TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Members of Town Council
From: Nicole Sauviat Criste, Consulting Planner
Through: Shane Stueckle, Deputy Town Manager
Date: June 16, 2008
For Town Council Meeting: June 25, 2008

Subject: Specific Plan 01-04, Conditional Use Permit 02-04 and Environmental Assessment 09-03, Super Wal-mart; supplemental information to May 22, 2008 Town Council staff report.

Prior Council Review: May 22, 2008

Recommendation: As recommended by the Planning Commission:

1. Adopt a Statement of Overriding Considerations for the Yucca Valley Retail Center Environmental Impact Report (State Clearinghouse Number 2004071127), and adopt the accompanying Resolution; and
2. Approve Specific Plan 01-04, based on the findings and conditions of approval contained in the staff report and Introduce the accompanying Ordinance; and
3. Approve Conditional Use Permit 02-04, based on the findings and conditions of approval contained in the staff report, and adopt the accompanying Resolution.

Background:

On May 22, 2008, the Town Council considered the above referenced applications to allow the development of a Super Wal-mart store at the southeast corner of Highway 62 and Avalon. Two days prior to that meeting, Town staff received written communication from the Center for Biological Diversity, which was distributed to the Council prior to the meeting. During the May 22 public hearing, the Council received additional written materials from John McClendon. The purpose of this memorandum is to provide staff analysis of the two submittals for the Council's consideration.

Reviewed By:	Town Manager	Town Attorney	Mgmt Services	Dept Head

___ Department Report	X Ordinance Action	X Resolution Action	X Public Hearing
___ Consent	___ Minute Action	___ Receive and File	___ Study Session

Center for Biological Diversity Letter of May 20, 2008

The letter from the Center uses a roman numeral listing of issues. The following analysis duplicates that numbering system.

I. Greenhouse Gas Analysis

The writer asserts the inadequacy of the EIR's analysis of greenhouse gas emissions, and references settlement agreement between the County of San Bernardino and the Attorney General's office.

The EIR analysis is adequate, and the referenced settlement agreement is irrelevant. As detailed in Response to Comments A-1 through A-10, the EIR used recognized and established State documentation, to develop the greenhouse gas discussion in the document. Also as detailed in Response to Comments A-1, the courts have found that projects are not required to analyze greenhouse gases on a quantitative level, as no existing credible methodology has been developed or promulgated by the State. The EIR utilizes the data available to analyze the issue to the greatest extent possible. The analysis is adequate, and meets the requirements of CEQA.

II. Understated Emissions

The writer states that the EIR under-estimates emissions associated with greenhouse gases, and provides an excerpt from another EIR as documentation.

The analysis referenced in the letter pertains to analysis provided in Response to Comments A-10. When the tables in that analysis are compared to Table 4.2.9 of the other EIR, the teragram of carbon dioxide equivalent (the measurement used in both documents), is not significantly different, particularly considering the fractional results. Specifically:

Pollutant	Yucca Valley EIR	Suisun EIR
Carbon Dioxide	0.007	0.0177
Methane	0.000024	0.000091
Nitrous Oxide	0.0001	0.00069

Since the City of Suisun is located in the Sacramento River delta area, in a different air basin, it is not possible to determine what factors or assumptions were included in the air modeling for that document.

Finally, the analysis in the EIR categorically addresses all pollutants required to be addressed by the SCAQMD/MDAQMD, as well as greenhouse gases. The analysis provides summaries, compared to thresholds of significance established by SCAQMD/MDAQMD, which is the regulatory agency responsible for air quality in southern California.

III. Use of CAT Strategies

The writer asserts that a different methodology should have been used in the EIR's analysis of greenhouse gases.

The EIR used the State government's own publications in development of the greenhouse has analysis. As stated under item I., above, the analysis utilized the best available information. The State's publications on this subject are used by environmental professionals pending completion of methodology and analysis by the Air Resources Board and SCAQMD/MDAQMD. The analysis in the EIR is adequate, and uses a credible source of data.

IV. Additional Mitigation

The writer states that additional mitigation should be provided.

The EIR includes feasible mitigation measures. In Response to Comments A-32, the mitigation measures proposed by the writer are compared to the mitigation measures or p0roject features. That analysis clearly shows that the project has, in effect incorporated the mitigation measures the writer is suggesting.

The mitigation measures proposed in the letter suggest that the project's cooling system should be different. As described by the applicant's representative at the hearing of May 22, the project is proposing an extremely efficient cooling system, which will exceed energy efficiency standards.

The project is not required, as implied by the writer, to purchase offset credits for greenhouse emissions, as the greenhouse gas impacts cannot be quantified using an accepted methodology.

Finally, the EIR is not required to include the mitigation measures from CAPCOA or the Attorney General's office. As stated above, the courts have found that analysis of greenhouse gases is limited until credible, responsible agencies, including state and regional agencies such as SCAQMD/MDAQMD, have developed methodologies which will enable all project emissions to be quantified in a scientific manner.

V. Desert Tortoise

The EIR requires that Desert tortoise surveys be undertaken prior to initiation of any ground disturbing activities on the site. There is well established protocol on how this study is to be undertaken, and what is to occur if the species is found on the site at that time. The EIR is explicit, and adequate in this regard. The project is not creating habitat for ravens. The project is required to maintain clean and closed trash areas to assure that the attraction of ravens is minimized. The EIR is adequate, and no further analysis is required.

As regards the other species which the writer asserts could occur on the site, please see Response to Comments A-45. The EIR adequately and appropriately identified the species occurring or potentially occurring on site.

Letter from John McClendon, dated May 22, 2008
The letter from Mr. McClendon makes a number of assertions regarding the adequacy of the EIR. In order to completely address the issues addressed in the letter, a response to comments was drafted, and is attached to this staff memorandum as Attachment 1. In addition, a memorandum prepared by Natelson Dale Group, addressing the blighting issues attached to Mr. McClendon's letter, was also prepared, and is attached to this memorandum as Attachment 2.

Conclusion
The Town has extensively and thoroughly analyzed the potential impacts associated with the development of the proposed project. These impacts have been addressed, and mitigated to the greatest extent possible. The comments received from the Center for Biological Diversity and Mr. McClendon do not include new information which has not been otherwise addressed in the record for the proposed project, and considered by the Planning Commission and Town Council in its deliberations over the proposed project. The recommendation made by the Planning Commission therefore, is still appropriate.

Recommendations:

As recommended by the Planning Commission:

4. Adopt a Statement of Overriding Considerations for the Yucca Valley Retail Center Environmental Impact Report (State Clearinghouse Number 2004071127), and adopt the accompanying Resolution; and
5. Approve Specific Plan 01-04, based on the findings and conditions of approval contained in the staff report and Introduce the accompanying Ordinance; and
6. Approve Conditional Use Permit 02-04, based on the findings and conditions of approval contained in the staff report, and adopt the accompanying Resolution.

Attachments:

1. "Response to Comment Letter Submitted at Town Council May 22, 2008."
2. Memorandum from the Natelson Dale Group, dated June 9, 2008.
3. Staff report and all attachments from May 22, 2008 Town Council hearing.

RESPONSES TO COMMENT LETTER SUBMITTED AT TOWN COUNCIL ON MAY 22, 2008

By John G. McClendon, of Leibold McClendon & Mann, APC, on behalf of Citizens for Responsible Equitable Environmental Development ("CREED").

Response to Comment 1: The commenter states that the EIR's traffic baseline is flawed because it underestimates existing conditions.

The EIR traffic analysis analyzed existing traffic conditions at 22 intersections in the Project vicinity, in order to generate a traffic baseline by which the Town could determine whether the Project has the potential to result in significant traffic impacts. The EIR then compares conditions in the Opening Year and Horizon Year both with and without the Project, to existing conditions in order to determine the Project's potential to result in significant traffic impacts. (See DEIR p. 4.15-1 through 4.15-11.)

In both the Opening Year and Horizon Year analyses, the EIR includes traffic generated by 37 cumulative projects creating an estimated 21,292 daily trips, in addition to the 11,226 daily trips assumed to be generated by the Project. In addition to traffic generated by the identified cumulative projects an additional 3% per year ambient growth in traffic was included in the baseline traffic numbers to account for any additional growth in traffic not captured in the cumulative projects analysis. Accordingly, although CEQA indicates that the baseline is generally conditions as they existing on the date the Notice of Preparation is released, the Project traffic analysis analyzed project traffic impacts against a more conservative baseline with the inclusion of traffic from all cumulative projects as well as 3% per year ambient growth. For example, this conservative baseline includes traffic generated by the proposed Century Homes project, a 1500 unit single family residential project proposed to be located at the corner of Yucca Trail and La Contenta in the Town. Due to the current state of the housing market, the Century Homes project will not be completed on Opening Day. Moreover, since the EIR was circulated for public review, the Wal-Mart store proposed as part of the Project has been downsized to 184,146 square feet resulting in reduced trip generation.

Response to Comment 2: The commenter states that the EIR's traffic baseline is flawed because it uses an inaccurate growth rate assumption and; therefore, the traffic impact analysis is inadequate because it dismisses several significant traffic impacts.

For the reasons discussed in response to Comment 1 above, the EIR's traffic baseline is not flawed. The commenter states that the EIR's ambient growth rate assumption of 3% per year is inaccurate because based on Caltrans traffic data, the historic growth rate along Highway 62 within the study area has been between 2% and 7% per year, with an average growth rate of 4.3%. What the commenter fails to take into account is that the 3% is intended to account for ambient growth from unidentified area wide projects as well as any increase in general vehicular travel through the area particularly on Highway 62, which serves as a highway used by travelers from the valleys to Joshua Tree National Park as well as the Colorado River and Arizona. Assuming commenter's stated Caltrans figure of 4.3% is accurate, adding 3% to the traffic generated by the Project as well as identified cumulative projects results in a comparable growth rate utilized in the project traffic analysis.

Response to Comment 3: The commenter states that the EIR's traffic baseline is flawed because gross project trip generation was underestimated and; therefore, the traffic impact analysis is inadequate because it dismisses several significant traffic impacts.

Contrary to the commenter's contention, the use of ITE land use code 815 to calculate Project trip generation was appropriate. As discussed in the Traffic Impact Analysis and the EIR, land use code 815 (Free-Standing Discount Store) as opposed to 813 (Free Standing Discount Superstore) was used because it yielded a higher quantity of trips on a daily basis and during the p.m. peak hour. (See DEIR p. 4.15-27.)

Moreover, the commenter states that use of either 815 and/or 813 was inappropriate for the Project because a recent article in the ITE journal suggests that neither the 815 nor 813 land use code is appropriate for Free-Standing Discount Superstores greater than 200,000 square feet. The Project proposes an 184,146 square foot Wal-Mart Supercenter. Accordingly, the argument is inapplicable because the Project proposes a store less than 200,000 square feet. Moreover, while the ITE Journal published the article cited by the commenter, it has yet to include a new category for Free-Standing Discount Superstores in excess of 200,000 square feet. The daily trip rates published in Trip Generation, Institute of Transpiration Engineers (ITE) *Trip Generation* (7th Edition) remain the industry standard.

Response to Comment 4: The commenter states that the traffic baseline is flawed because the EIR overestimates pass-by trips and; therefore, the traffic impact analysis is inadequate because it dismisses several significant traffic impacts.

Contrary to the commenter's contention, the ITE Trip Generation Handbook referenced is not outdated. Trip Generation, Institute of Transportation Engineers (ITE) *Trip Generation* (7th Edition) is the industry standard and it is what was cited in the Project Traffic Impact Analysis and EIR.

Furthermore, the commenter's contention that pass-by trips were overestimated is in error. For the reasons discussed above, the 815 rather than the 813 land use code was used to calculate Project trip generation. Furthermore, the Traffic Impact Analysis prepared for the Project expressly explains that the proximity of Highway 62, a major highway adjacent to the Project and serving travelers justifies the use of the pass-by rate from ITE, despite the fact that land use code 813 does not recommend a pass-by factor. (EIR Appendix M, p. 14.) The use of a pass-by factor in calculating Project trips is supported by substantial evidence in the record.

Response to Comment 5: The commenter states that the traffic baseline is flawed because the EIR overestimates internalized trips and; therefore, the traffic impact analysis is inadequate because it dismisses several significant traffic impacts.

The commenter's point is unclear. The EIR used a nominal 10 percent internal capture rate. (DEIR Appendix M, p. 14.) In other words it assumed that 10% of the trips generated by each Project use would visit another Project use during the course of a single visit to the site. The commenter provides no support for its position that internalized trips were overestimated nor has it provided any specific traffic impacts that were dismissed as a result of the alleged overestimation. The Town has independently reviewed the Traffic Impact Analysis prepared by LSA Associates for the Project and the EIR, and has determined that the analysis adequately assesses the potential for significant Project traffic impacts.

Response to Comment 6: The commenter states that the "no significant impacts conclusions" reached in the Market Impact Study and relied upon in the EIR cannot be supported because Wal-Mart's own consultant prepared the Study without peer review.

The Town of Yucca Valley hired LSA Associates, Inc. to complete the EIR for the Project. Contrary, to the commenter's statement, LSA Associates, Inc., not Wal-Mart, hired The Natelson Dale Group ("TNDG") to prepare the Market Impact Study.

Regardless of whether TNDG has prepared Market Impact Studies for other projects including Wal-Marts, CEQA requires that the lead agency "independently review and analyze" any document prepared during the course of the EIR process in order to determine whether its inclusion is appropriate. (See Public Resources Code § 21082.1 (c)(1).) The Town independently reviewed and analyzed the Market Impact Study and determined that its conclusions were supported by substantial evidence including: facts; reasonable assumptions predicated upon facts; and expert opinion supported by facts. (See CEQA Guidelines § 15384 (b).) The failure to have the Market Impact Study peer reviewed by a second consultant, as the commenter suggests, does not render the EIR legally inadequate. Moreover, the fact that TNDG has been sought out by several local agencies to perform this type of work demonstrates the fact that they are well respected in the field.

Furthermore, the commenter suggests that differing retail averages in Market Impact Study's for other Wal-Mart projects demonstrate that TNDG is biased. The reality is that market factors dictate that average sales per square foot differ from market to market depending on the particular market characteristics of any market area, including competitors and market area demographics. Accordingly, different conclusions in different jurisdictions are not indicative of bias, but rather differing market characteristics.

Based upon the foregoing, the results of the peer review conducted by the commenter's consultant Philip King amount to no more than a difference of opinion amongst experts. It is well settled that a disagreement among experts does not render an EIR inadequate. (See CEQA Guidelines § 15151; see also *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376 (1988).) The commenter's position is noted and has been considered during Town Council review of the EIR and the Project. TNDG's response to the Philip King memorandum is attached as Exhibit A.

Response to Comment 7: The commenter presents a nationwide study that concludes a single supercenter reduces retail employment by about 150 workers and leads to a decline in retail employment earnings of about $1.5 million, presumptively to demonstrate that the Project will result in significant environmental impacts that have not been analyzed in the EIR. Economic impacts are only relevant in the CEQA context, insofar as they have the potential to indirectly result in adverse physical changes to the environment, e.g. Urban Decay. The EIR determines, based on substantial evidence in the record, including the Market Impact Study prepared by TNDG that the Project will result in less than significant Urban Decay impacts. (See DEIR p. 4.17-15.) Accordingly, the Town is confident concluding the commenter's anecdotal evidence has no direct bearing on the adequacy of the Project EIR.

Response to Comment 8: The commenter presents a nationwide study that concludes new Wal-Mart stores result in increased crime levels that place strains on local government resources. While the commenter does not expressly state how the study relates to the Town's analysis of Project impacts in the EIR, presumptively it is intended to demonstrate that impacts to local police services were not adequately addressed in the Project EIR.

The Project EIR concludes based on substantial evidence in the record that with payment of fair share fees to a Town-wide public services assessment district, the Project's potential impacts to police protection services will be less than significant. (See DEIR p. 4.13-6.) Accordingly, the commenter's anecdotal evidence amounts to nothing more than evidence constituting a difference of opinion amongst experts, such a difference of opinion does not render the EIR's analysis legally inadequate. (See CEQA Guidelines § 15151; *see also Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376 (1988).) Moreover, it is a differing opinion that was reached without reference to the unique characteristics of the Town and its residents.

Response to Comment 9: The commenter states that the EIR's Alternatives Analysis is inadequate because it fails to consider "an innovative and sustainable green building".

CEQA requires that an EIR include a discussion of reasonable project alternatives that would feasibly attain most of the basic objectives of a project while avoiding or substantially reducing any of the significant effects of the project. (CEQA Guidelines § 15126.6.) "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.... [A]n EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project ... which: (1) offer substantial environmental advantages over the project proposal ...; and (2) may be 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved." (*Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 566 (1990), emphasis added.) An exhaustive list of alternatives is not required, and the statutory requirements for consideration of alternatives must be evaluated against a rule of reason. (Id. at p. 565.)

The EIR Alternatives Analysis considered four Alternatives in depth; (1) No Project/Existing Zoning Alternative; (2) Mixed Commercial/Office Alternative; (3) Off-Site Location Alternative; and (4) Reduced Intensity Commercial Alternative. Moreover, it considered and rejected two more alternatives, No Build Alternative and Alternative Use of the Project Sites infeasible. (See DEIR pp. 6-1 through 6-6.)

The stated purpose of an Alternatives Analysis is to consider a means to avoiding or substantially reducing significant effects of a Project. All of the alternatives were analyzed in order to determine their ability to avoid or substantially reduce the significant Air Quality and short-term Construction Noise impacts of the Project. There are no significant impacts of the Project that would be reduced if the Town were to require implementation of features suggested by the commenter. Moreover, the Project includes many of the energy efficiencies and sustainable features suggested by the commenter and that are incorporated into HE.5 stores. Moreover, the EIR considered the Project and its sustainable features and determined that the Project would have a less than significant impact with respect to Global Climate Change precisely because of its innovative and environmentally friendly features. (See DEIR pp. 4.3-50 and 4.3-51.)

Based on the foregoing, the Project analyzed a reasonable range of alternatives. The EIR need not look at every conceivable alternative, and the failure to analyze "an innovative and sustainable green building" does not contribute to inadequacy of the analysis for CEQA purposes.

Response to Comment 10: The commenter states that Project objectives are unacceptable "for the reasons set forth above". However, the Town is unable to find any stated reasons for why Project objectives are unacceptable in the commenter's letter. Moreover, the commenter states that the EIR Alternatives analysis is inadequate because it rejects the Reduced Intensity Alternative only because it does not meet the stated objective of achieving a 233,000 square foot building, an "artificial objective."

A review of the Draft EIR demonstrates that achieving a 233,000 square foot building is not a stated Project objective. (See DEIR pp. 3-12 and 3-13.) Furthermore, a review of the CEQA Findings prepared for the Project demonstrates that the Reduced Intensity Alternative was not rejected solely because it did not achieve the objective of a 233,000 square foot building. The proposed CEQA Findings prepared for the Project conclude that while Project impacts in several issue areas would be reduced if the Reduced Intensity Alternative were ultimately approved, impacts in ten issue areas would remain similar to those of the Project, meaning they would not be reduced. Furthermore, the Reduced Intensity Alternative would not meet the Town's objectives for the Project site, not because it would not result in a building 233,000 square feet in size, but rather, because the reduced size, 115,000 square feet, would not accommodate high quality commercial uses such as the Wal-Mart Supercenter proposed at the Project site. Finally, the proposed Findings recognize that the Reduced Intensity Alternative provides for fewer tax-generating uses and employment-generating opportunities than the Project.

Taking all of the aforementioned factors into account, the proposed CEQA Findings conclude that the Reduced Intensity Alternative does not meet Project objectives. The analysis is far more comprehensive than simply determining that the Reduced Intensity Alternative does not meet the unwritten objective of a 233,000 square foot building. If the ultimate objective of the Project were to construct a 233,000 square foot building, the Project currently proposed would not accomplish such objective. The Project currently proposes an 184,146 square foot Wal-Mart Supercenter.

Response to Comment 11: The commenter suggests that the EIR's discussion of wastewater impacts is flawed because the project's daily projected generation of wastewater is underestimated. The commenter states that the standard rule for calculating a commercial retail project's daily generation of wastewater is to assume 80 gallons per day of wastewater will be generated for every 1,000 gross square feet of the project, and that because the EIR's analysis does not utilize this assumption it is inadequate.

The suggested assumption is not the general rule, but rather is the assumption suggested by the Los Angeles CEQA Thresholds Guide, a reference for preparing CEQA analyses in Los Angeles. Using water usage records for other existing stores, Wal-Mart provided average flow numbers for a 221,000 square foot store, which were utilized to generate the flow generation numbers provided in the EIR. Since that time, the store has been reduced to 184,146 square feet. Accordingly, based on Wal-Mart averages the Project site is likely to generate less wastewater than what was actually analyzed in the EIR. Moreover, the final design of the on-site wastewater treatment will be reviewed and approved by the Colorado River Regional Water Quality Control Board and the San Bernardino Department of Environmental Health. If either of the approval agencies conclude that the proposed 10,000 gallon on-site treatment system is inadequate, its capacity will have to be increased before the system is constructed and the Project becomes operational.

Response to Comment 12: The commenter states that the EIR "fudges on the timing for the actual construction of a wastewater treatment facility". However, the commenter does not explain how the error affects the viability of the EIR's impact analysis.

Precisely because the completion of the Town's wastewater treatment facility was uncertain, the EIR requires that the Project install its own on-site wastewater treatment facility AND install dry sewer lines and record acceptance of connection when available against the parcel so as not to rule out the possibility of connecting seamlessly to the wastewater treatment facility once completed. (DEIR pp. 4.16-8 and 4.16-9.) The Project will treat wastewater on-site until which date sewer is available, no matter when that date occurs. For this reason, the fact that the Hi-Desert Water District's schedule is uncertain is irrelevant in terms of assessing potential Project impacts.

Response to Comment 13: The commenter states that the cure for perceived EIR deficiencies with respect to wastewater impacts is to require the Project utilize "existing, proven technology to clean up it[s] wastewater to a level where it can be utilized aboveground for landscaping and other non-potable purposes."

The commenter appears to be unclear about what type of on-site wastewater treatment facility is proposed at the Project site. Specifically the commenter states that the Project proposes to accommodate wastewater generated by the Project by installing a 10,000 gallon on-site "septic system". On the contrary, the Project has been conditioned to construct a treatment facility such as a package treatment plan, as opposed to a septic system because septic systems in the Town are currently compromising the Town's groundwater. (See DEIR pp. 4.16-4 and 4.16-5.) The commenter's point was considered during the EIR process and for the reasons suggested in the comment letter a septic system is not permitted as part of the Project.

As discussed in the EIR, with construction of an on-site wastewater treatment system designed to handle wastewater flows from the Project and compliance with applicable design requirements of the Hi-Desert Water District, County of San Bernardino Environmental Health Department, and the Regional Water Quality Control Board, the Project will result in less than significant wastewater impacts. (DEIR p. 4.16-8.) Therefore, implementation of the commenter's proposed technology is not required for CEQA purposes.

LEIBOLD MCCLENDON & MANN
A PROFESSIONAL CORPORATION

23422 MILL CREEK DRIVE, SUITE 105
LAGUNA HILLS, CALIFORNIA 92653
(949) 457-6300
FAX: (949) 457-6305

JOHN G. MCCLENDON
john@CEQA.com

May 22, 2008

Hand Delivered
Members of the Town of Yucca Valley Planning Commission
Monterey Business Center
58928 Business Center Drive
Yucca Valley, CA 92284

Re: Yucca Valley Retail Specific Plan Environmental Impact Report [SCH 2004071127]

Honorable Mayor and Members of the Town Council of Yucca Valley:

I am submitting this letter on behalf of Citizens for Responsible Equitable Environmental Development ("CREED") and other citizens in your community who are concerned about the sufficiency of the Environmental Impact Report (the "EIR") for the Yucca Valley Retail Specific Plan (the "Project") under the California Environmental Quality Act (California Public Resources Code Sections 21000, *et seq*: "CEQA") and the State Guidelines for Implementation of CEQA (Title 14, California Code of Regulations Sections 15000, *et seq*.: "CEQA Guidelines"). On behalf of them, I submit this letter urging that you do not approve the Project tonight unless and until serious flaws in the EIR are corrected. I request that this letter, along with all attachments to it, be included in the record of the Town's proceedings for the Project.

1. <u>The EIR Fails to Disclose the Complete Scope of Potential Impacts Because It Is Predicated Upon an Underestimated Baseline</u>

As a threshold matter, the EIR's analysis of traffic impacts is flawed because the baseline upon which the analysis was conducted was underestimated. Failure to use a proper baseline resulted in the oversimplification and unjustified dismissal of significant traffic impacts.

It is well established that the purpose of an EIR is to provide public agency decision-makers and members of the public with an informational document that explains potentially significant environmental impacts and feasible mitigation measures. (Pub. Res. Code § 21002.1; Guidelines § 15121; *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 821-822.) In order to be useful, however, the EIR must accurately identify what significant impacts exist. "[T]he significance of a project's impacts can be ascertained only if the agency first establishes the physical conditions against which those impacts are to be measured." (Michael H. Remy et al., *Guide to CEQA California Environmental*

Quality Act, 198 (11th ed., Solano Press 2007).) The idea is to compare "what will happen if the project is built with what will happen if the site is left alone." (*Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707 ("*Woodward Park*").)

The rule for what constitutes an environmental baseline is set forth in Guidelines section 15125(a), which provides that:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significantly.

Applying this rule to projects involving the development of raw land, it follows that significant impacts are determined by comparing the status of the land with the project against the status of the land as it is. Indeed, the Fifth District Court of Appeal in *Woodward Park* held that an environmental impact report prepared for the development of a commercial/retail shopping center on vacant land was "inadequate as an informational document because it failed to analyze consistently and coherently the impacts of the project relative to leaving the land in its existing physical condition," which was undeveloped. (*Woodward Park*, 150 Cal.App.4th at 710.) "CEQA nowhere calls for evaluation of [environmental] impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area." (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

The *Woodward Park* court was concerned that the "EIR had a dominant theme of comparing the proposed project with build-out under existing zoning, combined with a scattered, partial discussion of some of the project's impacts relative to vacant land." (*Woodward Park*, 58 Cal.Rptr.3d at 120. According to the *Woodward Park* court, this approach led to the "EIR never present[ing] a clear or a complete description of the project's impacts compared with the effects of leaving the land in its existing state." (*Id.* at 121.)

2. <u>The EIR's Traffic Analysis Is Flawed</u>

Like the EIR in *Woodward Park*, the EIR for the Yucca Valley Retail Specific Plan is inadequate in light of CEQA because it does not establish an honest baseline. As explained in Orosz Engineering Group's peer-review of the EIR's traffic study (<u>Tab 1</u>), the baseline was flawed for at least five reasons.

First, the EIR's baseline underestimated existing conditions. That is, the traffic section of the EIR notes that the existing traffic count data is from 2005. The data included in the technical appendix notes intersection traffic counts dated June 23, 2004 and vehicle classification counts in 2005. The traffic study is dated July 2006 and the Draft EIR is dated July 2007. Traffic volumes more than two years old are typically too stale to use in a significant EIR (22 study area locations) in a growing area. At a minimum, the EIR should have usee traffic data less than two years old to begin the analysis. 1

Second, in the EIR baseline used an inaccurate growth rate assumption of 3% per year. Based on Caltrans traffic data, the historic growth rate along Highway 62 within the study area has grown between 2% and 7% per year, with the average growth rate of 4.3%. Nearby, the growth rate on one portion of Highway 62 has been over 10% per year. The growth rate is high enough not to rely on existing traffic data more than two years old to be representative for the basis of an environmental document. 2

Third, the EIR's baseline used a gross project trip generation was underestimated. There are significant problems with the data presented in Table 4.15D. One is the primary trip rate for the Retail Store (229,000 SF). The land use code used in the EIR represents a small free-standing discount store. The average building size for the ITE land use code 815 is 106,000 SF. The project is more than double that size. The other is that there have been published studies in the ITE Journal, including one published in August 2006 (<u>Tab 2</u>), that identify much higher PM peak hour trip generation rates for buildings like the one proposed in the EIR. 3

Fourth, the EIR baseline overestimated pass-by trips. The ITE Trip Generation Handbook reference is outdated. The current handbook is dated March 2001. The current handbook does not recommend a pass-by factor for Land Use Code 813 (Free-standing Discount Superstore) due it's nature as a destination, not somewhere you stop by on your way. Due to the size of the building (over 200,000 SF) and size of parking field (over 1000 spaces), this type of facility does not lend itself to a quick in and out trip. 4

Finally, the EIR's baseline overestimated internalized trips. By adding up the 10% internalized trip value, which by itself makes some sense, represents 42.5% of the total traffic 5
generated by the Fueling Station and Fast Food combined. Just the 10% of the Retail Store traffic represents 33% of the trips generated by the Fueling Station and Fast Food traffic, more than the 10% internal trip estimate.

To summarize, by relying on an underestimated baseline and underestimated trip generation, the EIR's analysis of traffic impacts is flawed because impacts that would otherwise be identified as significant had a proper baseline been used go unmitigated and are disregarded.

3. <u>The EIR Relies Wal-Mart's Objectively Flawed and Incorrect *Market Impact Study*</u>

In concluding that the Project would not lead to urban decay, the EIR relied on the *Market Impact Study* ("MIA") that was prepared by <u>Wal-Mart's own consultant</u>: The Natelson Dale Group ("TNDG"). Apparently, Town staff accepted its conclusions that the proposed Wal-Mart Supercenter will have no significant impact on other area retailers *carte blanc* and without any peer review. However, according to a peer review of TNDG's MIA conducted by Professor Philip King, an internationally-recognized authority (<u>Tab 3</u>), the "no significant impacts conclusion" that TNDG reached simply cannot be supported based upon the factual inaccuracies (and, in several cases, complete lack of data) that pervade it.

To put it bluntly, having Wal-Mart's own consultant prepare the MIA is the classic 6
fox guarding the henhouse. TNDG will say anything it needs to reach the conclusion Wal-Mart wants. For example, in the analysis TNDG prepared for Wal-Mart's lawyers in the City of Yucaipa (<u>Tab 4</u>), it assumed that existing annual grocery sales in that city were in line with regional averages: about $400 per square foot. On the other hand, when TNDG analyzed the grocery store impacts resulting from it building a Wal-Mart Supercenter in the City of Perris (<u>Tab 5</u>), it assumed that existing annual grocery sales in that city were an astonishing $865 per square foot! TNDG's Perris study was subsequently peer-reviewed by Professor Alan Schlottmann who, not surprisingly, found the $865 number posited by TNDG ludicrous. (<u>Tab 6</u>.)

As Professor King notes, purely economic impacts are not the purview of CEQA. However, given the challenging economic times for cities, I would strongly suggest that you carefully consider the most current and definitive study on the economic impacts resulting 7
from Wal-Mart Supercenters. According the that study, published last year in the *Journal of Urban Economics* (<u>Tab 7</u>), a single supercenter <u>reduces</u> retail employment by about 150 workers and leads to a decline in retail employment earnings of about $1.5 million. Earlier

studies have similarly confirmed the tax revenue superiority of local retail over national "big box" retailers and the fact that dollars spent at local retailers are more likely to remain in the community. (Tab 8.) In the specific case of Wal-Marts, crime levels often skyrocket, putting further strains on local government resources. (Tab 9.) 8

4. The Town Has a Duty to Adopt Any Feasible Alternative that Would Reduce or Eliminate the Project's Adverse Impacts

Both CEQA and the CEQA Guidelines instruct Lead Agencies "not [to] approve projects as proposed if there are feasible alternatives...available which would substantially lessen the significant environmental effects of [a] project." In fact, alternatives that would lessen environmental impacts *must* be adopted if feasible. (Pub. Res. Code §§ 21002, 21181; Guidelines § 15021(a)(2).) The "policy of the state" reflected in CEQA is that projects with significant environmental impacts *may not* be approved "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects..." (Pub. Res. Code § 21002; Guidelines § 15021(a)(2).)

As the California Supreme Court recently stated:

> CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are *truly* infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (*id.*, § 21081, subd. (b)), would tend to displace the fundamental obligation of "[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (*id.*, § 21002.1, subd. (b)).

(*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368.)

The extent of the alternatives to be analyzed, according to CEQA Guidelines Section 15126.6 is "a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

The most manifestly feasible alternative that the EIR should have considered is development of the Project as an innovative and sustainable green building consistent with Wal-Mart's newly-established and environmentally-friendly "sustainable future" strategy. (Tab 10.) While Wal-Mart's sincerity on the front has been seriously called into question (Tab 11), by Wal-Mart's own admission, it has already developed and tested a number of supercenters nationwide that were built on principles of "innovative green technologies designed to reduce operational and construction waste, use recycled and renewable materials, and conserve water and electricity." (Tab 12.) Notably, this alternative is itself a global warming mitigation measure that, if adopted, would not only lessen greenhouse gas emissions, but also reduce impacts related to air quality, waste, water quality, and noise.

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Moreover, in March of this year, Wal-Mart announced the opening of

> its most energy efficient U.S. store -- the HE.5 prototype – that will use up to 45 percent less energy than the baseline Supercenter. Building upon learnings [sic] from previous high efficiency stores Wal-Mart opened in 2007 and 2008, the HE.5 begins a new series of prototypes designed for specific climates. This facility is western climate-specific, meaning the efficiency gains are made possible by innovations designed for the conditions of the region.

(Tab 13; emphasis added.) Also recently, Wal-Mart announced the roll-out of a "solar power pilot project" with the goal of such installations generating "up to 30% of the power for each store on which it is installed." (Tab 14.) Consequently, the Town Council needs to ask itself ***why*** it would allow a Wal-Mart supercenter to be built in the Town to 20th Century standards when Wal-Mart is already building these stores to environmentally sensitive 21st Century standards.

The EIR claims that the general Project objective "is to provide a new retail commercial use to the Town of Yucca Valley." Subsumed in this general objective is a more specific objective to "Allow the potential for development of high quality commercial uses within an *undeveloped* portion of the Town." While this is unacceptable for the reasons set forth above, alternatives need not meet all project alternatives to be considered feasible. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477; Guidelines § 15126.6(b).) While it is true that the "no project" alternative would not meet any of the Project objectives, a reduced project size alternative is reasonable and cannot be rejected simply because it does not meet the stated objective of achieving the 233,000 square foot building objective.

Furthermore, the objectives for a project cannot be so narrowly defined so that they essentially preordain the selection of the agency's proposed alternative. Case law under CEQA's federal equivalent, the National Environmental Policy Act ("NEPA," 42 U.S.C. § 4331 *et seq.*) can be helpful in interpreting CEQA. Early CEQA cases relied heavily on NEPA case law. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 80; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 261.) "NEPA cases continue to play an important role in adjudication of CEQA cases, especially when a concept developed in NEPA decisions has not yet been applied to CEQA cases." (*Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 732.)

The position of the Seventh Circuit in *Simmons v. U.S. Army Corps of Eng'rs* (7th Cir. 1997) 120 F.3d 664, 669 is therefore relevant to this case: 10

> The 'purpose' of a project is a slippery concept, susceptible of no hard-and-fast definitions. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will.

The District of Columbia Circuit Court of Appeal similarly said:

> An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action.

(*Citizens Against Burlington v. Busy* (D.C. Cir. 1991) 938 F.2d 190, 196.) Thus, the rejection of a less intense development based upon an artificial project objective was improper. The EIR identified the "Reduced Intensity Commercial Alternative" as the environmentally superior alternative. This alternative was rejected it in part because it does not comply with the objective of the 233,000 square foot building plan. This too is not a proper ground for rejecting the environmentally superior alternative.

5. <u>The EIR's Discussion of Wastewater Impacts to Groundwater Is Flawed</u>

The EIR's conclusion that the Project will not result in groundwater and wastewater impacts is incorrect in many ways. First, it projects that the Project will generate "an anticipated combined average flow of approximately 9,620 [gallons per day]" of wastewater.

(4.16-7.) Tellingly, it notes that, "These numbers are based on information provided by Wal-Mart" and its consultant, Nasland Engineering." (*Ibid.*) It then goes on to note that the Project will accommodate "9,620 gallons per day of wastewater generated by the Project" by installing "A 10,000 gallon on-site" septic system. (3-7.)

When it comes to data provided by Wal-Mart and its consultants, all cities are well-advised to follow the old Russian proverb, "Trust, but verify." In fact, the standard rule of thumb for calculating a commercial retail project's daily generation of wastewater is to assume 80 gallons per day of wastewater will be generated for every 1,000 gross square feet of the project. (See *L.A. CEQA Thresholds Guide*, Tab 15.) For example, this standard was recently employed in the EIR for a similar commercial retail project in the City of Hesperia. (Tab 16.) Had the EIR utilized the accepted formula, it would have disclosed that the Project will most likely generate some 18,640 gallons per day of wastewater effluent—almost double what the EIR stated! 11

This significant error translates into more extensive potential impacts to the Town's groundwater, water that is internationally famous. (Tab 17.) This groundwater is projected to become even more precious than it already is. (Tab 18.) However, the increasing seepage of nitrates and other things into the groundwater basin is causing increasing degradation to its water quality, and the Regional Water Quality Control Board is currently embarking on a plan to create a "prohibition zone" that would "phase out current discharges of waste from septic systems in the Town of Yucca Valley." (Tab 19.)

This is particularly significant, given that the EIR fudges on the timing for the actual construction of a wastewater treatment facility and not mere the Hi-Desert Water District's previously approved nitrate removal project. (Tab 20.) Contrary to what the EIR claims, Hi-Desert Water District's own information and timeline shows that it is still pursuing funding for the wastewater treatment facility that is so badly needed, and that even if such funding is quickly obtained the facility will not likely be completed until 2017. (Tab 21.) 12

The logical solution here would be for the Town to impose upon the Project, as an entirely feasible mitigation measure, the requirement that Wal-Mart utilize existing, proven technology (Tabs 22-24) to clean up it wastewater to a level where it can be utilized aboveground for landscaping and other non-potable purposes. Such an approach is currently being seriously examined in Los Osos, an unincorporated community of roughly 15,000 that is entirely on septic tanks and is under scrutiny by its Regional Water Quality Control Board. (Tab 25.) 13

In sum, the EIR fails to perform its CEQA function of informing the public and decision-makers of the Project's true potential impacts. Consequently, before you approve the Project, you should insist that the EIR's defects be corrected and the EIR recirculated for public review.

Very truly yours,

LEIBOLD MCCLENDON & MANN, P.C.

By: John G. McClendon

A final postscript:

Lest the claim be made that our comments are somehow untimely, the following quote from *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1201, amply rebuts this claim:

> "City appears to have thought that the public's role in the environmental review process ends when the public comment period expires. Apparently, it did not realize that if a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing. (*§ 21177, subd. (b)*; *Guidelines, § 15202, subd. (b)*; *Hillside, supra, 83 Cal.App.4th at p. 1263*.) If the decisionmaking body elects to certify the EIR without considering comments made at this public hearing, it does so at its own risk. If a CEQA action is subsequently brought, the EIR may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval."

cc: CREED

MEMORANDUM

TO:	LSA Associates, Inc.	**DATE:**	June 9, 2008
FROM:	The Natelson Dale Group. (TNDG)	**FILE:**	#3822
ATTN:	Ray Hussey		
SUBJECT:	**YUCCA VALLEY WAL-MART EIR: RESPONSE TO DR. PHILIP KING'S MAY 22 MEMORANDUM**		

Summary Response

TNDG has carefully reviewed Philip King's memorandum dated May 22, 2008. It is true that there has been a dramatic slowdown in new residential construction over the past year and that there are currently economic challenges facing the retail industry. We agree that retail vacancy rates in Yucca Valley are likely to rise over the next 2 to 3 years. However, we believe that most of the vacancies will be in newly built space that is gradually being absorbed – as opposed to being the result of the closure of existing businesses. We do not believe that vacancy levels will remain at a level which could reasonably be characterized as urban decay. Urban decay is a process that occurs over time. The potential for urban decay therefore needs to be evaluated in the context of what is likely to happen beyond just the next 18 to 24 months. TNDG believes that the longer-term (3 to 5 year) outlook for Yucca Valley's retail market remains very strong, and that this longer-term strength will effectively mitigate against the onset of urban decay conditions. Accordingly, we do not believe that recent changes in the market alter the significant determinations regarding urban decay included in the Draft EIR for this project.

While we generally concur with Dr. King's concerns regarding the current slowdown of the residential and commercial real estate markets, we disagree with the other major points raised in his memorandum. In particular:

- We disagree with the notion that Yucca Valley will have "an excess" of 450,000 square feet of non-grocery retail space. As detailed below, the actual amount of recently built or immediately pending non-grocery space is approximately 386,000 square feet. Of this total, 162,000 square feet is already occupied and an additional 36,000 square feet (the added non-grocery space at the proposed Wal-Mart) has a committed tenant. Thus, the remaining amount of new non-grocery space to be absorbed is about 188,000 square feet. Although we project that vacancies will temporarily rise (given the availability of a new space during an economic slowdown), we project that retail occupancies will reach normal levels within approximately 2 to 3 years of the opening of the proposed project.

- Dr. King is incorrect in asserting that TNDG failed to account for sales at the PX/BX facilities at the Twentynine Palms Marine Corps Air Ground Combat Center (MCAGCC). As described below, the presence of these facilities was thoroughly reflected in TNDG's original analysis.

- TNDG disagrees with Dr. King's contention that this type of study should evaluate a project's potential impacts on individual competitors (versus evaluating retail sales potentials in the aggregate). Given the data available to independent analysts, it is not possible to reliably predict how an individual store may respond to new competition and it is especially difficult to predict which competitors are more or less vulnerable to closure. As such, Dr. King's predictions regarding the potential impacts to individual stores (without any analysis to substantiate these claims) fall in to the realm of speculation, which is not considered valid under CEQA. In particular, Dr. King has failed to provide any real evidence supporting his claim that the Yucca Valley Food 4 Less store "will" close when the proposed project opens. He seems to base this claim on his estimate of the store's existing sales, but fails to identify his source. TNDG has reviewed no data which leads us to believe that Food 4 Less is uniquely vulnerable to impacts from Wal-Mart Supercenters. In fact, in preparing a response on this issue TNDG completed a statewide search and could not identify a single instance of a Food 4 Less store closing as a result of the opening of a Supercenter. TNDG agrees that the proposed Supercenter would divert sales from exist supermarkets in Yucca Valley. However, TNDG's analysis does not suggest that the sales impacts would be severe enough to result in store closures, especially given the prospect of strong demand growth within several years of the project's opening.

- TNDG disagrees with Dr. King's notion that Old Town Yucca Valley is especially vulnerable to competitive impacts from the proposed project. Based on our updated field survey we estimate that the current retail vacancy rate in Old Town is approximately 4%. This compares favorably to the vacancy rate for Yucca Valley overall (9.0%) and for the overall Inland Empire (5.9%). Thus, there is no indication that the Old Town area is uniquely distressed. Dr. King further asserts that the proposed project will impact the convenience food stores located in Old Town and that the possible loss of these stores will reduce the viability of Old Town as a whole. We disagree with both of these points. Convenience stores are generally recognized to serve a different market niche from supermarkets (and are in fact classified separately by the State Board of Equalization and U.S. Census Bureau). Dr. King has provided no substantiation for the claim that these stores are particularly vulnerable to closure as a result of the proposed project. Moreover, even if we hypothetically assumed that some of these stores would close, it is not clear to us that this would significantly undermine Old Town's viability. In a "strip center" setting, a convenience store clearly serves as an anchor tenant and therefore is critical to the viability of the overall center. But Old Town Yucca Valley, to its credit, is not a strip center. There is no visible indication (and Dr. King has provided no substantiation of the claim) that the convenience stores, individually or collectively, function as anchor tenants in this setting.

- Under the heading "Urban Decay" beginning on page 10 of his memorandum, Dr. King includes a number of generic comments about the potential impacts of supercenter-type development based on studies completed in other locations (outside California). However, he has failed to provide any evidence that this information is applicable to

Yucca Valley. Indeed, his apparently inadvertent and erroneous reference to "Clovis/Fresno" (see page 10) leads us to believe that this is "boilerplate" material that he has inserted into this memorandum without thoughtful editing. Moreover, the studies cited by Dr. King do not necessarily represent consensus views. In this regard, TNDG has summarized below a recent article which provides a balanced summary of peer-reviewed studies on Wal-Mart's economic impacts.

Additional discussion on several of the above points is provided below, along with a description of TNDG's revised retail demand analysis.

Current Retail Vacancy Conditions in Yucca Valley

In response to concerns about rising vacancy rates in Yucca Valley, TNDG completed a comprehensive update of the inventory of existing retail tenants and vacancies in the Town (to further update and supplement our February 2008 memorandum). This comprehensive update included additional field work to determine the current state of the retail market in Yucca Valley. The revised inventory is attached as Appendix A. Based on the updated inventory, TNDG estimates that the current retail vacancy rate is 9.0%. Much of the vacancy is concentrated in two recently completed projects:

- The Town Center Mall (former Kmart building). This building totals approximately 73,722 square feet of which an estimated 10,300 square feet is occupied (although another tenant – a health club – is currently completing tenant improvements and will open soon).

- Additional small-store space at the Yucca Valley Square center (adjacent to the newly opened Dollar Store). This small store space totals 11,130 square feet. Although none of this space is occupied yet, there are signs posted on two of the spaces indicating that tenant improvements will commence soon for two fast food type uses.

Neither of these vacant properties exhibit any indication of urban decay.

If these two new projects were excluded from the vacancy rate calculations, the Town's existing vacancy rate would be 3.6%. We mention this not to "white wash" the presence of existing vacancies but to make the important distinction between new space that is still in the process of being leased and older space that has actually been vacated. Older space is more vulnerable to the impacts of urban decay. Dr. King's memo gives the impression that Yucca Valley is experiencing some sort of "exodus" of existing businesses, which is clearly not the case. Figure 3 in Dr. King's memo is especially misleading. It says, "A number of stores in the Yucca Valley Square Center are closed." In reality, the space shown in the picture is brand new (the 11,130 square feet noted above) and is just now in the process of being leased. So, no stores have "closed" as he suggests.

Dr. King has criticized TNDG for excluding the vacated Kmart building from our original vacancy rate calculations. We excluded it because it was going through a redesign and entitlement process at the time and not part of the available supply of space. It was therefore included (in our original analysis) as part of the potential future supply of additional space. Now that it is built, the new space (both the occupied and vacant portions) is included in our updated building inventory.

Updated Demographic Forecasts and Revised Retail Demand Analysis

In May 2008, the Southern California Association of Governments (SCAG) released updated demographic forecasts for San Bernardino County. The new forecasts are from the 2008 Regional Transportation Plan and replace earlier forecasts adopted in 2004. SCAG's forecasts are developed via a multi-year process that includes substantial input from and consultation with local jurisdictions. Compared to the previous (2004) forecast, the new (2008) forecasts reflect substantially higher rates of anticipated housing and population growth in the Town of Yucca Valley and the overall Morongo Basin. For example, the previous forecasts indicated that the Town would reach a population of 18,946 persons by 2010. The revised projections indicate a 2010 population of 23,415, or almost 5,000 additional residents. (As estimated by the State Department of Finance, the actual population as of January 1, 2008 was 21,268, confirming that SCAG's earlier forecasts were too conservative).

The table below shows SCAG's recently adopted household forecasts for the years 2005, 2010, and 2015 for the Primary and Secondary Market Areas defined for TNDG's retail demand analysis (these are summations of the SCAG data for the individual census tracts included in the two market areas). The table also shows the numbers of households as of 2008 (estimated by TNDG based on Department of Finance data).

Table 1
Projected Number of Households by Year
Yucca Valley Market Area
SCAG 2008 Forecasts

Market Area	2005	2008	2010	2015
Primary Market Area	16,627	17,579	19,819	23,930
Secondary Market Area	9,221	9,576	11,072	13,684
Total	*25,848*	*27,155*	*30,891*	*37,614*

Source: SCAG; State Department of Finance; TNDG.

Given the availability of new demographic forecasts, TNDG has updated its retail demand analysis for purposes of this memo. The revised analysis is provided in Appendix B.

It should be acknowledged that, although SCAG's forecasts were just adopted this year, the actual process for developing the updates takes several years. Thus, while the projections are generally regarded as accurate long-term indicators of an area's growth capacity, they do not necessarily reflect recent changes in market conditions, such as the recent slowdown in residential development. A review of building permit data for the Town of Yucca Valley indicates a drop-off in residential development. Although SCAG's 2010 forecasts indicate greater growth than previously considered, and hence more retail demand than assumed in the 2006 analysis, TNDG has adjusted SCAG's household forecasts to account for a worst-case development scenario to address Dr. King's concerns and allegations. The adjustments are based on the following assumptions:

- No new residential development will occur between 2008 and 2010. Given that nearly 100 permits have been issued in the Town of Yucca Valley alone (which represents just 31% of the total trade area) over the past 18 months, this is likely a conservative assumption.

- After 2010, household growth will resume at the annual percentage rates projected by SCAG for each five-year period. This results in lower growth in absolute terms (i.e., the absolute number of new households each year) given that the percentage growth rates are applied to a smaller base).

TNDG has not attempted to account for an acceleration of growth once the housing market recovers (i.e., to reflect "pent up" demand). Thus, the post-2010 growth rates used in TNDG's analysis are likely to be conservative.

The above adjustments have the net affect of shifting SCAG's 2010 forecasts approximately three years into the future. That is, the number of housing units SCAG projects for 2010 would be achieved by 2013. TNDG's adjusted forecasts are summarized in Table 2 below and detailed in Appendix C. Even assuming this worst-case scenario where new retail demand severely declines, the following analysis shows that Dr. King's conclusions regarding the project's potential impact on urban decay are unsupported.

Table 2
Projected Number of Households by Year
Yucca Valley Market Area
TNDG-Adjusted Forecasts

Market Area	2008	2009	2010	2011	2012	2013
PMA	17,579	17,579	17,579	18,254	18,956	19,684
SMA	9,576	9,576	9,576	9,991	10,423	10,874
Total	***27,155***	***27,155***	***27,155***	***28,245***	***29,379***	***30,558***

Source: The Natelson Dale Group, Inc. (TNDG).

TNDG's revised retail demand projections for non-grocery space are summarized in Table 3a below.

Table 3a Potential Demand for NEW Retail Space Non-Grocery Retail Categories Town of Yucca Valley (Expressed in Square Feet)				
Retail Category	**2008**	**2011**	**2012**	**2013**
Apparel	42,311	44,478	46,711	49,033
General Merchandise/Specialty	37,898	52,511	67,708	83,511
Furniture/Appliances	35,603	37,750	39,983	42,305
"GAFO" Subtotal	**115,832**	**134,739**	**154,402**	**174,849**
Eating and Drinking	12,925	17,875	23,017	28,359
Building/Hardware/Garden	138,935	147,491	156,390	165,645
Services Space	26,769	30,011	33,381	36,885
Subtotal	**178,629**	**195,377**	**212,788**	**230,889**
GRAND TOTAL	**294,461**	**330,116**	**367,190**	**405,738**
Source: TNDG				

As described in TNDG's previous reports, the retail demand analysis calculates "net" demand over and above existing retail sales in Yucca Valley. TNDG's updated model has a base year of 2006. The reason for the 2006 base year is that 2006 is the latest full year for which taxable sales data (the basis for netting out existing sales) are available from the State Board of Equalization (SBOE).

Over the past two years, several significant retail projects totaling 236,852 square feet have been developed in Yucca Valley (as detailed below). Of this total new space, 162,300 square feet has been occupied. Although these projects are already completed, the occupied space still needs to be deducted from the "future" demand forecasts above (since they happened after the 2006 base year). This calculation is shown in Table 3b below.

Table 3b Potential Demand for NEW Retail Space Non-Grocery Retail Categories ADJUSTED TO ACCOUNT FOR RECENTLY BUILT SPACE				
	2008	**2011**	**2012**	**2013**
Gross Demand for New Space	294,461	330,116	367,190	405,738
Less: Recently Occupied Space	(162,300)	(162,300)	(162,300)	(162,300)
GRAND TOTAL	**132,161**	**167,816**	**204,890**	**243,438**
Source: TNDG				

It is fair to ask why there are currently significant vacancies in Yucca Valley given TNDG's projection of current demand for approximately 132,000 square feet of additional occupied space. It needs to be acknowledged that, in sync with the national economic downturn, the retail industry currently faces a number of challenges and many major retail chains have curtailed expansion plans and even gone into retraction modes. Thus, while Yucca Valley could currently support more space based on its demographics, the general slowdown in retail leasing activity (nationally, not just in Yucca Valley) is currently preventing this demand from being met. Once the economy begins to recover (which TNDG's analysis assumes will happen in the 2010 or 2011 timeframe), it is likely that Yucca Valley will experience a surge in retail leasing activity based on the "pent up" demand that often builds during recessions. It should be noted, though, that even during this difficult period, some new space is being leased in Yucca Valley. Thus, it is quite possible that vacancies in the newly completed space will gradually be absorbed prior to the 2010 or 2011 timeframe).

Recently Completed and Pending Retail Projects in Yucca Valley

Major retail projects completed in Yucca Valley over the past two years are summarized on Table 4 below.

Table 4
Major Retail Projects Developed in Yucca Valley
Since 2006

Project	Estimated Square Footage
Home Depot	135,000
Dollar Store	12,000
New Space in Yucca Valley Square (adjacent to Dollar Store)	11,130
Yucca Valley Town Center (former Kmart building)	73,722
Applebee's	5,000
Total	***236,852***

Source: Town of Yucca Valley; TNDG.

It should be noted that the Yucca Valley Town Center is expected to include a mix of retail, service and office tenants. Thus, the amount of actual retail space in the project may be considerably less than the total square footage indicated above. Nevertheless, TNDG has included the full amount here in order to account for the maximum potential impact of this project on the local retail market.

TNDG estimates that the proposed project and the existing Wal-Mart building will add approximately 150,000 square feet of non-grocery retail space that will need to be absorbed in Yucca Valley. This total includes the following:

Table 5 New Non-Grocery Retail Space Related to Proposed Wal-Mart Project	
Project Component	**Estimated Square Footage**
Existing Wal-Mart Building	110,000
Additional Non-Grocery Space proposed for new Wal-Mart	36,000
Fast Food Pad at Proposed Project	4,000
Total	***150,000***
Source: TNDG	

In addition to the proposed Wal-Mart project, there are several other retail projects that may be developed in Yucca Valley over the next several years. These are summarized on Table 6 below.

Table 6 Potential Future Retail Projects Town of Yucca Valley	
Project	**Estimated Square Footage**
"The Mojave" (mixed use project), Building A	27,000
"The Mojave" (mixed use project), Building B	8,526
Outparcels for Home Depot Project	39,893
Total	***75,419***
Source: Town of Yucca Valley; TNDG.	

As with the Yucca Valley Town Center, The Mojave project is expected to include a mix of retail and office uses. Thus, the amount of actual retail space in the project may be considerably less than the total square footage indicated above. However, TNDG has again included the full amount in the cumulative impacts analysis in order to account for the maximum potential impact of this project on the local retail market. It should also be noted that, according to the Town of Yucca Valley, no specific timeframes have been specified for the development of either The Mojave project or the Home Depot outparcels. In order to reflect a maximum impact or "worst case" scenario, TNDG's cumulative analysis assumes that these projects would be fully built by 2010 (the assumed opening date for the Wal-Mart Supercenter). Given that the Town has to date received no specific building applications for these projects, it would appear highly unlikely that they would actually be built by 2010.

Potential Retail Vacancy Rates Over Next Five Years

As noted above, the current retail vacancy rate in Yucca Valley is estimated at 9.0%. Based on the demand numbers and potential future supply increases summarized above, TNDG has projected potential changes in the Town's vacancy rate over the next five years (through 2013). TNDG's vacancy rate calculations are provided for two levels of analysis:

1. A ***project-specific analysis*** that considers the potential impacts of just the proposed Wal-Mart project (totaling 200,000 square feet); and

2. A ***cumulative analysis*** that considers the potential impacts of the proposed Wal-Mart project plus the other potential projects listed in Table 6 above.

Whereas an overall retail vacancy rate of 5% is generally considered optimal (with lower vacancy rates reflecting a "tight" market and therefore restricting the ability of the market to respond to the expansion/relocation needs of local firms), vacancy rates in the range of 5% to 10% are generally considered "normal." Vacancy rates higher than 10% are generally considered unacceptable from the perspective of commercial property owners.

Table 7 projects vacancy rates under the project-specific analysis.

Table 7
Projected Retail Vacancy Rates
Town of Yucca Valley

PROJECT-SPECIFIC IMPACT ANALYSIS

	2010	2011	2012	2013
Projected Vacancy Rate	12%	10%	7%	5%

Source: TNDG

Under the project specific analysis, TNDG projects that overall vacancy rates would briefly exceed the acceptable range but would reach more normal levels within 2 to 3 years of the project's 2010 opening date.

Table 8 projects vacancy rates under the cumulative impacts analysis.

Table 8
Projected Retail Vacancy Rates
Town of Yucca Valley

CUMULATIVE IMPACTS ANALYSIS

	2010	2011	2012	2013
Projected Vacancy Rate	16%	14%	12%	9%

Source: TNDG

If all of the cumulative projects were built by 2010 (as is assumed in the above calculations), Yucca Valley would experience high vacancy rates through approximately 2013. However, as noted previously, it is highly unlikely – especially in light of the current market slowdown – that this space would all be built by 2010. These projections should therefore be regarded as a conservative or "worst case" scenario. Even under this unlikely scenario, TNDG does not believe vacancies would be severe enough to constitute urban decay.

The above calculations are detailed in Appendix B (Tables B-17 and B-18).

Aggregate vs. Store-Level Analysis

In his memorandum, Dr. King states that "In an urban decay analysis, what matters are store closures, not aggregate sales." This position is inconsistent with commonly accepted definitions of urban decay, and also fails to recognize a fundamental requirement of CEQA.

In previous EIR's TNDG has utilized the following definition of urban decay:

> Urban decay may be considered a downward spiral of store closures and long-term vacancies[1]. While the phenomenon of urban decay is not defined under CEQA, it is assumed to be indicated by significant deterioration of structures and/or their surroundings. Such deterioration occurs when property owners reduce property maintenance activities below that required to keep their properties in good condition. Property-owners are likely to make reductions in maintenance under conditions where they see little likelihood of future positive returns.
>
> In areas where vacancy rates are low and/or short lived, property owners are more likely to see the prospect of keeping properties leased at favorable rents. Commercial and industrial vacancy rates of 5% or less are often assumed as "frictional," i.e. the level expected in a healthy real estate market. Where vacancy rates are high and persistent, property owners are more likely to have a pessimistic view of the future and be prone to reducing property maintenance as a way to reduce costs. Very high vacancy rates (over 25%) that persist for long periods of time (i.e., several years) are more likely to lead to reduced maintenance expenditures and in turn to physical deterioration.

A store closure, in and of itself, does not meet the above criteria. While the closure of a business is clearly a severe impact to the owners and employees of the firm, within the context of CEQA it is only significant if it results in sustained vacancies and related deterioration of the physical condition of the vacant building(s). Moreover, TNDG believes that the presence and condition of vacant buildings needs to be evaluated within the context of overall market conditions within a trade area. For example, a limited number of vacancies, even if they are sustained vacancies,

[1] As cited in the Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal. App 4th 1184, p 2.

would be less indicative of urban decay than a community where long-term vacancies are pervasive.

For the above reasons, TNDG believes that an aggregate analysis is the most appropriate way to evaluate the potential for urban decay since it takes a holistic view of a community's commercial real estate base. The question an urban decay study ultimately needs to answer is not, "Will Tenant X remain in business once the proposed project opens?" but "Is the *building* where Tenant X is located likely to be occupied (either with Tenant X or some future tenant) or at least to remain in leasable/saleable condition after the proposed project opens?" An aggregate analysis effectively addresses this question since it not only allows for an evaluation of the potential for store closures but, more importantly, considers the realistic prospects for reuse of any vacated facilities. This is especially relevant in a trade area such as the Morongo Basin where population and household growth over the next five to ten years are projected to be substantial – with this growth serving as the most effective mitigation for any short-term impacts.

The other advantage of an aggregate analysis relates to a fundamental requirement of CEQA. Put simply, <u>speculative analysis is not considered valid under CEQA</u>. In order to accurately predict whether an individual store will close as a result of increased competition, it would be necessary to have information about the store's existing sales volume and profitability level – information which is generally not available to an independent analyst such as TNDG. Thus, predictions as to which specific stores may close as a result of a competitive impact would venture into the realm of speculation. The speculative nature of these types of predictions is further complicated in a high-growth community, where some firms may choose to tolerate some "lean" years in anticipation of improved conditions in the future. Other firms may lack the financial capacity to sustain reduced profits and close in spite of the area's longer-term potentials. Again, however, attempting to predict which firms are more or less likely to take this "long-term strategy" would be speculative and therefore not permissible in a CEQA analysis.

Dr. King asserts that the existing Food 4 Less in Yucca Valley "will" close if the proposed project opens. However, in the absence of any real quantitative analysis to support this position, it needs to be dismissed as speculation.

<u>Revised Grocery Demand Analysis</u>

TNDG has updated its grocery demand analysis to reflect the revised household growth assumptions described above. In addition, this memorandum provides a more detailed estimate of the current sales volumes of Yucca Valley's existing supermarkets.

For calendar year 2006 (the latest full year for which taxable sales data are available from SBOE), total taxable sales in the "Food stores selling all types of liquor" category were $17,199,000. The relationship between taxable sales and total sales varies from store to store. Based on a review of a range of data sources, TNDG estimates that taxable sales for supermarkets range from 22% to 24% of total sales. Thus, a ratio in the range of 4.2 to 4.5 can be applied to taxable sales in order to estimate total sales. Applying this range to taxable sales of $17,199,000, total supermarket sales in Yucca Valley in 2006 are estimated to range between $72,235,800 and $77,395,500. This translates into an annual sales volume of $486 to $520 per square foot (based an existing inventory of 148,561 square feet of supermarkets). Thus, we estimate that the average sales performance of Yucca Valley's supermarkets in 2006 was 6% to 13% higher than the median for supermarkets in the Western U.S. ($460) and 21% to 30% higher than the national median ($400)[2].

Table 9 below provides TNDG's projections of the per-square foot sales volumes of the existing stores after the opening of the proposed Wal-Mart Supercenter.

Table 9
Potential Sales Impacts to Existing Supermarkets
Based on Opening of Proposed Wal-Mart Supercenter
Town of Yucca Valley
In 2006 constant dollars

Description	2010	2011	2012	2013
Total Potential Demand for Supermarket Sales (000's)	$89,136	$91,385	$94,908	$98,566
Reduction for Wal-Mart's Projected Sales (000's)	($30,000)	($30,000)	($30,000)	($30,000)
Net Demand Available to Existing Supermarkets (000's)	$59,136	$61,385	$64,908	$68,566
Sales Per Square Foot of Existing Stores (148,561 square feet)	$398	$413	$437	$462

Source: TNDG

Given the severe slowdown in new residential development in the trade area, TNDG believes that a significant portion of Wal-Mart's grocery sales will be diverted from existing supermarkets in the trade area. During the Supercenter's initial year of operation (assumed to be 2010), the average sales volume of the Town's existing supermarkets would decrease to a projected $398 per square foot, or roughly the national median. Within three years of the project's opening, demand growth in the trade area would be sufficient to support average sales volumes of $462, or roughly the median for the Western U.S.

Based on the above projections, TNDG does not believe there is compelling evidence that the proposed project will cause an existing supermarket in Yucca Valley to close.

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[2] From the Urban Land Institute's *Dollars & Cents of Shopping Centers*, 2006 edition.

Commissary and PX Facilities at MCAGCC

Dr. King is incorrect in asserting that TNDG failed to account for the fact that a significant number of trade area residents have access to Commissary and PX/BX facilities at the Twentynine Palms Marine Corps Air Ground Combat Center (MCAGCC). As is clearly stated on page 17 of TNDG's June 2006 report, we addressed this issue by systematically reducing Yucca Valley's projected capture rates of resident demand in the secondary market area (SMA).

In deriving our capture rate estimates we reviewed the following data:

- The 2004 version of the MCAGCC Economic Impact Statement (this was the latest version available at the time we prepared our original report); and
- Taxable sales data for the City of Twentynine Palms (the only incorporated city in the SMA).

In order to ensure that TNDG's capture rate assumptions for the SMA are still appropriate, we reviewed the latest (2006) taxable sales data for the City of Twentynine Palms. Within the GAFO categories most relevant to this analysis, TNDG estimates that existing (2006) sales in the City total approximately $9 million per year. Per Dr. King, sales at the PX/BX are approximately $10 million per year. Thus, total GAFO sales in the City and on the base are estimated at approximately $19 million per year. This total amounts to approximately 33% of the total GAFO demand of SMA households, leaving 67% of demand available to be captured in Yucca Valley.

With respect to the large population living on base (over 8,000 individuals, according to Dr. King), TNDG has reviewed census data to confirm that these residents are considered "group quarters" population. Since TNDG's growth forecasts are based on <u>households</u> (not population), the group quarters residents are not included in TNDG's demand calculations and therefore do not need require further adjustment in our analysis.

Response to Dr. King's General Comments on Urban Decay

Under the heading "Urban Decay" beginning on page 10 of his memorandum, Dr. King includes a number of generic comments about the potential impacts of supercenter-type development based on studies completed in other locations (outside California). However, he has failed to provide any evidence that this information is applicable to Yucca Valley. Moreover, the studies cited by Dr. King do not necessarily represent consensus views.

TNDG has summarized below an article which, in our opinion, provides a more balanced discussion of Wal-Mart's economic impacts. The article ("What is the Local Wal-Mart Effect?" by Michael J. Hicks, Ph.D.) is from the Summer 2006 issue of the *Economic Development Journal* published by the International Economic Development Council (IEDC). IEDC is the world's largest professional organization for economic development practitioners, with approximately 4,500 members. Dr. Hicks is an associate professor of economics at the Air Force Institute of Technology (Dayton, Ohio) and a research professor at Marshall University (Huntington, West Virginia). He is well known for his research on Wal-Mart, but it is important to note that he has no financial relationship with Wal-Mart or any Wal-Mart affiliate. TNDG believes that his IEDC article is an excellent resource for local decision makers for the following reasons: a) it provides a thorough, up-to-date review of major academic, peer-reviewed studies on Wal-Mart's socioeconomic impacts; b) it is specifically intended to assist local policy makers in properly framing the complex issues related to the economic impacts of Wal-Mart supercenters; c) it provides a succinct summary of issues where there is general consensus among economists regarding Wal-Mart's impacts; and d) it is honest enough to acknowledge certain issues where there is not consensus regarding Wal-Mart's impacts. A complete copy of Dr. Hicks' article is provided as Appendix D of this memorandum and key points are summarized below (passages in quotations are quoted verbatim from the article):

1. Among the academic studies reviewed by Dr. Hicks, there is general consensus that "the net impact on the number of retail and related firms will be very modest (with estimates of zero, to plus or minus two to four firms)."

2. "There's not much research suggesting Wal-Mart contributes to, much less causes, urban sprawl."

3. Economists do not agree on Wal-Mart's impacts on nominal wages in the retail industry. "Studies find starkly different answers in different regions, times and model structures. Notably, even the estimates of the largest retail wage reductions are still offset by price reductions attributed to Wal-Mart, thus leaving retail workers actually better off in terms of purchasing power." Although labor market impacts are technically not within the purview of CEQA, we mention this point here because Dr. King has raised the wage issue in his memorandum (bottom of page 12).

4. "Finally, whether or not local governments are net fiscal beneficiaries of Wal-Mart is such a highly localized outcome that no generalized answer is possible."

5. "No economic developer has failed to hear the claim that Wal-Mart affects local firms. Yet, research on this matter largely suggests little impact." Studies by Emek Basker (University of Missouri, 2001) and Michael Hicks and Kristy Wilburn (Marshall University, 2005) find "either very modest two to three business increases or losses respectively, and that is over several years. Both find positive economic impacts on retail sub-sectors not competing directly with Wal-Mart. So the overall economic impact is uncertain...By far the most extensive study is by two economists at West Virginia University's Entrepreneurship Center. Using a carefully crafted analysis of Wal-Mart's impact on small businesses (including entrepreneurial type firms), they find the entrance and presence of a Wal-Mart has no statistically significant effect on small business growth, or the relative size and profitability of the small business sector in the U.S. (Sobel and Dean, 2006)."

6. "Local policymakers interested in honestly evaluating Wal-Mart should carefully weigh studies on the subject…studies that present unambiguous findings are a fiction. There are no clear national impacts, and local studies should carefully explain the methodology and make their data and statistics publicly available."

Please feel free to contact us if you have any questions about our revised findings.

Roger Dale, Managing Principal
Alan Levenson, Senior Associate