of an existing facility to incorporate a variety of sustainability features that would reduce the expanded building's demand for energy and other resources.

This alternative is environmentally superior to the proposed project in all respects. However, based on these factual findings, the City Council rejects the No Project Alternative (Alternative 1) because it does not satisfy basic project objectives and because it would deprive the City of several public benefits, including providing additional jobs, and updating the stores architectural design.

### **Alternative 2: 30,000-square foot Expansion with No Grocery Alternative**

This alternative would include the development of 30,000 square feet (11,433 square feet less than the proposed project) of space consisting of a general merchandise sales area, stockroom/receiving area, an ancillary area, and an outdoor garden center. The grocery sales area and grocery storage and ancillary areas would not be developed.

This alternative would result in slightly less air quality impacts, due to the fact that the size of the expansion would be reduced, and would therefore result in fewer emissions. This alternative would generate 797 fewer average weekday daily trips and generate 961 fewer average weekend daily trips from the project site, thus traffic and roadway noise impacts would be slightly reduced when compared to those identified for the proposed project. However, neither this alternative nor the proposed project would result in significant air quality, noise, or traffic impacts on either a project- or cumulative-level (with mitigation). As no grocery store component would be constructed, this alternative would have a smaller potential to retain sales within the Lompoc retail trade area (LRTA), and would result in smaller potential for economic benefits within the LRTA than the proposed project. The proposed project did not result in any project- or cumulative-level urban decay impacts; however, as this alternative would not construct a grocery store component, there would be no reasonable likelihood of related grocery store closures as a result of its implementation. Therefore, potential for urban decay related impacts of this alternative would be less than the proposed project. Energy impacts would be substantially similar to those projected for the proposed project, and would be less than significant. Additionally, impacts resulting from hazards and hazardous materials would be substantially similar to those projected for the proposed project, and would be less than significant (with mitigation).

The City Council finds that Alternative 2 (30,000-square foot Expansion with No Grocery) would not meet the following project objectives/benefits:

- Maximize affordable grocery shopping options for residents of the City and the immediate surrounding area.
- Expand an existing retail facility to maximize employment opportunities for City residents.
- Provide a significant tax revenue generator with the flexibility to adapt its existing store to meet market demands through expansion in lieu of new ground-up construction.

Based on these factual findings, the City Council rejects Alternative 2 (30,000-square foot Expansion with No Grocery) because it does not satisfy basic project objectives and because it would deprive the City of several public benefits.

### **Alternative 3: 20,000-square-foot Expansion, No Grocery, and Tire & Lube Express Alternative**

This alternative would include the development of 20,000 square feet (21,433 square feet less than the proposed project) of space consisting of a general merchandise sales area, stockroom/receiving area, an ancillary area, an outdoor garden center, and the Tire & Lube Express. The grocery sales area and the grocery storage and ancillary areas would not be developed.

This alternative would result in less air quality impacts, due to the fact that the size of the expansion would be reduced, and would produce 45 percent of the mobile emissions and 50 percent of the stationary emissions of the proposed project. This alternative would generate 1,328 fewer weekday average daily trips and 1,602 fewer average weekend daily trips from the project site, thus traffic and roadway noise impacts would be reduced when compared to those identified for the proposed project. However, neither this alternative nor the proposed project would result in significant air quality, noise, or traffic impacts on either a project- or cumulative-level (with mitigation). As no grocery store component would be constructed, this alternative would have a smaller potential to retain sales within the Lompoc retail trade area (LRTA), and would result in smaller potential for economic benefits within the LRTA than the proposed project. The proposed project did not result in any project- or cumulative-level urban decay impacts; however, as this alternative would not construct a grocery store component, there would be no reasonable likelihood of related grocery store closures as a result of its implementation. Therefore, potential for urban decay related impacts of this alternative would be less than the proposed project. Energy impacts would be slightly less to those projected for the proposed project; however, both Alternative 3 and the proposed project would result in less than significant impacts to energy resources. Additionally, impacts resulting from hazards and hazardous materials would be substantially similar to those projected for the proposed project, and would be less than significant (with mitigation).

The City Council finds that Alternative 3 (20,000-square-foot Expansion, No Grocery, and Tire & Lube Express) would not meet the following project objectives/benefits:

- Maximize affordable grocery shopping options for residents of the City and the immediate surrounding area.
- Expand an existing retail facility to maximize employment opportunities for City residents.
- Provide a significant tax revenue generator with the flexibility to adapt its existing store to meet market demands through expansion in lieu of new ground-up construction.

Although each alternative would only incrementally reduce the impacts, this is considered the "environmentally superior alternative," as defined by CEQA. The reduction of floor area would cause an incremental reduction of the overall level of impact when compared to the proposed project. Additionally, due to the exclusion of a grocery component from Alternative 3, it is unlikely that an existing grocery store would close down as a result of the project. Consequently, the possibility of physical manifestations of urban decay would be reduced (e.g., litter, boarded-up windows, graffiti, etc.); and, therefore, Alternative 3 is considered to have less potential for urban decay impacts than the proposed project.

However, by removing the grocery store facility and reducing the expansion of the existing building, employment opportunities in the area would not be created to their maximum potential. Additionally, residents in the project area will not be served by the grocery store component. The reduced expansion and removal of grocery facilities will also proportionately reduce tax revenues that would benefit the City.

Furthermore, the proposed project does not result in any significant and unavoidable impacts in any environmental category, after implementation of mitigation. Therefore, none of the alternatives effectively lessen or avoid significant impacts that would otherwise result from the Project.

Based on these factual findings, the City Council rejects Alternative 3 (20,000-square-foot Expansion, No Grocery, and Tire & Lube Express) because it does not satisfy basic project objectives and because it would deprive the City of several public benefits.

#### **Alternative 4: 10,000-square-foot Expansion with Only Grocery**

This Alternative would include the development of 10,000 square feet (31,433 square feet less than the proposed project) of space consisting of a grocery sales area, a grocery storage area, and ancillary grocery uses. The general merchandise sales area, stockroom and receiving area, the ancillary area, and the outdoor garden center would not be developed.

This alternative would result in slightly less air quality impacts, due to the fact that the size of the expansion would be reduced, and would produce 25 percent of the mobile emissions and 25 percent of the stationary emissions of the proposed project. This alternative would generate 1,860 fewer average weekday daily trips and generate 2,224 fewer average weekend daily trips from the project site, thus traffic and roadway noise impacts would be reduced when compared to those identified for the proposed project. However, neither this alternative nor the proposed project would result in significant air quality, noise, or traffic impacts on either a project- or cumulative-level (with mitigation). As this alternative would construct a smaller grocery store component than would the proposed Project, there would be less likelihood of related grocery store closures as a result of its implementation, which would further reduce the possibility of urban decay in the future. However, urban decay is not considered a foreseeable or significant impact of the project. Energy impacts would be slightly less to those projected for the proposed project; however, both Alternative 4 and the proposed project would result in less than significant impacts to energy resources. Additionally, impacts resulting from hazards and hazardous materials would be substantially similar to those projected for the proposed project, and would be less than significant (with mitigation).

The City Council finds that Alternative 4 (10,000-square-foot Expansion with Only Grocery) would not meet the following project objectives/benefits:

- Maximize affordable grocery shopping options for residents of the City and the immediate surrounding area.
- Expand an existing retail facility to maximize employment opportunities for City residents.
- Provide a significant tax revenue generator with the flexibility to adapt its existing store to meet market demands through expansion in lieu of new ground-up construction.

The reduction of floor area would cause an incremental reduction of the overall level of impact when compared to the proposed project. Additionally, due to the smaller grocery component, it is less likely that an existing grocery store would close down as a result of this alternative. However, by removing the grocery store facility and reducing the expansion of the existing building, employment opportunities in the area would not be created to their maximum potential. Additionally, residents in the project area will not be served by the project's full-sized grocery store component. The reduced expansion will also proportionately reduce tax revenues that would benefit the City.

Furthermore, the proposed project does not result in any significant and unavoidable impacts in any environmental category, after implementation of mitigation. Therefore, none of the alternatives effectively lessen or avoid significant impacts that would otherwise result from the Project.

Based on these factual findings, the City Council rejects Alternative 4 (10,000-square-foot Expansion with Only Grocery) because it does not satisfy basic project objectives and because it would deprive the City of several public benefits.

#### **STATEMENT OF OVERRIDING CONSIDERATIONS**

The Lompoc City Council determines that there are no unavoidable significant adverse environmental impacts that will not be fully mitigated. Therefore, there are no environmental impacts identified which require the adoption of a statement of overriding considerations concerning the project's unavoidable significant impacts to explain why the project's benefits override and outweigh its unavoidable impacts (see CEQA Guidelines Section 15093).

#### **STATEMENT OF LOCATION AND CUSTODIAN OF DOCUMENTS**

In accordance with Public Resources Code Section 21081.6(d), the documents which constitute the record of proceedings related to the City's consideration of the Walmart Expansion Project are located in the Planning Division Office at the Lompoc City Hall, 100 Civic Center Plaza, Lompoc, California, 93436 and the custodian of said records is the Secretary of the Planning Commission.

#### **FINDINGS ON MITIGATION MONITORING PROGRAM**

Section 21081.6 of the Public Resources Code requires that when making findings required by Section 21081(a) of the Public Resources Code, the Lead Agency approving a project shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval, in order to ensure compliance with project implementation and to mitigate or avoid significant effects on the environment. The City Council hereby finds that:

- 1) A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the project, and the mitigation measures therein are made a condition of project approval. The MMRP is incorporated herein by reference and is considered part of the record or proceedings for the proposed project.
- 2) The MMRP designates responsibility and anticipated timing for the implementation of mitigation. The City will serve as the overall MMRP coordinator. The property owner will be primarily responsible for ensuring that all project mitigation measures are complied with. Mitigation measures are programmed to occur at, or prior to, specific timelines identified in the MMRP, thereby integrating mitigation monitoring into existing City processes, as encouraged by CEQA. In each instance, implementation of the mitigation measure will be accomplished in parallel with another activity associated with the project.

- 3) The MMRP prepared for the project has been adopted concurrently with these Findings. The MMRP meets the requirements of Section 21021.6 of the Public Resources Code. The City will use the MMRP to track compliance with project mitigation measures. The MMRP will remain available for public review during the compliance period.

#### **SECTION 21082.1(c)(3), 15091, and 15092 FINDINGS**

Based on the foregoing findings and the information contained in the record, the City Council of the City of Lompoc has made one or more of the following findings with respect to the significant effects of the project:

- 1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- 2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Based on the foregoing findings and the information contained in the record, and as conditioned by the MMRP, all significant effects on the environment due to the project have been eliminated or substantially lessened where feasible. (See CEQA Guidelines §§15091 and 15092.)

Pursuant to Public Resources Code §21082.1(c)(3), the City Council of the City of Lompoc hereby finds that the Final EIR reflects the independent judgment of the lead agency.

# EXHIBIT C

**RESOLUTION NO. 683 (11)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOMPOC APPROVING A DEVELOPMENT PLAN (DR 08-09) FOR THE WALMART EXPANSION PROJECT AT 701 WEST CENTRAL AVENUE**

**WHEREAS**, a request was received from Amelia Neufeld, representing the Walmart Real Estate Trust, the property owner, for consideration of 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 proposed Walmart Expansion project is located at 701 West Central Avenue on a 12.03-acre site at the northeast corner of the intersection of West Central Avenue and North O Street (Assessor Parcel Number: 93-450-36); and

**WHEREAS**, the Project was considered by the Planning Commission at a duly-noticed public meeting on February 9, 2011; and

**WHEREAS**, at the meeting of February 9, 2011 City Planning staff presented the staff report and discussed proposed Conditions of Approval and staff answered Planning Commissioners' questions and addressed their concerns; and

**WHEREAS**, at the meeting of February 9, 2011, Amelia Neufeld, representing the Walmart Real Estate Trust, the property owner, Jeff Wagner, eda-Design Professionals, Civil Engineer, Ellen Berkowitz, Esq. of Manatt[Phelps]Phillips, and Mathew Morrill, of Perkowitz + Ruth Architect, presented the project and answered Planning Commissioners' questions and addressed their concerns; and

**WHEREAS**, at the meeting of February 9, 2011, Richard Morris, Karen Frankengerger, Eric Timmons, Ken Smith, Doug Conley, and John Spooner, spoke in favor of the project; and

**WHEREAS**, at the meeting of February 9, 2011, Robert Cuthbert, Harry Keim, Rod Smith, and Fanny Davis Diehl spoke in opposition to the project; and

**WHEREAS**, the City Council adopted Resolution No. 5687 (11) on February 1, 2011 and certified the Final Environmental Impact Report (FEIR 09-02) for the project including CEQA Findings of Fact and the Mitigation Monitoring Program (MMP) as required by the California Environmental Quality Act (CEQA).

**NOW, THEREFORE, THE LOMPOC PLANNING COMMISSION RESOLVES AS FOLLOWS:**

**SECTION 1:** After hearing testimony, considering the evidence presented, and due deliberation of the matters presented, the Planning Commission finds that the proposed project, as conditioned, meets the requirements of the Lompoc Municipal Code and is consistent with the applicable policies and development standards, therefore the Planning Commission finds that:



- 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.

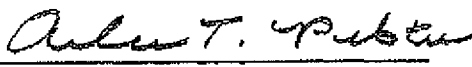
**SECTION 2:** Based upon the foregoing, DR 08-09 is approved as the Development Plan for the Walmart Expansion Project, as reviewed by the Planning Commission February 9, 2011, subject to the attached Conditions of Approval (Exhibit A), Mitigation Measures (Exhibit B), and sign criteria (Exhibit C) which are incorporated by reference as if fully set forth herein.


The foregoing Resolution, on motion by Commissioner Fink, seconded by Commissioner Gonzalez, was adopted at the Planning Commission meeting of February 9, 2011 by the following vote:

**AYES:** Commissioners Leach, Fink, Gonzalez

**NOES:** Commissioner Griffith

**NOT PARTICIPATING:** Commissioner Hain

  
Arleen T. Pelster, AICP, Secretary

  
Nicholas Gonzalez, Chair

Attachment: Exhibit A – Conditions of Approval  
Exhibit B – Mitigation Measures  
Exhibit C – Sign Criteria